



Australian
Competition &
Consumer
Commission

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

Date: 3 October 2013

Authorisation numbers: A91354-
A91357

Commissioners: Sims
Cifuentes
Walker

Summary

The ACCC has decided to revoke authorisations A91252- A91255 and grants authorisations A91354-A91357 in substitution. The substitute authorisation is for the revised Homeworkers Code of Practice, and has been granted until 26 October 2018.

The Homeworker Code Committee (the Code Committee) seeks reauthorisation for five years to permit the operation of a revised version of the Homeworkers Code of Practice (the Code). The proposed revisions to the Code (particularly the explicit inclusion of all textiles products) reflect changes in the underlying laws and relevant Award with which the Code seeks to promote compliance. Various versions of the Code have been authorised by the ACCC since 2000.

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 *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 Certification Trademark series 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 and customers regarding the Code and its operations.

The ACCC received a number of submissions in support of the arrangements under the Code. For example, Oxfam stated that it promotes the Code internationally as one of the few examples of a code of practice which successfully protects vulnerable workers. A number of existing accredited businesses also expressed strong support for the Code.

Businesses which oppose the Code have expressed concern that participation in the Code is not voluntary in certain circumstances. In particular, accreditation is a condition of participation under Commonwealth procurement tendering and grant programs. In addition, accredited manufacturers must ensure that all Australian businesses in their outsourced supply chains undertake the compliance auditing process. Therefore, businesses in these supply chains, even if they themselves are not a signatory to the Code, incur some additional auditing costs and must undergo auditing by the TCFUA as to whether they are compliant with workplace laws and the Textile, Clothing and Footwear Award 2010 (if relevant).

After considering the submissions received, including oral submissions provided at a conference to discuss the draft determination, the ACCC is satisfied that the likely public benefits outweigh the likely public detriments.

In particular, the ACCC considers that the Code is likely to lead to public benefits by providing businesses with a means to efficiently ensure that they and their supply chains are compliant with relevant Awards and workplace laws, and a means to efficiently signal this compliance. The ACCC also considers that public benefits are likely to arise from reduced incidence of unlawful treatment of workers.

The ACCC understands that the Commonwealth Government requires the accreditation, under its tendering and grant programs, as a means by which it can ensure that its Australia TCF contractors have complied with workplace laws. The ACCC considers that businesses seeking accreditation in order to qualify for a grant or tender will do so on the basis that the business expects that it will be commercially beneficial to the business.

Similarly, the ACCC considers that the costs to a supplier of undergoing auditing in order to remain in the outsourced supply chain of an accredited business are part of the cost of doing business with an accredited business. Any method used by a business in order to audit its outsourcing arrangements is likely to impose some costs on the businesses being audited.

The ACCC accepts that some public detriment is likely to arise from increased business costs. However, the ACCC considers that these detriments are limited by the following factors:

- a) the Code is a voluntary Code, although the ACCC acknowledges that businesses in the outsourced supply chains of accredited manufacturers or which are seeking accreditation to meet the Commonwealth Procurement Rules may regard it as involuntary;
- b) retail signatories and accredited manufacturers are only able to agree to boycott other businesses who are not compliant with their legal obligations;
- c) the Code contains safeguards against inappropriate accreditation or boycott decisions; and
- d) the Code now includes a dispute resolution mechanism.

The ACCC notes that some businesses have raised concerns about the role of the TCFUA in conducting the audit process. However, the ACCC accepts the TCFUA's continued role as the sole auditor has efficiencies and is consistent with existing legislation.

On balance, the ACCC considers that the likely public benefits outweigh the likely public detriments. Accordingly, the ACCC grants reauthorisation to permit the operation of the revised Code until 26 October 2018.

Although the ACCC has found that the Conduct is likely to produce a net benefit in this matter, the ACCC strongly recommends that the Code 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.

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Glossary of terms

ACCC	Australian Competition and Consumer Commission
accredited manufacturer	a supplier or manufacturer in the textile, clothing and footwear industry who has gained accreditation under Part 1 the Code.
Act	the <i>Competition and Consumer Act 2010</i>
Board of Reference	an entity within the Fair Work Commission which maintains a register of information provided by textile, clothing and footwear businesses which contract out work.
CCIQ	Chamber of Commerce and Industry Queensland
Code	the Homeworkers Code of Practice in the form provided to the ACCC on 7 March 2013.
Code Committee	the Homeworker Code Committee Incorporated
Code Parties	the entities listed in paragraph 8 of this final determination.
Commonwealth outworker entity	defined by section 12 of the Fair Work Act as: a constitutional corporation, the Commonwealth, a Commonwealth authority, a body corporate incorporated in a Territory or (broadly) a person who subcontracts work commonly performed by outworkers in a way that is connected with a Territory.
ECA	Ethical Clothing Australia
Fair Work Act	the <i>Fair Work Act 2009</i>
legal obligations	in the context of the ACCC's consideration of this authorisation application, legal obligations refers to obligations imposed under relevant awards and all relevant workplace laws including (but not limited to) the Fair Work Act, occupational health and safety, anti-discrimination, child labour, public holidays, long-service leave and superannuation.
outworkers	individuals and employees who perform work in the textile, clothing and footwear industry from home or non-conventional business premises.
retail signatory	a retailer in the textile, clothing and footwear industry which has become a signatory to Part 2 of the Code.
TCF Award	the Textile, Clothing, Footwear and Associated Industries Award 2010. This is the current Federal employment award which covers workers in the textile, clothing and footwear industry.
TCFUA	The Textile, Clothing and Footwear Union of Australia
TFIA	Council of Textile and Fashion Industries of Australia Limited
Work agreement	A signed, written agreement between a principal and an outworker which must be entered into prior to the commencement of work by the outworker. The contents of the work agreement are specified by clause F.3 of Schedule F of the TCF Award.

work record

A written record relating to work which is contracted out by a principal, the required details are specified by clause F.2.2 of Schedule F of the TCF Award.

The applications for authorisation

1. On 21 February 2013, the Homeworker Code Committee Incorporated (the Code Committee) lodged applications with the ACCC under section 91C(1) *Competition and Consumer Act 2010* (the Act) for the revocation of authorisations A91252-A91255 and the substitution of A91354-A91357 for the ones revoked (reauthorisation) The Code Committee is seeking reauthorisation for five years. The Code Committee also requested interim authorisation under section 91 of the Act as the current authorisations were due to expire on 11 March 2013.
2. On 7 March 2013, the Code Committee amended its application for reauthorisation, seeking authorisation for five years of a revised version of Homeworkers Code of Practice. Further details regarding the Code are provided in the 'Industry Background' section from paragraph 53.
3. On 8 March 2013, the ACCC granted interim authorisation to permit the ongoing operation of the Homeworkers Code of Practice in the form previously authorised by the ACCC (and as provided in the Code Committee's authorisation application dated 21 February 2013).
4. The Homeworkers Code of Practice is a mechanism within the textile, clothing and footwear industry which seeks to encourage industry compliance with legal obligations relating to workers' entitlements and working conditions. The Code has been authorised by the ACCC in various forms since 2000. The Homeworkers Code of Practice has a number of compliance measures which includes potential boycotts of businesses which are not compliant with their legal obligations, although no boycotts have been engaged in to date.
5. On 21 June 2013, the ACCC issued a draft determination¹ proposing to reauthorise a revised version of the Homeworkers Code of Practice including the further amendments proposed on 17 May 2013 (the Code). A conference was requested to discuss the draft determination and was held on 1 August 2013.
6. Following the pre-decision conference, the Code Committee proposed further variations to the Code including a dispute resolution mechanism and a definition of supply chain. The final version of the revised Code is attached at **Attachment C**.

The Code Parties

7. The Code Committee is a not-for-profit committee which oversees the operation and management of the Homeworkers Code of Practice. It is composed of six representatives from the Textile, Clothing and Footwear Union of Australia, three representatives from business groups and three representatives from individual businesses.
8. The Code Committee has applied for the statutory protection provided by any authorisation to cover itself and:
 - a) the entities which have one or more representatives on the Code Committee's board. These currently include:
 - Textile Clothing and Footwear Union of Australia (TCFUA)
 - New South Wales Business Chamber

¹ Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

- Australian Industry Group (AiG)
 - Australian Retailers Association
 - Jets Swimwear
 - Pacific Brands Limited
 - Cue Clothing Company
- b) current accredited businesses and signatories to the Code²
- c) future accredited businesses and signatories to the Code (collectively, the Code Parties).

Reauthorisation process

9. Authorisation is a transparent process whereby the ACCC may grant protection from legal action for conduct that might otherwise breach the Act. Broadly, the ACCC may 'authorise' businesses to engage in anticompetitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not.³
10. The holder of an authorisation may apply to the ACCC under section 91C of the Act to revoke an existing authorisation and grant another authorisation in substitution for the one revoked (reauthorisation). In order for the ACCC to reauthorise conduct, the ACCC must consider the application for reauthorisation under the same statutory test as if it was a new application for authorisation under section 88 of the Act.

Previous authorisations

11. On 31 July 2000, the ACCC granted authorisation for five years to the Council of Textile and Fashion Industries of Australia Limited (A90722 and A90723) and the TCFUA (A90724 and A90725). The authorisations provided statutory protection to various arrangements that comprised the Homeworkers Code of Practice, in the form which existed at the time.
12. On 12 December 2005, the ACCC granted reauthorisation to the Homeworkers Code of Practice for five years (A90975-A90978).
13. On 17 February 2011, the ACCC granted reauthorisation for two years until 11 March 2013 (A91252-A91255). The shorter length of the reauthorisation was sought by the Code Committee in 2011 as the Code Committee was in the process of conducting a review and relaunch of the Homeworkers Code of Practice.

Industry background

Summary of the textile, clothing and footwear industry

14. 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

² The Code Committee provided a list of the businesses which are accredited or signatories under the Code. This listing is available at **Attachment B**.

³ Detailed information about the authorisation process is contained in the ACCC's Guide to Authorisation, available on the ACCC's website, www.accc.gov.au.

goods such as clothes, shoes, household linen, carpets and industrial textiles. The ACCC notes that despite the broad coverage of the Code to include the entire industry, under the Code, auditing covers only accredited manufacturers and their outsourced supply chains. The difference between outsourced supply chains and other forms of supply are discussed below. The implications of this issue are also discussed further under 'Scope of the Code'.

15. Purchasing in the industry is, broadly, conducted via two different models. Under one model, businesses in the industry buy products or product lines from suppliers on an arms-length basis. These products may either be finished items (e.g. a t-shirt) or they may be intermediate goods (e.g. fabric). The products are then resold or used to manufacture a value added product.
16. Under the second model, businesses in the industry contract for products to be made for them, typically finished products (eg a t-shirt), or services to be provided to them (e.g. embroidery on the t-shirt). Under this model, the purchaser provides detailed specifications and instructions to the contractor on how the products are to be made or services provided and often provides the consumables needed to fulfil the contract. The contractor may fulfil the contract in-house or may sub-contract some or all of the work to one or more other businesses. The second model is referred to in the industry as 'giving out work'. Any business which contracts or sub-contracts out work is referred to as a principal.
17. A business has different legal obligations (some of which are unique to the industry) under existing Awards and workplace laws depending upon if:
 - a) all of its textile, clothing or footwear inputs are bought at arms-length from suppliers and any production is conducted in-house;
 - b) any of its textile, clothing or footwear inputs or products are produced for the business by a contractor. However, that contractor (or its sub-contractors) use in-house workers only, so that no work is performed by an outworker; or
 - c) any of its textile, clothing or footwear inputs or products are produced for the business by a contractor and at least some of the work outsourced to that contractor is ultimately performed by an outworker.
18. The following table is based on the most recent statistics available from the Australian Bureau of Statistics regarding the distribution of businesses in the industry.⁴

Table 1 - Textile, Clothing and Footwear businesses by number of employees and by state and territory June 2011

State	Non employing	1-19 employees	20-199 employees	200+ employees	Total
New South Wales	1339	1157	133	7	2636
Victoria	1165	1134	183	11	2493
Queensland	690	540	80	0	1310
South Australia	246	161	31	0	438
Western Australia	360	286	43	0	689
Tasmania	62	30	9	0	101
Northern Territory	13	12	3	0	28
Australian Capital Territory	44	15	0	0	59
Total	3919	3335	482	18	7754

⁴ 8165.0 - Counts of Australian Businesses, including Entries and Exits, Jun 2007 to Jun 2011.

A selection of industry reviews and reports

19. The ACCC notes that the Homeworkers Code of Practice was originally developed in response to the findings of a number of reviews and reports into industry working conditions. For the purposes of providing context to the Homeworkers Code of Practice, a selection of these reviews and reports are summarised below.

1996 and 1998 Senate Economics References Committee Outworkers in the Garment Industry

20. The Senate Economics References Committee produced two reports in 1996 and 1998 investigating the working conditions of outworkers in the garment industry. The reports found that most outworkers were not receiving their wage entitlements and there was serious exploitation of some outworkers, a situation which 'had probably worsened over the past decade'⁵. The exploitation included physical and verbal abuse and dangerous work environments.
21. The reports included recommendations that:
- the Australian Government clarify within legislation the employment status of outworkers. In particular, since at least 1987, court and tribunal cases had confirmed that, due to the nature of the production process, outworkers in the garment industry are legally employees no matter their apparent contractual status.⁶ However, this had received little recognition within the industry amongst businesses;
 - government clothing procurement include contractual terms to protect outworkers by requiring manufacturers to comply with workplace laws;
 - the Homeworkers Code of Practice be finalised and adopted by all participants in the garment retailing and manufacturing process⁷;
 - the Australian Government fund an education program to assist businesses to implement the Homeworkers Code of Practice⁸; and
 - the industry adopt a label declaring that the employment conditions under which a garment was made complied with legislative requirements.

2001 Cregan, C. *Home Sweat Home*

22. In 2001, Professor Christina Cregan of Melbourne University published the results of a research project into garment outworkers, in a report titled 'Home Sweat Home'. Cregan's study interviewed 119 outworkers working in Melbourne. The outworkers made an average hourly rate of \$3.60. The ACCC notes this may be compared to minimum Award rates of \$10-\$12 at the time.⁹ Over 90% received no paid leave or public holidays.¹⁰ Cregan found that 62% sewed 7 days a week, 26% 6 days a week, and that the majority of outworkers sewed more than 10 hours per day. The study also found high levels of delayed or unpaid remuneration and other payment irregularities.

⁵ Senate Economics References Committee (1997) *Outworkers in the Garment Industry 1996* p. xi.

⁶ Australian Industrial Relations Commission *Re Clothing Trades Award 1982 [1987]* 7 April 1987, 19 IR 416.

⁷ Senate Economics References Committee (1997) *Outworkers in the Garment Industry 1996* p. xv.

⁸ Senate Economics References Committee (1998) *Review of the Inquiry into outworkers in the garment industry 1998* p. 6.

⁹ Australian Industrial Relations Commission (2000) *Re Clothing Trades Award 1999* Print S1147 <http://www.fwc.gov.au/alldocuments/PR904513.htm>.

¹⁰ Cregan, C (2001) *Home Sweat Home* Melbourne University p. 8.

2007 Harpur, P. *Occupational health and safety duties to protect outworkers: the failure of regulatory intervention and calls for reform*

23. In 2007, Paul Harpur conducted a broad ranging review which collated information from a variety of sources including previous academic studies, court cases and Australian State and Federal government reviews of textile, clothing and footwear outworkers. This review cited previous studies that common occupational health and safety risks suffered by outworkers included overwork, poor lighting, dangerous unguarded equipment, exposure to dyes and bleaches which caused various skin conditions, and violence from their suppliers.¹¹
24. Harpur found that poor working conditions were common despite the fact that direct suppliers were often in close proximity to outworkers' premises (in order to deliver materials and collect products) and thus had the opportunity to inspect those premises and provide training. Additionally, this was despite legislation in most states and territories that makes businesses responsible for the occupational health and safety conditions of any outworkers they directly contract to (and in the ACT, to any outworkers in their supply chain).¹²

2007 Brotherhood of St Laurence *Ethical Threads: Corporate social responsibility in the Australian garment industry*

25. The Brotherhood of St Laurence produced a report in 2007 concerning outworkers in the garment industry. The study interviewed both business representatives and outworkers. Although the study interviewed a very small sample of outworkers (13), the outworkers interviewed indicated that a shortage of work meant that conditions had declined since the time of the Cregan study in 2001.¹³
26. The study found limited awareness of existing legal obligations or of outworkers' working conditions on the part of businesses. For example, many business representatives interviewed stated that outworkers were not treated badly in the industry. However, most of these representatives had never talked to an outworker or visited the premises of their contractors or any outworkers in their supply chain.
27. The businesses, particularly smaller ones, cited difficulties in complying with legal obligations and the Homeworkers Code of Practice due to lack of access to suppliers who were compliant, small manufacturing bases and limited corporate capacity. In addition, there was a perception that due to lack of consumer interest, there was no business case in adopting corporate social responsibility measures.
28. Specifically in relation to the Homeworkers Code of Practice, businesses and business representative organisations felt that there was little support for it within the industry. The Code Committee was closely identified with the TCFUA and Fairwear (a labour rights organisation) by business respondents and there were concerns expressed regarding potential mismanagement.¹⁴ Businesses were also concerned about the cost of accreditation (a flat rate fee of \$2000 at the time).

¹¹ Harpur, Paul D. (2007) *Occupational health and safety duties to protect outworkers: the failure of regulatory intervention and calls for reform* Deakin Law Review, 12(2) pp. 63, 64, 66, 67.

¹² Harpur, Paul D. (2007) *Occupational health and safety duties to protect outworkers: the failure of regulatory intervention and calls for reform* Deakin Law Review, 12(2) pp. 53-56.

¹³ Diviney, E and Lillywhite, S (2007) *Ethical Threads: Corporate social responsibility in the Australian garment industry* Brotherhood of St Laurence p. 4.

¹⁴ Diviney, E and Lillywhite, S (2007) *Ethical Threads: Corporate social responsibility in the Australian garment industry* Brotherhood of St Laurence p. 9.

29. The study identified a variety of remedies including increasing dialogue between contracting companies, workers, suppliers and their representative organisations. The study recommended using industry events to increase awareness of labour rights issues and legal obligations. The study also noted that there was 'scope for governments to support vulnerable workers through their procurement activities'.¹⁵ Other strategies identified included targeting industry educational institutions and maintaining a list of Award compliant manufacturers.

2008 Green, R. *Building Innovative Capability: Review of the Australian Textile, Clothing and Footwear Industries*

30. In 2008, Roy Green produced a report commissioned by the Department of Innovation, Industry, Science and Research into exploring ways to improve the viability and capability of the Australian textile, clothing and footwear industries.
31. The report acknowledged the growing consumer awareness and demand for products that have been designed and manufactured in accordance with ethical standards relating to labour conditions, animal welfare and environmental sustainability. The report noted the difficulty of defining and monitoring ethical standards. However, the report noted that Australian firms were seeking certification processes to gain a legitimate advantage in both Australian and overseas markets where consumers wish to be assured of ethical production standards and to have the opportunity to make an informed choice about purchasing. The report recognised the efforts of the industry in developing the Homeworkers Code of Practice to meet this need.¹⁶

2011 Senate Education, Employment and Workplace Relations *Committee Report Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill*

32. In 2011, the Senate Education, Employment and Workplace Relations Committee reviewed the proposed Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill. Following the report of this inquiry, the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012* amended the *Fair Work Act 2009*. The main amendments included:
- changes to the provisions deeming outworkers as employees to make them more explicit and comprehensive;
 - a process for outworkers to recover unpaid amounts from indirect principal businesses further up the supply chain;
 - increased rights of entry into business premises by unions; and
 - provision for the introduction for a mandatory industry code of practice via regulations.¹⁷

Existing industry workplace legal obligations

33. The Code requires compliance with existing legal obligations and is intended to complement those obligations. For example, the auditing of outsourced supply chains is intended to ensure that each business in an accredited supply chain has fulfilled its

¹⁵ Diviney, E and Lillywhite, S (2007) *Ethical Threads: Corporate social responsibility in the Australian garment industry* Brotherhood of St Laurence p. 1.

¹⁶ Green, R. (2008) *Building Innovative Capability: Review of the Australian Textile, Clothing and Footwear Industries* Department of Innovation, Industry, Science and Research vol 1, p. 110.

¹⁷ These regulations have not been utilised to introduce a mandatory code.

record keeping and other obligations under existing laws. The Code also relies upon the obligations of businesses to permit entry to the TCFUA, under existing law, in order to implement an effective supply chain audit mechanism.

34. The main source of businesses' legal obligations in this context are the *Fair Work Act 2009* (the Fair Work Act) and the Textile, Clothing and Footwear Award 2010 (TCF Award). Since Western Australia has not entered into the national industrial relations system and has no relevant Award, the Code obliges unincorporated businesses in that State to comply with the general minimum terms and conditions set under State law. Incorporated Western Australian businesses are subject to the Fair Work Act and the TCF Award in the same way as incorporated businesses in other States. In addition, other more general, workplace laws also apply to and protect textile, clothing and footwear industry workers. These include State and Federal laws relating to: occupational health and safety, anti-discrimination, child labour, public holidays, long-service leave and superannuation.

The Fair Work Act 2009

35. The Fair Work Act commenced operation on 1 July 2009, replacing the previous *Workplace Relations Act 1996*. Under section 26, the Fair Work Act applies to the exclusion of all State or Territory industrial laws 'so far as they would otherwise apply in relation to a national system employee or a national system employer'. However section 27(2) preserves the operation of State laws in relation to a number of matters including outworkers.
36. The following sections of the Fair Work Act are relevant to the legal obligations and liability of businesses in the textile, clothing and footwear industry which contract out work:
- an employer is prohibited from misrepresenting to an individual that a contract for employment is actually a contract for services under which the individual would perform work as an independent contractor (sham contracting);¹⁸
 - an outworker is defined as:¹⁹
 - (a) an employee who, for the purpose of the business of his or her employer, performs work at residential premises or at other premises that would not conventionally be regarded as being business premises; or
 - (b) an individual who, for the purpose of a contract for the provision of services, performs work:
 - i) in the textile, clothing or footwear industry; and
 - ii) at residential premises or at other premises that would not conventionally be regarded as being business premises;
 - in many circumstances, outworkers in the textile, clothing and footwear industry are taken to be employees of any business for which the outworkers perform work either directly or indirectly.²⁰
37. The effect of the above provisions is that, for many businesses which outsource work which is ultimately performed by an outworker, those businesses are liable should the

¹⁸ Sections 357-359 *Fair Work Act 2009*.

¹⁹ Section 12 *Fair Work Act 2009*.

²⁰ Section 789BB *Fair Work Act 2009*.

outworker not get paid their full legal entitlements.²¹ This makes such a business reliant on the compliance of all contractors in its outsourced supply chain, even if the work has been further sub-contracted out by other businesses. There are certain exceptions for retailers depending upon the retailers' oversight of the work performed.²²

38. The Fair Work Act also grants unions the ability to enter workplaces and access records and documents to investigate suspected contraventions of the Fair Work Act or a related instrument. As well as these general provisions, there are also special provisions which facilitate easier union access to investigate suspected contraventions relating to textile, clothing and footwear outworkers.²³

The Textile, Clothing and Footwear Award 2010

39. The TCF Award is an instrument created under the Fair Work Act which establishes the minimum terms and conditions of employment in the textile, clothing and footwear industry. Prior to the decision of the Fair Work Commission which established the TCF Award, these minimum terms and conditions of employment were established by a mixture of State legislation and State and Federal Awards which covered particular sections of the industry (e.g. the Clothing Trades Award 1999 (Cth)).
40. In addition to provisions dealing with minimum conditions for standard full time, part-time and casual employees, Schedule F to the TCF Award also contains various special provisions in relation to outworkers. Broadly:
- any principal business which contracts out work is obliged to be registered with the relevant Fair Work Commission Board of Reference. Such arrangements are referred to as 'giving out work'. If a business gives out work to another business which in turns gives out the work, then both businesses are considered to be principals;
 - a principal is required to make and retain a written record of work which is contracted out (work record), which is also to be provided to the person with whom the principal has made the arrangement;
 - there are further record keeping obligations if a principal gives out work directly to a worker or a worker's family business. Alternatively, a principal may give out work only to other principals or to businesses which will perform the work using in-house employees;
 - a principal must make and retain a list of each person to whom it has given out work and the dates this occurred. A copy of the list is to be provided quarterly to the Fair Work Commission and the state branch of the TCFUA;
 - principals who give work directly to outworkers are required to provide workers entitlements as though the outworkers are full-time or part-time employees;
 - a principal is liable if a business to which it has given out work owes unpaid amounts to the workers who performed the work (whether due to non-payment or incorrect payments). This extends the Fair Work Act obligations to more businesses and workers.

²¹ In this case, 'business', means a defined Commonwealth outworker entity: a constitutional corporation, the Commonwealth, a Commonwealth authority, a body corporate incorporated in a Territory or (broadly) a person who subcontracts work commonly performed by outworkers in a way that is connected with a Territory. Section 12 *Fair Work Act 2009*.

²² Division 3, Part 6-4A *Fair Work Act 2009*.

²³ Chapter 3 Part 3-4 *Fair Work Act 2009*.

- principals require the consent of the TCFUA or the TCF Award Board of Reference (the Fair Work Commission) in order to give out work to more than 10 workers at any time; and
- upon request, principals are required to provide relevant documents to the TCFUA for inspection and copying.

Commonwealth Procurement Rules and grant requirements

41. Commonwealth Government policy requires accreditation of a business if it is in the textiles, clothing and footwear industry and, broadly, seeking:
- a. to become the prime contractor for Commonwealth procurement worth \$80,000 or more, or
 - b. to gain a Commonwealth grant, the specific requirements of which are governed by each grant's eligibility rules.
42. Clause 6.7 of the Commonwealth Procurement Rules (formerly the Commonwealth Procurement Guidelines) states that: '[a]gencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.' The Commonwealth Procurement Rules apply to all departments and agencies subject to the *Financial Management and Accountability Act 1997*. A breach of the Commonwealth Procurement Rules is a breach of Regulation 7 of the Financial Management and Accountability Regulations 1997. The Australian Government Procurement Statement and the Fair Work Principles are used to interpret the Commonwealth Procurement Rules and a breach of either is also considered to be a breach of Regulation 7 of the Financial Management and Accountability Regulations 1997.
43. Clause 6.7 is interpreted by the Australian Government Procurement Statement which states in part:
- The Australian Government is also committed to ensuring an appropriate safety net for homeworkers. All government contractors in the textile, clothing and footwear industry must be accredited or be seeking accreditation with the Homeworkers' Code of Practice.²⁴*
44. In addition to the Commonwealth Procurement Rules and Australian Government Procurement Statement, there are 24 procurement-connected policies administered by Australian Government agencies which are intended to assist interpretation of the Commonwealth Procurement Rules. Of relevance is the Fair Work Principles which state:
- The Australian Government is committed to ensuring an appropriate safety net for Homeworkers.*
- ...
- Suppliers in the TCF industry who tender to provide goods to the Australian Government must be accredited with the Homeworkers' Code of Practice. This requirement also applies to any subcontractor in the supply chain.*
45. The Post Implementation Review of the above aspects of the Commonwealth procurement policy indicated that the vast majority of Commonwealth procurement of textiles, clothing and footwear products occurs through the Department of Defence or the

²⁴ Australian Government Procurement Statement 2009, p. 4.

Defence Materiel Organisation.²⁵ The Defence Procurement Policy Manual has interpreted the Commonwealth procurement policy as follows:

... for all procurements at or above the relevant procurement threshold, Defence must not enter into a contract with a tenderer who:

...

- *is a textiles, clothing or footwear manufacturer that is not accredited with the Homeworkers' Code of Practice, or not seeking such accreditation*²⁶

46. The obligations on Australian manufacturers of textiles, clothing and footwear to the Commonwealth to gain accreditation existed at the time the Homeworkers Code of Practice was previously authorised, in 2011. However, in practice it appears that this obligation has not been applied to textile manufacturers, since in most cases they could not have gained accreditation under the previous wording of the Code. Should the revised version of the Code be authorised, this situation is likely to change and the Commonwealth tender and grant requirements are likely to be extended to include accreditation of textiles manufacturers. However, the relevant aspects of the Commonwealth Government's policy are also subject to change and this may affect the accreditation requirement generally.
47. A critical aspect of the Commonwealth procurement policy is that it only requires an Australian manufacturer of textiles (or clothing or footwear) to be accredited if the Commonwealth Government purchases textiles (or clothing or footwear) directly from that manufacturer. In particular, accreditation is not required if the textiles are purchased as a component of another product or provided in the course of a service by a contractor which is not in the textiles, clothing or footwear industry. The term 'textiles' as used in the Commonwealth procurement policy covers both assembled textile products such as towels, sheets and sleeping bags and unassembled textile products such fabric and yarn.
48. Questions were raised at the pre-decision conference regarding, for example, the textiles used in aircraft purchased by the Commonwealth and carpet used in Commonwealth buildings. However, if the unassembled textiles are acquired by a prime contractor or sub-contractor then no accreditation is required. That is, no accreditation is required, as the products purchased by the Commonwealth Government are the aircraft as a whole or a building fitout and the contractor they are purchased from is not a manufacturer in the textile, clothing or footwear industry.
49. The initial Post Implementation Review found that the vast majority of tenders for textiles, clothing or footwear products recorded on AusTender (39 in the previous two years) were won by suppliers which did not manufacture the products and therefore were not required to gain accreditation.²⁷ The ACCC accepts that industry beneficiaries of Commonwealth grants are also generally required to gain accreditation. This is likely to be of particular relevance to research intensive sectors of the industry such as technical and non-woven textiles.
50. Separate from the issue of accreditation is the issue of auditing of textile manufacturers. The ACCC notes that businesses and business associations which objected to accreditation of textiles businesses also raised concerns regarding the extent of auditing

²⁵ Department of Finance *Australian Government Procurement Statement - textile, clothing and footwear provisions Post Implementation Review* September 2012, p 12.

²⁶ Department of Defence *Defence Procurement Policy Manual* July 2012, p. 3.10-3, para 12.

²⁷ Department of Finance *Australian Government Procurement Statement - textile, clothing and footwear provisions Post Implementation Review* September 2012, p 12.

<http://ris.finance.gov.au/2013/04/12/australian-government-procurement-statement-post-implementation-review-department-of-education-employment-and-workplace-relations/>.

to which textiles businesses might be subject as suppliers of accredited manufacturers. As discussed in 'Scope of Code', supplier auditing is limited to outsourced supply chains of accredited manufacturers. Therefore, to the extent that textiles businesses may sell their products to accredited manufacturers, textiles businesses would only be subject to auditing if this sale occurred under an outsourcing contract.

Fair Work Commission

51. Previously known as Fair Work Australia, and established on 1 January 2010, the Fair Work Commission is the national workplace relations tribunal. The Fair Work Commission also maintains the Boards of Reference for the purposes of the TCF Award. The Fair Work Commission has the power to vary awards, make minimum wage orders, approve enterprise agreements, determine unfair dismissal claims and make orders on such things as good faith bargaining and industrial action. The Fair Work Commission is also able to assist employees and employers to resolve disputes at the workplace through mediation.²⁸

Fair Work Ombudsman

52. The Fair Work Ombudsman is a statutory office established on 1 January 2010 under the Fair Work Act. The Fair Work Ombudsman's functions include promoting harmonious, productive and cooperative workplace relations and ensuring compliance with Commonwealth workplace laws. In exercising these functions, the Fair Work Ombudsman provides information and education regarding Australia's workplace relation system. It also investigates and litigates complaints and breaches of workplace laws, awards and agreements.²⁹

The Homeworkers Code of Practice

53. The Code is a tool to enable businesses to manage their own compliance, including exposure to noncompliance in their supply chains, with relevant awards (currently the TCF Award) and workplace laws in the textile, clothing and footwear industry (referred to generally as 'legal obligations'). The proposed terms of the Code are the result of negotiations since 2010 between the TCFUA, Council of Textile and Fashion Industries of Australia Limited (TFIA), Australian Industry Group, the NSW Business Chamber, the Australian Retailers Association and individual businesses which are members of the Code Committee.³⁰
54. The role of the Code Committee under clause 5 of the Code is to:
- develop the Code;
 - make accreditation decisions under the Code and settle disputes; and
 - oversee Ethical Clothing Australia.
55. Ethical Clothing Australia is a registered business name of the Code Committee and it is used to refer to the staff of the Code Committee who are responsible for its day to day operations. The staff of the Code Committee consist of a national manager, two accreditation advisors, an administrative officer, a finance officer, and a media and communications director.

²⁸ Fair Work Commission website: <http://www.fwc.gov.au/index.cfm?pagename=aboutrole>.

²⁹ Fair Work Ombudsman website: <http://www.fairwork.gov.au/about-us/pages/default.aspx>.

³⁰ The ACCC notes that at this stage, it is unclear whether the Council of Textile and Fashion Industries of Australia Limited will rejoin the Code Committee.

56. Ethical Clothing Australia's role under clause 7 of the Code is to promote ethical behaviour in the industry, administer the Code and assist applicants and accredited manufacturers. Ethical Clothing Australia provides some training and marketing regarding the Code to businesses and consumers, runs a telephone line to provide assistance to businesses undergoing accreditation and auditing and has developed detailed guidelines to assist businesses to understand their legal obligations in relation to workers' entitlements.
57. The TCFUA's role under clause 6 of the Code is to audit businesses' compliance with their legal obligations. When conducting such audits, if incidences of noncompliance are discovered, the TCFUA's compliance officers are expected to educate businesses as to how to become legally compliant. The TCFUA is also expected to assist Ethical Clothing Australia to promote workers' and consumers' awareness of the Code and workers' legal entitlements.
58. The operations of the Code are subsidised by Australian Government grants provided through the Department of Education, Employment and Workplace Relations.³¹ This funds the day to day operations and training provided or outsourced by Ethical Clothing Australia and the compliance auditing by the TCFUA. The yearly fees of \$330-\$6600 (depending on size) paid by accredited manufacturers (but not retail signatories) also make a contribution to the operations of the Code.
59. The agreements that comprise the Code and for which reauthorisation is sought are the:
 - Manufacturers' Agreement (Part 1)
 - Retailers' Agreement (Part 2).

Manufacturers' Agreement

60. 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.
61. 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.
62. 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.³²
63. 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:

³¹ The most recent grant was awarded for a four year period from 2011-2015.

³² Clause 10, Part 1 Homeworkers Code of Practice (7 March 2013 version).

³³ Clause 9, Part 1 Homeworkers Code of Practice (7 March 2013 version).

- 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;³⁴
 - iv. it, and all suppliers within any outsourced supply chain, are registered with the Board of Reference if they give out work; and
 - 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;³⁵
 - c) pay the yearly accreditation fee³⁶ 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 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.³⁸
64. 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.³⁹
65. 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. Clause 9.6 of Part 1 of the Code states that:
- with the exception of clause 9.4(d) of Part 1 of the Code, the Code is intended to reflect requirements of the Award and relevant workplace laws. A party who complies with an Award or workplace law will also have complied with a provision of the Code that is intended to reflect the relevant requirement of the Award or workplace law as in force from time to time.
66. 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.
67. The exception in clause 9.4(d) of Part 1 of the Code potentially extends the liability of an accredited manufacturer to cover unpaid remuneration to outworkers within its supply chain.⁴⁰ In specific circumstances, this supplements the mechanisms to recover unpaid workers' entitlements in clause F.7 of the TCF Award and Division 3 of the Fair Work Act. This is discussed further under 'Scope' in 'ACCC Evaluation'.

³⁴ The standard letter is Schedule 6, Part 1 *Homeworkers Code of Practice* (7 March 2013 version).

³⁵ Clauses 9.2, 9.3 and 9.4, Part 1 *Homeworkers Code of Practice* (7 March 2013 version).

³⁶ Clause 11, Part 1 *Homeworkers Code of Practice* (7 March 2013 version).

³⁷ Work agreements, work records, wages records, superannuation fund and record of payments, workers compensation fund and record of payments.

³⁸ Clause 8, Part 1 *Homeworkers Code of Practice* (7 March 2013 version).

³⁹ Clause 9.5, Part 1 *Homeworkers Code of Practice* (7 March 2013 version).

⁴⁰ Clause 9.4(d), Part 1 *Homeworkers Code of Practice* (7 March 2013 version).

68. 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.
69. 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.

Retailers' Agreement

70. 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.
71. 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;⁴¹
 - 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;⁴²
 - 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;⁴³
 - 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;⁴⁴
 - 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;⁴⁵
 - 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;⁴⁶
 - g) include in any future supply agreements, and use its best endeavours to amend existing supply agreements to include, obligations on its suppliers to.⁴⁷

⁴¹ Clause 4.7, Part 2 *Homeworkers Code of Practice* (7 March 2013 version).

⁴² Clause 6, Part 2 *Homeworkers Code of Practice* (7 March 2013 version).

⁴³ Clause 6.3 and 6.4 *Homeworkers Code of Practice* (7 March 2013 version).

⁴⁴ Clause 3 and 4.1, Part 2 *Homeworkers Code of Practice* (7 March 2013 version).

⁴⁵ Clause 4.2, Part 2 *Homeworkers Code of Practice* (7 March 2013 version).

⁴⁶ Clause 3.1(c), Part 2 *Homeworkers Code of Practice* (7 March 2013 version).

⁴⁷ Clauses 4.3 and 4.4, Part 2 *Homeworkers Code of Practice* (7 March 2013 version).

- 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;⁴⁸ and
- i) permit its suppliers to use the Ethical Certification Trademark series on labels and swing tags if they are accredited under the Code.
72. 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.
73. 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.⁴⁹

Interaction between the Code and state mandatory codes

74. New South Wales has a mandatory code of practice in relation to textile, clothing and footwear industry outworkers. South Australia has a mandatory code of practice in relation to clothing outworkers only. Both mandatory codes provide an exemption from compliance with the relevant state mandatory codes for manufacturers and/or retailers accredited under the Code.⁵⁰ Queensland has previously implemented a mandatory code of practice in relation to clothing outworkers but this was repealed on 9 November 2012.
75. There are considerable differences between the mandatory State codes and the Homeworkers Code of Practice. In particular, the State codes have been imposed by the relevant state governments as a condition of doing business in the section/s of the industry covered by the codes. The Homeworkers Code of Practice, by contrast, is a voluntary code. It is possible both in theory and in practice to operate in all areas of the industry as most businesses do (on a comparison of the number of Code signatories with the number of businesses in the industry on ABS statistics) without becoming either a retail signatory or an accredited manufacturer.
76. Other differences between the mandatory State codes and the Homeworkers Code of Practice relate both to the parties which bear obligations under the various codes and the methods by which the codes operate. For example, the mandatory Queensland Code of Practice (prior to its repeal) required retailers to frequently create extensive documentation, on prescribed forms, describing the structure and details of the businesses in their outsourced supply chains. This may be compared to the Code which

⁴⁸ Clauses 4.5 and 4.6 Part 1 *Homeworkers Code of Practice* (7 March 2013 version).

⁴⁹ Clause 9, Part 2 *Homeworkers Code of Practice* (7 March 2013 version).

⁵⁰ The South Australian *Outworker (Clothing Industry) Protection Code* is made by regulation under section 99C of the *Fair Work Act 1994* (SA). The New South Wales *Ethical Clothing Trades Extended Responsibility Scheme* is made by regulation under Part 3 of the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW).

largely relies on manufacturers and retailers maintaining the existing paperwork required to be created under existing laws in order to trace outsourced supply chains.

Submissions received by the ACCC

77. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process. The ACCC specifically sought submissions from the members of the Code Committee (which includes the TCFUA, industry representative groups and individual businesses), relevant state and Australian Government departments, industry representative groups which are not members of the Code Committee and various non-government stakeholders.
78. The ACCC received 31 submissions from interested parties in relation to the Code Committee's request for interim authorisation. Many of these submissions were also expressed to apply to the ACCC's consideration of the substantive application for reauthorisation. After seeking further submissions in relation to the substantive application the ACCC received another 18 submissions prior to the draft determination. Following the draft determination, the ACCC held a pre-decision conference attended by 23 interested parties. In addition, following the draft determination, the ACCC received a further 21 submissions.⁵¹ This includes submissions in relation to amendments proposed to the Code following the draft determination.

Prior to the draft determination

Submissions supporting the authorisation application

79. The ACCC received submissions (including some submissions received on a confidential basis) from industry associations, individual businesses and the TCFUA that expressed support for the Code. Public submissions were received from the Department of Education, Employment and Workplace Relations, Oxfam, the TCFUA, Fairwear, the NSW Business Chamber, Ted Eftimiadis (a business representative on the Code Committee), New Model Beauty Queen and So Stella.
80. These submissions supported the Code Committee's claims that the Code is likely to reduce the unlawful treatment of workers, provide an efficient means by which businesses can show their compliance with legal obligations and also reduce supply chain risks.

Submissions opposing the authorisation application

81. The ACCC also received a number of confidential and nonconfidential submissions expressing concerns with reauthorisation of the Code in any form. Public submissions opposing the authorisation were received from the Council of Textile and Fashion Industries of Australia Limited (TFIA), the National Retail Association (NRA), Jenny Bannister, M Recht Accessories Pty Ltd, GTG Industries Pty Ltd t/a Skoola, Markit Apparel Online and Wilderness Wear Australia Pty Ltd.
82. A number of interested parties including the TFIA and the National Retail Association queried the claimed public benefits of the Code, given:
 - a claimed reduction in the number of homeworkers;
 - a claimed lack of exploitation of homeworkers; and

⁵¹ Some interested parties have made multiple submissions.

- the existence of alternative methods which are available to increase businesses' compliance with their legal obligations.⁵²
83. Further, interested parties considered that the Code has given rise to detriments, and is likely to in the future, because:
- compliance with the Code is not seen by businesses to be voluntary in certain circumstances. In particular, businesses which are required to gain accreditation in order to meet government grant or tender requirements or undergo auditing in order to remain in the supply chain of an accredited business;
 - there are high compliance costs, in particular the cost of paperwork and seeking many statutory declarations; and
 - the involvement of the TCFUA in the process of accreditation under the Code, including the scope of the audits performed by the TCFUA (which imposes further costs upon businesses and to which some businesses have an objection).⁵³
84. Several of the confidential submissions and the submission from Markit Apparel Online opposing the application were received from small businesses who consider themselves wrongly classified as outworkers under the TCF Award and the Fair Work Act. These small businesses did not consider themselves or other similar small business owners in the industry as subject to exploitation. Further, they considered that their ability (and the ability of similar people) to establish and run a small home based business had been significantly inhibited by measures in the TCF Award and the Fair Work Act which are intended to protect them as outworkers. These businesses considered that the Code would lead to public detriment through the effect of greater compliance cost burden on small businesses such as themselves.

Following the draft determination

85. A pre-decision conference was requested by Technical Fabric Services Australia to discuss the draft determination. The conference was held in Melbourne on 1 August 2013, with links via video conference to Brisbane and Sydney. A record of the conference may be obtained from the ACCC's website www.accc.gov.au/authorisationsregister. The ACCC also received public and confidential submissions following the draft determination.
86. The primary issues raised at the conference and in submissions following the draft determination were substantially the same as those raised pre-draft determination. In summary, they are:
- a) the Code is effectively mandatory due to the Commonwealth Government's procurement policy;⁵⁴
 - b) a perceived overreach of the Code to businesses that typically don't use outworkers, including technical textiles businesses;

⁵² Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013 Letter pp 3, 7; Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 4 March 2013 Letter pp 5-6.

⁵³ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013 Letter pp 2, 3, 6.

⁵⁴ The Commonwealth Government's procurement policy refers to the Commonwealth Procurement Rules (formerly the Commonwealth Procurement Guidelines) as supplemented by the Australian Government Procurement Statement and the Fair Work Principles. In the case of the defence contracting, this is interpreted and supplemented by the Defence Procurement Policy Manual and various procurement templates.

- c) the costs borne by industry in complying with labour regulation, including accreditation under the Code and/or auditing under the Code;
 - d) the fact that the TCFUA is the auditor with no alternative auditor available or dispute resolution mechanism; and
 - e) questions about the basis or need for the Code given a lack of recent data on businesses' levels of compliance and the effectiveness of the Code in redressing problems.
87. Other interested parties provided submissions supporting the Code and the TCFUA's role as the auditor of the Code.
88. The views of the Code Committee and interested parties are outlined in the ACCC's evaluation chapter of this determination. Copies of public submissions may be obtained from the ACCC's website www.accc.gov.au/authorisationsregister.

ACCC evaluation

89. The ACCC's evaluation of the Code is in accordance with the relevant net public benefit tests⁵⁵ contained in the Act. While there is some variation in the language of the tests, in broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition and weigh the two. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public would outweigh the public detriments.
90. In order to assess the likely effect of the Code and the public benefits and detriments likely to result, the ACCC identifies the relevant areas of competition and the likely future with and without the Code.

Scope of the Code

Coverage of textiles and footwear

91. The ACCC notes that it has received a number of submissions from the TFIA and from businesses that the revisions incorporated within the Code have unjustifiably extended the operation of the Code to include textile and footwear businesses (in addition to clothing businesses) and to cover all workers of those businesses (not just outworkers).
92. A number of manufacturers supported the submissions of the Technical Textile and Non-woven Association (TTNA) at the pre-decision conference, that no benefits are likely to arise from the application of the Code to some sectors of the industry, since:
- a) the production processes involve large expensive machinery in factories with highly educated employees (eg engineers and industrial chemists) and there is no evidence of a pattern of significant breaches of workplace laws amongst this type of worker;
 - b) in order to protect intellectual property, none of the work is outsourced, therefore the businesses do not benefit from the Code's risk reduction effects in relation to outsourced work; and
 - c) the narrow focus of the Code's certification means that it offers little additional benefit to manufacturers in a sector which already uses a variety of stringent accreditation

⁵⁵ Sections 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the Act. The relevant tests are set out in full at Attachment A.

and certification programs, including the in-house programs of major customers such as Boeing and Toyota.

93. In addition, to the TTNA's claim that there is a lack of benefit in applying the Code to its sector, the TTNA claims a number of detriments are imposed upon an accredited manufacturer and coverage of this sector of the industry requires funds from the Code Committee for auditing and accreditation which could be better spent in more problematic areas.
94. The TCFUA submitted that the Code was, from its beginning, intended to cover all workers in the TCF industry, not simply outworkers. The TCFUA acknowledged that the Code covers businesses and areas of the industry which do not utilise outworkers but considers this a deliberate intention of the Code. The TCFUA submitted that this was important because in its experience:
- a) prior to having their outsourced supply chain audited, many businesses are unaware of outworkers in their supply chain and therefore, businesses are not always able to reliably guarantee that outsourced work performed in their supply chain is not performed by outworkers;
 - b) outworkers may work in a variety of employment conditions including factory like conditions, therefore there are no clear distinctions between in-house factory workers and outworkers; and
 - c) upon inspection, many factories have significant occupational health and safety issues, even if not part of an outsourced supply chain, for example, lack of adequate ventilation. The application of the Code provides a benefit in that these environments will be audited and issues identified.
95. Public submissions supporting the Code have been received from five accredited small businesses and one medium sized business that do not outsource or minimally outsource production. Although these businesses do not outsource work, they considered that they gained value from accreditation under the Code, particularly from the use of the certification trademark.
96. The ACCC notes that the range of businesses which may become accredited is limited by the definition, in Part 1 of the Code, of 'Products' which may be supplied by accredited manufacturers. Similarly, the type of businesses which may become retail signatories is limited by the definition of 'Goods' in Part 2 of the Code.
97. The definition in Part 1 of the Code also defines the range of businesses which may be audited in the supply chain of an accredited manufacturer.⁵⁶ However, the extent to which a supply chain may be audited also depends upon whether it is performing work which was originally outsourced by a manufacturer seeking accreditation. The ACCC notes that fabric and yarn manufacturers are examples of textiles businesses which are less likely to be subject to supply chain auditing, as fabric and yarn is commonly bought on an arms-length basis. However, the assembly of linens and furniture covers are examples of textiles work which are likely to be outsourced. If work is outsourced by a business seeking accreditation then the contractors performing the work would be subject to supply chain auditing.
98. Previously, the definitions of 'Products' and 'Goods' in the Homeworkers Code of Practice included a reference to 'wearing apparel' which the Code Committee and the TCFUA have interpreted to extend to footwear. Accordingly, the Code Committee has previously accredited footwear businesses and accepted such businesses as retail signatories.

⁵⁶ The definition in Part 2 of the Code plays a similar role in relation to retail signatories.

99. In relation to textiles products, the definition of 'Products' did not explicitly include textiles products. However, the definition did include a statement that: '[i]t is an intention of the parties to expand the definition of product to encompass all items manufactured by parties to this agreement.'⁵⁷ The ACCC also notes that the definition of 'Goods' included many items commonly considered to be textile products including handkerchief, serviette, pillowslip, pillowsham, sheets, tablecloth, towel, quilt, apron, mosquito net, bed valance, or bed curtain, and ornamentations made of textiles, felts or similar fabrics, or artificial flowers.
100. The Code Committee has revised the definition of 'Products' and 'Goods' to explicitly include any article of footwear or any textile product.
101. The Code Committee submits that the Code was originally established to reflect and supplement the outworker and contracting out provisions of the Clothing Trades Award 1999, which was replaced by the modern Textile, Clothing and Footwear Award in 2010.⁵⁸ In addition, many relevant laws are expressed to apply to the whole textiles, clothing and footwear industry and are not limited to, for example, the clothing section of the industry. Examples include the Commonwealth Procurement Rules, the Fair Work Act and State occupational health and safety legislation. Therefore, the extension of the Code to explicitly include textiles manufacturers (in particular) reflects changes in the coverage of the underlying Award and laws.
102. The ACCC agrees that the revisions to the definition of 'Products' and 'Goods' will extend the operation of the Code to some textiles businesses not previously covered. However, the ACCC considers that the revisions do not go beyond the definitions of the types of businesses covered by the TCF Award and relevant State and Federal legislation.

The extent of businesses audited as suppliers

103. The ACCC notes that the Code audits suppliers of accredited manufacturers only to the extent that the suppliers are performing work which was ultimately outsourced by the accredited manufacturer. As noted above, arms-length supply arrangements are not audited and the revised definition of 'supply chain' clarifies this practice.
104. For the avoidance of doubt, the Code Committee has now included the following definition of supply chain which states that:

4.15 "Supply Chain" in relation to a manufacturer (whether accredited or seeking accreditation under this Code), means one or more arrangements entered into by the manufacturer, with any legal or natural person, to have work performed for them (directly or indirectly) as the principal.

Workers in a manufacturer's supply chain include workers directly engaged by the manufacturer (including homeworkers) and/or those workers engaged by any of their suppliers or contractors (including homeworkers).

105. This definition uses the terminology of the Fair Work Act and the Award in relation to the types of supply relationships subject to extended obligations under existing laws, reflecting the Code's concern to encourage compliance with existing laws.

⁵⁷ Clause 4.10, Part 2 of the *Homeworkers Code of Practice* as authorised on 17 February 2011.

⁵⁸ Homeworker Code Committee Submission 6 March 2013 *HWCC Response to ACCC issues regarding revised HWCP* p. 6.

106. The ACCC considers that, contrary to the concerns expressed by many businesses, there is a limit on how far supply chain auditing will reach. The outsourcing relationships audited under the Code are relatively common in the manufacturing of clothing, footwear and assembled textile products (eg towels and sheets) but are likely to be relatively uncommon in relation to unassembled products (such as fabrics and yarns). The ACCC acknowledges, however, that specialist yarns and fabrics are more likely to be produced under a work contract according to the specific design, methods and instructions of a manufacturer which uses them as inputs to finished products and therefore may be more commonly considered to be outsourced production.

Coverage of all workers

107. The ACCC notes the submissions objecting to the Code on the basis that the revisions to the Code mean that the Code explicitly covers all workers of relevant businesses, not just outworkers. These submissions also objected to the fact that, under previously authorised versions of the Homeworkers Code of Practice, the TCFUA has audited the working conditions of employees and factory workers, not just outworkers.

108. The ACCC refers to clause 4.7 of Part 1 of previous versions of the Code in which retailers commit to take action in the event of exploitation being identified in relation to both suppliers' employees and their contractors. The ACCC notes that Part 2 of previous versions of the Code has been more explicitly focused upon outworkers (referred to as homeworkers). However, the ACCC also notes that the definition of "Manufacturer" in these previous versions of the Code clearly contemplates that accredited manufacturers may conduct production in-house (using in-house workers rather than outworkers). This reflects the intention of the Code Committee (stated in relation to previous authorisations) to ensure that all workers engaged by an accredited manufacturer or in its outsourced supply chain receive their Award and legislative entitlements.⁵⁹

109. The ACCC considers that there is some confusion in the industry regarding the scope of the Homeworkers Code of Practice and that the revisions in the Code are likely to provide clarification on this point. However, the ACCC also considers that the coverage for both in-house workers and outworkers has been an attribute of the Homeworkers Code of Practice since the version authorised by the ACCC in 2005 (and reauthorised in 2011). Accordingly, the ACCC does not consider that the revisions in the Code extend its operations beyond previous versions of the Homeworkers Code of Practice in this respect.

Comparison of obligations owed to workers under the Code with existing legal obligations

110. The ACCC has received a number of submissions which express concerns that the Code imposes obligations upon businesses additional to existing legal obligations. The ACCC notes that the intention of the Homeworkers Code of Conduct is to require compliance with existing legal obligations in relevant awards and legislation rather than to extend these obligations. Therefore, to the extent that the Code includes substantive obligations to workers, these have been included in the Homeworkers Code of Conduct for educative purposes.

111. The one exception is clause 9.4(d) of Part 1 of the Code which intentionally extends the liability of some accredited manufacturers to cover unpaid remuneration to outworkers

⁵⁹ For example, in Homeworkers Code Committee *Application for authorisation 2010* (granted 17 February 2011) p. 8.

within their outsourced supply chains.⁶⁰ The ACCC notes that this is not a new clause and was present in the version of the Homeworkers Code of Practice which was authorised by the ACCC in 2005 (and reauthorised in 2011).

112. The ACCC notes that, clause 9.6 mitigates the risk that the Award or underlying workplace laws may change in the future in a way which is inconsistent with the content of the Code.
113. The ACCC also notes that amendments to the Fair Work Act during the life of the Homeworkers Code of Practice have reduced the extent to which clause 9.4(d) of the Code differs from underlying legal obligations. In particular, the amendments contained in the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012* gave outworkers the ability to recover unpaid amounts from indirect principals which are subject to the Fair Work Act.⁶¹
114. The TCF Award also gives all workers, including outworkers, the ability to recover unpaid amounts from indirect principals which are one step removed from their direct principal. Due to the referral of State employment powers, except in Western Australia and subject to transitional arrangements, businesses such as sole traders and partnerships are subject to the TCF Award as well as corporations.
115. Given the above considerations, the ACCC considers that the incremental extension in clause 9.4(d) of Part 1 of the Code is likely to have the greatest effect upon small State based businesses which are unincorporated. The effect of this extension on the likely benefits and detriments of the Code is considered below.

Conclusion on scope of the Code

116. The ACCC considers that the revisions to the Code reflect existing laws and will extend the operations of the Code to some textiles businesses not previously covered under previous versions of the Code. That is, all textiles manufacturers will be eligible for accreditation and, to the extent that a business participates in a supply chain outsourced by an accredited manufacturer or that of a retail signatory, that business may be audited as a supplier under the Code. The ACCC accepts that the Code proposes to audit the working conditions of all workers of an accredited business and all workers in any relevant supply chain. The ACCC also accepts that, depending on the circumstances of an accredited manufacturer, the Code may incrementally increase the accredited manufacturer's obligations to unpaid outworkers in any outsourced supply chain. As noted above, this part of the Code existed under previously authorised versions of the Code.
117. The ACCC considers that those factors which affect the scope of the Code have the potential to affect the magnitude of the likely public benefits and detriment discussed below but do not, of themselves, constitute a likely public benefit or public detriment.

The relevant area of competition

118. The Code Committee submits that the Code applies to businesses in the textile, clothing and footwear industry that manufacture products in Australia. The relevant areas of competition encompass the breadth of the textile, clothing and footwear supply chain;

⁶⁰ Clause 9.4(d), Part 1 *Homeworkers Code of Practice* (7 March 2013 version).

⁶¹ That is, businesses which are defined Commonwealth outworker entities and are thus subject to the outworker provisions of the Fair Work Act discussed in paragraph 42 and 43 of this Draft Determination.⁶¹

through the processing of fibres for textile manufacture, to design, construction and manufacture of garments or footwear, wholesaling of finished products, concluding in retail of those products to the end consumer.

119. The ACCC notes that the textile, clothing and footwear supply chain comprises a number of functional levels as described in the Code Committee's submission. The nature of the participants and the nature of the competition at each functional level varies. The likely impact of the Code on each functional level is also likely to vary.

The future with and without

120. The ACCC considers the *'likely future with-and-without'* the conduct that is the subject of the authorisation to identify and weigh the public benefits and public detriments generated by conduct for which reauthorisation has been sought.⁶²
121. The ACCC considers that in the absence of the conduct for which authorisation is sought, it is unlikely that the Code would operate in its current form. This is because the Code contains conduct which is at significant risk of breaching the Act.
122. The ACCC notes that in the absence of the Code, textile, clothing and footwear businesses would continue to be required to comply with any State code, the relevant award, the Fair Work Act, and other applicable legislation. For example, many principal businesses which contract out work have liabilities under these existing legal obligations if a direct contractor or a sub-contractor fails to fully comply with legal obligations in relation to workers.
123. The ACCC considers that, to the extent that businesses have voluntarily participated in the Code, these businesses would be likely to seek to replicate the effects of the Code to ensure the compliance of their own supply chains. The ACCC considers that any system which would be capable of fulfilling such a role, including tracing a variety of contracting relationships, would impose similar costs in terms of auditing and fees.
124. While it may be possible for the Code Committee to amend the Code to lessen the concerns under the Act this would constitute a significant dilution of the Code. The ACCC notes that the effectiveness of the Code to encourage compliance with legal obligations depends upon those provisions of the Code which potentially raise concerns under the Act. In particular, the potential trading sanctions which retailers and manufacturers agree to impose on non-compliant suppliers further up the production chain is a powerful mechanism to ensure compliance.
125. The ACCC therefore considers that the relevant future without the conduct is the situation in which the revised Code is not implemented and potentially, a significantly diluted version of the Code is introduced in its place.

Public benefit

126. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

⁶² *Australian Performing Rights Association* (1999) ATPR 41-701 at 42,936. See also for example: *Australian Association of Pathology Practices Incorporated* (2004) ATPR 41-985 at 48,556; *Re Media Council of Australia* (No.2) (1987) ATPR 40-774 at 48,419.

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.⁶³

127. The public benefits claimed by the Code Committee may be summarised as:
- a) efficiencies in businesses' management of their supply chain risks;
 - b) efficiencies in the means by which businesses in the industry may signal their ethical status to interested consumers and for consumers to easily gain assurance as to the ethical status of industry products; and
 - c) increased compliance by businesses with their legal obligations in relation to textile, clothing and footwear workers.
128. Each of the public benefits are considered in more detail below.

Efficiencies in the management of supply chain risks

The Code Committee submissions

129. The Code Committee notes that the TCF Award and the Fair Work Act impose a cascading series of obligations upon each business in a supply chain, in relation to the payment of workers who perform contracted work, particularly outworkers. This creates a risk for retailers and manufacturers who give out work, should a supplier further up in the supply chain fail to pay its workers correctly due to insolvency or for other reasons. This risk and other risks (such as the potential for non-delivery of contracted items or quality control issues) are exacerbated by supply chains that are not transparent.
130. The Code Committee submits that businesses which seek accreditation or become retail signatories under the Code generally believe that they have a complete understanding of their outsourced supply chains and that all businesses within it are compliant. However, auditing of these supply chains often reveals sub-contracting by suppliers to other businesses or outworkers, which has occurred without the knowledge or specific consent of the principal business. In addition to risks of non-payment, undisclosed contracting may create issues of quality control and delivery delays. Therefore, the transparency created by the Code's auditing procedures assists businesses to quantify and control several supply chain risks.
131. Once suppliers are identified using the transparency provisions within the Code, the Code Committee undertakes a range of activities to assist these suppliers to identify and meet their legal obligations. To the extent that a supplier understands and is assisted to meet its legal obligations, this reduces the risks of all principal businesses within the industry that are supplied by that supplier.
132. The Code Committee submits that since 2010 the range of activities it has undertaken to assist businesses to manage their supply chain risks include:⁶⁴
- a) revising the Homeworkers Code of Conduct, its website and its internal practices and procedures to remedy areas of confusion.

⁶³ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

⁶⁴ Homeworker Code Committee Amendment to Application for Authorisation A91354-A91357 7 March 2013 Appendix 1, p 12.

- b) managing program delivery for the compliance services and the outworker outreach program provided by the TCFUA, thus helping principal businesses to identify and quantify the risks posed by sub-contracting.
- c) managing program delivery for the industry education and training provided by the TFIA.⁶⁵ The TFIA's training related activities have included:
 - i. development of a training program for the industry *Plan for People: HR Strategy and ECA Accreditation* which provides information regarding the TCF Award, the Fair Work Act, occupational health and safety and other workplace laws, and the forms and record keeping obligations to maintain compliance with the above legal obligations;
 - ii. more than 40 training presentations to industry participants conducted by TFIA, including presentations to tertiary students and hosting industry specific events such as *Building Consumer Confidence in Textile & Fashion Sustainability* which was co-hosted by the TFIA and the National Retailers Association; and
 - iii. delivery of TCF Award training through several new platforms (business clusters and the monthly *Plan for People* forums on the Textile & Fashion Hub). These platforms are not part of the Code but were established as joint industry initiatives including the TFIA to facilitate networking and dissemination of skills and information amongst industry businesses with common interests.
- d) providing direct assistance and information to businesses through:
 - i. a telephone advice line and a shopfront, with particular emphasis given to assisting small and emerging businesses;
 - ii. the development and launch of a comprehensive guide to the TCF Award;
 - iii. the development of template record keeping spreadsheets and forms to help businesses register with the Boards of Reference, keep complete work records and written records of outworker arrangements and meet other legal record keeping obligations; and
 - iv. updating industry training slides to incorporate the development of the TCF Award guide and associated business record keeping tools.

133. It has also developed and is soon to launch a new web based education program to respond to industry feedback regarding a preference for flexible self-paced training as opposed to face to face training sessions.

134. The Code Committee notes that clause 9.4(d) of Part 1 of the Code potentially extends a principal's obligations in relation to unpaid work performed by outworkers. This section of the Code applies only to accredited manufacturers (not retail signatories). The Code Committee submits that this obligation has been a long standing part of the Homeworkers Code of Practice and reflects the commitment that accredited manufacturers make to outworkers.⁶⁶

Submissions supporting the application

135. The benefit of efficiencies in the management of supply chain risk claimed by the Code Committee was supported by a number of interested parties' submissions made to the ACCC. For example, Mr Eftimiadis, Pacific Brands' representative on the board of the

⁶⁵ The ACCC notes that these activities are provided for under the Code Committee's grant and are likely to continue.

⁶⁶ Homeworker Code Committee Submission 17 May 2013 *HWCC Response to ACCC issues regarding revised HWCP* pp. 1-2.

Homeworker Code Committee provided an individual submission. Mr Eftimiadis stated that: 'it is very important to my employer Pacific Brands to have such accreditation. In simple terms it is a risk management tool.'⁶⁷

Submissions opposing the application

136. A number of manufacturers supported the submissions of the Technical Textile and Non-woven Association made at the pre-decision conference: that as their businesses do not outsource work their businesses are unable to benefit from a reduction in supply chain risk. In other cases, the manufacturers already participate in extensive supply chain risk management processes such as those implemented by Toyota and Boeing.

ACCC consideration

137. The TCF Award and the Fair Work Act impose a range of legal obligations upon businesses which give out work to ensure the payment of workers who perform that work. Around 80% of existing accredited manufacturers are incorporated and thus, to the extent that these businesses give out work (that is, outsource), they are subject to the full range of obligations under the Fair Work Act and the TCF Award.
138. The ACCC notes that these legal obligations may extend to a contractor's or sub-contractor's in-house workers or to outworkers. As an example, a principal business which is supplied by a firm which becomes insolvent may be jointly or individually required to pay out the firm's employees and/or outworkers. Importantly, this risk is not limited to the 'head' business which originally gave out the work or the business which directly contracted with the subsequently insolvent firm. Each of the sub-contractors in the supply chain between the head business and the insolvent business are also regarded as principals and have the potential to also be jointly and individually liable.
139. In addition to the supply chain risk resulting from existing legal obligations, the ACCC accepts that businesses in this industry are also vulnerable to other supply chain risks as a result of non-transparent outsourced supply chains. In particular, businesses may suffer from quality control issues and delivery delays.
140. The ACCC considers that the transparency and auditing obligations in the Code are likely to assist many participating businesses to manage the risks which arise from outsourcing their supply chains. The ACCC also considers that in the absence of the Code, bigger businesses at least, are likely to have the capacity to implement their own individual outsourced supply chain risk management measures. However, the ACCC considers that the Code is likely to provide greater efficiencies in the management of risks than a piecemeal approach by individual businesses. For, example, there are likely to be auditing efficiencies to the extent that outsourced supply chains are shared by accredited manufacturers and retail signatories.
141. Nonetheless, the ACCC accepts that there are also businesses and sectors of the industry which are already well served by existing supply chain auditing or certification processes. Or, alternatively, businesses which do not and cannot outsource their production. In these cases, the ACCC accepts that efficiencies in the management of outsourced supply chain risk are unlikely to arise.
142. As discussed under 'Scope' from paragraph 111, the ACCC considers that clause 9.4(d) of Part 1 of the Code provides for an incremental extension in some businesses' obligations to outworkers over existing legal obligations. The extension is likely to have most effect upon small unincorporated businesses which are not based in a Territory. For

⁶⁷ Ted Eftimiadis *Submission* 2 April 2013.

these businesses, this extension in obligations is likely to reduce the total benefit arising from any decrease in supply chain risks noted above. Whether these businesses are likely to benefit from the efficiencies in management of supply chain risk is likely to depend on the specific circumstances of the businesses (approximately 20% of currently accredited manufacturers are unincorporated).

Conclusion on efficiencies in the management of supply chain risks

143. The ACCC considers that the Code is 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. The ACCC also considers that the identification of sub-contracting practices may incidentally help businesses to more efficiently manage supply chain risks arising from quality control and delayed delivery. The ACCC accepts that some businesses do not outsource their manufacturing process, or already have other outsourcing management measures in place, and that these businesses are unlikely to benefit from the risk management qualities of the Code. Nonetheless, overall, the ACCC considers that the Code is likely to improve many businesses' efficiency in managing outsourced supply chain risks and that this constitutes a likely public benefit.

Efficiencies in signalling compliance with legal obligations

The Code Committee submissions

144. The Code Committee submits that the Code, in conjunction with the Ethical Certification Trademark series, provides an efficient means for businesses in the industry to provide positive assurance to customers that they have met their legal obligations in relation to workers' entitlements. In this case, 'customers' include both consumers and bulk end purchasers of textile, clothing and footwear products such as government procurement areas and the uniform departments of some businesses. For example, the Australian Government's Procurement Rules require all suppliers of Australian manufactured textiles, clothing or footwear products to be accredited or seeking accreditation to qualify for tenders.⁶⁸
145. The Code and the Ethical Certification Trademark series provide an efficient means for customers to assure themselves that particular textile, clothing or footwear goods have been produced by workers who have received their correct entitlements. The Code Committee submits that the credibility of the Code in this regard is enhanced by its comprehensive nature and representation by both industry groups and the TCFUA on the accreditation body (the Code Committee).
146. Since 2010 and in particular since the Homeworkers Code of Practice was last authorised by the ACCC, in order to enhance knowledge of the Code and reinforce the above efficiencies, the Code Committee submits it has undertaken the following activities:
- a) obtained a second round of program funding from the Department of Education, Employment and Workplace Relations (DEEWR) for a four year period (2011-2015);
 - b) to increase the marketing appeal of accreditation (and improve the business case for certification), it:
 - i. registered the Ethical Certification Trademark series, to replace the old 'No Sweat Shop' label;

⁶⁸ Homeworker Code Committee *Amendment to Application for Authorisation A91354-A91357* 7 March 2013 Appendix 1, p 14.

- ii. launched the consumer campaign 'Meet Your Maker'; and
 - iii. refreshed the marketing appeal of its website.
- c) in order to raise business's awareness of the advantages of accreditation it:
- i. made large numbers of presentations to existing businesses and tertiary level students who were about to enter the industry; and
 - ii. participated in major fashion and 'fair trade' oriented events;
- d) in order to support government purchasing decisions (in the context of the Commonwealth Procurement Rules which mandate that all Australian textile, clothing and footwear suppliers seek accreditation)⁶⁹:
- i. gave presentations to businesses participating in the Defence Materials Organisation Clothing Forum and provided tender training workshops to industry; and
 - ii. worked with government purchasing officers and established a secure web portal to facilitate the process of checking tenderers' accreditation status.⁷⁰

147. In addition to the promotion of the Code, Ethical Clothing Australia also engaged in promotion of accredited manufacturers at fashion and industry events and in its publications.

Submissions supporting the application

148. A number of accredited manufacturers submitted that they considered that they had benefited from the use of the Ethical Certification Trademark series in order to promote their business's ethical status. For example, So Stella noted that the labels are used as a talking point with customers and to help educate its customers regarding the reasons why So Stella charges more for its products. So Stella's website has received significant traffic from its link to the accredited manufacturers page on the Ethical Clothing Australia website. Ethical Clothing Australia also promoted So Stella's products at the Sustainable Living festival in Melbourne.⁷¹

149. Other accredited manufacturers which have made similar public supporting submissions include Cameron & James, Akubra Hats, New Model Beauty Queen, Esra Derya Couture, Urban Earth Ware and Tuffys & Tuffetts. In each case the business submitted that it focuses its brand on quality, ethically produced Australian products and uses the trademark to promote this fact to customers.

Submissions opposing the application

150. Several Code participants submitted that their businesses had not benefitted from increased demand for their products following accreditation and in some cases demand had decreased. Accordingly, these businesses questioned whether the Code had achieved its aim of promoting the benefits of goods sold by businesses audited under the Code.⁷²

⁶⁹ The Australian Government Procurement Statement (issued in July 2009) and Fair Work Principles (issued in January 2010) include a specific statement to this effect and are used to interpret the Commonwealth Procurement Rules issued in July 2012 (previously the Commonwealth Procurement Guidelines).

⁷⁰ Homeworker Code Committee *Amendment to Application for Authorisation A91354-A91357* 7 March 2013 Appendix 1, p 23.

⁷¹ Michelle Kent, *So Stella submission* 3 April 2013.

⁷² E.g. Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 4 March 2013 Letter p 6.

151. Manufacturers which had become accredited mainly in order to be able to tender for Australian Government contracts noted that the accreditation was not accepted for state government contracts. Therefore, those businesses which specialise in fulfilling government contracts must undertake a number of different processes in order to meet different government requirements. Other manufacturers submitted that their existing accreditation under various international ethical standards should be accepted by the Australian Government as equivalent to accreditation under the Code. These businesses did not consider that the availability of Code accreditation provided an efficient signal due to the limited cross-recognition between the various accreditation and certification schemes.

ACCC consideration

152. The ACCC notes that the Code provides a method by which businesses can effectively signal to customers that Australian manufactured textile, clothing and footwear products have been produced in compliance with the TCF Award and workplace laws. The ACCC considers that the Code provides a benefit in this respect to businesses that would be compliant with their legal obligations even without the Code and also to businesses which do not or only minimally outsource. It is likely that this signalling provides more information to customers and enables them to make better informed purchasing decisions, resulting in the public benefit of more informed markets.

153. The ACCC also notes that the Commonwealth Procurement Rules require all suppliers in the textile, clothing and footwear industry which participate in tenders to be accredited under the Code. Most Commonwealth grant programs which are relevant to the industry also require accreditation.

154. The ACCC notes that many of the businesses which are on the Code Committee's list of accredited manufacturers use the Ethical Clothing Australia certification trademark on their website. Many of these businesses also made explicit claims regarding the ethical nature of their products, using their accreditation to substantiate this claim. Many of the public submissions supporting the Code were made by accredited small to medium sized businesses which stated that they benefit from using the trademark despite not outsourcing or minimally outsourcing. The experience of these businesses is that, even if the trademark is not well known to customers prior to dealing with the businesses, it provides an opportunity for the businesses to explain higher cost structures which may arise as a result of Australian ethical production methods.

155. The ACCC notes the submissions from some businesses that they have not experienced an increase in sales following accreditation. The ACCC notes that the public benefit arising from more informed markets does not necessarily translate into greater sales for any individual accredited manufacturer or accredited manufacturers as a whole. This is because information about compliance with legal obligations is likely to be one of a number of factors that customers take into account when making purchase decisions.

156. The ACCC notes that there are a variety of alternative methods of signalling and ascertaining a business's ethical status in relation to labour standards. These include:

- certification under international standards such as ISO 26000;
- certification by a relevant non-government agency such as Fairtrade;
- Australian state government worker and outworker codes of practice;
- direct investigations by consumers and consumer representative groups; and
- representations made by individual businesses (which may or may not be independently audited).

157. The ACCC considers that there is potential value in a diversity of accreditation schemes in that this gives customers a choice as to the scope and level of assurance to use in purchasing decisions.
158. However, the ACCC does not consider that the alternative certification and signalling schemes suggested in submissions are comparable in scope and intent to the Code. The ACCC also does not consider positive assurance mechanisms such as the Code are equivalent to negative assurance mechanisms (such as the fact that the Fair Work Ombudsman has not taken public action against a business). Accordingly, the ACCC is satisfied that the fact that a business is an accredited manufacturer or retail signatory under the Code conveys information regarding compliance with the TCF Award and workplace laws which is not conveyed by other methods.

Conclusion on efficiencies in signalling compliance with legal obligations

159. The ACCC accepts that not all businesses which undergo accreditation will consider that they have benefited from the ability to use the trademark to inform or attract customers. However, overall, the ACCC considers that the Code provides efficiencies in signalling reliable information regarding a business's compliance with the TCF Award and workplace laws and that these efficiencies are likely to lead to a public benefit in the form of more informed markets.

Increased compliance with legal obligations in relation to workers

The Code Committee submissions

160. The Code Committee submits there is evidence revealed in the anecdotes attached to its authorisation application and by the findings of various government enquiries and academic studies that some textile, clothing and footwear businesses do not comply with their legal obligations.⁷³ The Code Committee submits that this non-compliance not only affects workers within the industry but also their families.
161. The Code Committee submits that the Code increases businesses' compliance with their legal obligations through:
- a) measures to educate relevant businesses regarding their legal obligations including through outreach programs and during TCFUA compliance audits;
 - b) measures to ensure the transparency of the outsourced supply chains of accredited manufacturers and retail signatories, allowing every business in the supply chain to be found and contacted;
 - c) yearly audits by the TCFUA and statutory declarations that provide a check upon a business's compliance and the compliance of all suppliers in that business's supply chain. The ACCC notes that the provision of compliance visits and outworker contact has met or exceeded the key performance indicators set by DEEWR;
 - d) the potential for boycotts of suppliers who are not compliant with their underlying legal obligations; and
 - e) education of workers and consumers regarding the Code and the industry's legal obligations, which enhances incentives for businesses to comply with their legal obligations.

⁷³ Productivity Commission (2003) *Report of TCF Assistance, August 2003*; Senate Economic Reference Committee (1996) *Outworkers in the Garment Industry*; Diviney, E & Lillywhite S, (2007) *Ethical Threads – Corporate social responsibility in the Australian garment industry*, Brotherhood of St Laurence.

162. Since 2010 and in particular since the Homeworkers Code of Practice was last authorised by the ACCC on 17 February 2011, the Code Committee submits it has undertaken a range of activities in accordance with its obligations under the Code to encourage increased compliance with the TCF Award and workplace laws.⁷⁴ These include the following activities:
- a) developed a compliance checklist for use by TCFUA compliance officers and businesses undergoing the accreditation process;
 - b) developed and launched an industry supply chain database and supply chain mapping tool;
 - c) produced education materials and resources in various languages to assist outworkers to understand their entitlements. The TCFUA assisted in producing the Vietnamese version and Asian Women at Work the Chinese version; and
 - d) updated the Guidelines for Accreditation.
163. The Code Committee submits that as at 7 March 2013, 80 manufacturers were accredited and 141 businesses were retail signatories under the Homeworkers Code of Practice. As a result, the Code Committee submits that approximately 500 entities which are in these businesses' outsourced supply chains have been audited as compliant with their legal obligations in relation to the TCF Award and workplace laws.⁷⁵
164. The ACCC notes that this may be compared to the number of Australian textile, clothing and footwear manufacturing businesses which, as illustrated by **Table 1**, was over 7,500 in 2011.⁷⁶ However, the ACCC also notes the TFIA's submission that the number of businesses in the industry has since decreased substantially.

Submissions supporting the application

165. The ACCC received a number of submissions supporting the effectiveness of the Code in increasing businesses' compliance with their legal obligations, within supply chains audited under the Code. In particular, the TCFUA, Fairwear and Oxfam provided public submissions which support the arguments and anecdotes provided by the Code Committee.
166. Oxfam's submission noted that Oxfam promotes the Homeworkers Code of Practice overseas as one of the few examples of a code which works to successfully [increase the transparency of] garment supply chains and allows the [investigation of] the treatment of outworkers in those supply chains.⁷⁷
167. The ACCC notes that the TFIA's initial submission supported the Code Committee's assessment that the Code has been effective in increasing compliance with legal obligations, however the submission opposed the application on other grounds.⁷⁸ The TFIA's later submissions have questioned whether the Code has been effective in increasing compliance with legal obligations.⁷⁹

⁷⁴ Homeworker Code Committee *Amendment to Application for Authorisation A91354-A91357* 7 March 2013 Appendix 1, p 12.

⁷⁵ Homeworker Code Committee *Amendment to Application for Authorisation A91354-A91357* 7 March 2013 Appendix 1, p 12.

⁷⁶ 8165.0 - Counts of Australian Businesses, including Entries and Exits , Jun 2007 to Jun 2011.

⁷⁷ Daisy Gardener, *Oxfam submission* 26 March 2013.

⁷⁸ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013 Letter pp 4-5.

⁷⁹ Richard Evans *Council of Textile and Fashion Industries of Australia submission* 15 July 2013 Letter.

Submissions opposing the application

168. Many of the submissions which oppose the Code Committee's application, including those from the TFIA, claim that the Code is unnecessary and therefore unlikely to result in any public benefit. In particular, these submissions claim that the number of outworkers in the industry has reduced dramatically, for a variety of reasons including reductions in the size of the industry as a whole and the inflexibility of using outworkers under current legal requirements. These submissions question the figures provided by the TCFUA and the Code Committee as to the number and proportion of outworkers in the industry.⁸⁰
169. Many of the submissions also claim that, based on experience, the remaining outworkers in the industry are not exploited. In some cases these submissions have been made by businesses which use outworkers (directly or indirectly). These submissions included anecdotes indicating that the business was aware of outworkers who were satisfied with flexible working conditions which may not be compliant with the TCF Award or the Fair Work Act. The submissions indicated that outworkers preferred the flexibility to set their own minimum and maximum hours according to their family commitments rather than as required by law.⁸¹ In addition, it was submitted that the children of outworkers appreciated the opportunity to earn substantial amounts of money by working in the family business and this practice is facilitated by more flexible working conditions.
170. In other cases, the submissions have been made by individuals who have sought to start small businesses from home and are legally classified as outworkers but do not see themselves or other small business owners in the industry as subject to exploitation. To the contrary, these small business owners submit that the measures intended to prevent their exploitation as outworkers have significantly inhibited their ability to establish their businesses. An example of such a submission is the public submission from Markit Apparel Online.
171. Submissions were made by the Technical Textiles and Non-woven Association and some businesses at the pre-decision conference, that no benefits from reductions in exploitation are likely to arise from the application of the Code to their sector of the industry given the nature of their production process and that their businesses do not outsource work (see paragraph 92).
172. Some submissions also noted the existence of a variety of alternative mechanisms which are available to reduce any exploitation which might otherwise occur. For example, DEEWR and its State counterparts, various industrial relations tribunals and courts all play a role in managing the Australian industrial relations system. The Fair Work Ombudsman and the TCFUA both engage in direct compliance activities.

ACCC consideration

173. The ACCC notes that the term 'exploitation' as used in the Code refers only to lack of compliance with workplace laws by businesses in relation to their workers rather than exploitation in any other sense. The ACCC acknowledges the submissions from some industry participants that they have not witnessed exploitation of outworkers and/or workers either recently or in some cases at all. The ACCC also accepts that there are likely to be areas of the industry which do not outsource and/or use a highly educated

⁸⁰ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 4 March 2013 Letter p 3-5. The TCFUA has submitted that the ratio of factory based workers to outworkers within the industry varies between 1:4 and 1:10 depending on the supply chain. (Vivienne Wiles, *TCFUA submission* 8 April 2013 p. 20). In its submissions to the various reviews and inquiries listed in the 'Industry Background', the TCFUA has commonly proposed an estimated figure of around 300,000 outworkers.

⁸¹ E.g. Gloria Gavranic *Skola submission* 3 March 2013 p. 1.

and skilled workforce which is unlikely to be subject to either lack of compliance with workplace laws or exploitation in the traditional sense. To the extent that an accredited manufacturer and all suppliers in any outsourced supply chain would be compliant with the law in the absence of the Code, the ACCC considers that the Code will not lead to a benefit from greater compliance.

174. However, the ACCC considers that the information provided in submissions, academic studies and government reviews (including those discussed in the Industry Background section of this paper) indicates that there is greater potential for businesses to fail to comply with their legal obligations in relation to outworkers than in relation to workers in traditional employment arrangements. For example, the recent Fair Work Ombudsman's report into its review of clothing manufacturers in Queensland found that although only 11 of 171 businesses reviewed were found to employ outworkers, seven of those businesses had contravened the outworker specific provisions of the TCF Award. The report noted that in several other cases it was impossible to assess whether outworkers had been correctly paid or not due to the lack of records kept.⁸²
175. The ACCC also notes that the 2007 Brotherhood of St Laurence study (summarised in 'Industry Background') indicated that the fragmented nature of the industry and the non-transparent nature of the supply chains meant that most businesses in the industry had little awareness of the working conditions of the workers in their supply chain. In particular, although 16 of 19 company representatives had visited a workplace where their garments had been made, few companies had a systematic process to evaluate factory conditions and only five large companies gathered information about outworker's employment conditions.⁸³ This study also found that none of the small company representatives were aware of the need to be Award compliant.
176. The ACCC considers that lack of compliance with relevant Awards including the TCF Award and workplace laws is a continuing issue for many parts of the industry. As an example, in the recent Fair Work Ombudsman's report discussed above, of the 171 businesses audited, 29% were in contravention of workplace laws. Of these, 33 businesses (19%) had contravened laws by underpaying workers.⁸⁴ Therefore, the scope of non-compliance found was significantly wider than the seven businesses found to have contravened outworker specific provisions of the TCF Award.
177. While noting the submissions of the TFIA and others, the ACCC considers that, partly for definitional reasons, the size and proportion of the outworker population and whether it has increased or decreased is unclear. However, the ACCC notes that the Code applies to all workers (and has done since the 2005 authorisation). Further, the ACCC considers that the potential for benefits to arise from greater compliance with legal obligations does not depend upon demonstrating the size and composition of the relevant work force.
178. The ACCC acknowledges that a consequence of the broad protections to outworkers provided by the TCF Award and workplace laws is that these legal obligations may not suit particular businesses in particular circumstances. However, the ACCC notes that these issues arise as a consequence of the existing laws underlying the Code and considers that the consequences are not attributable to the Code.

⁸² Fair Work Ombudsman (2013) *Queensland Clothing Manufacturing Audit Report 2011-2012 Final report April 2013* pp 7, 12.

⁸³ Diviney, E and Lillywhite, S (2007) *Ethical Threads: Corporate social responsibility in the Australian garment industry* Brotherhood of St Laurence p. 5.

⁸⁴ Fair Work Ombudsman (2013) *Queensland Clothing Manufacturing Audit Report 2011-2012 Final report April 2013* pp 11-12.

179. The ACCC considers that the Code contains a number of strategies which are likely to encourage compliance with legal obligations. These include the provision of education regarding legal obligations, auditing of supply chains by the TCFUA and the potential for boycotts by retail signatories and accredited manufacturers of suppliers who are not compliant with their legal obligations.
180. Illustrating the importance of education, the Fair Work Ombudsman's report discussed above noted that lack of up to date knowledge by businesses regarding their legal obligations significantly contributed to the level of noncompliance found.⁸⁵ The Code also contains long-term education measures aimed at consumers and workers which are intended to increase incentives to increase compliance in the industry overall.
181. The ACCC notes that many of the activities undertaken by the Code Committee since January 2010 and described in its submission are likely to remedy some of the concerns described by the Brotherhood of St Laurence in its 2007 report (summarised in the 'Industry Background').
182. The ACCC notes that, as submitted by the TFIA and others, there are a variety of government and non-government entities which also have an interest or responsibility in workers' entitlements generally. Although the Fair Work Ombudsman and the TCFUA are the only entities cited with a direct compliance role, the ACCC accepts that the other entities also assist in improving workplace conditions and increasing compliance with workplace laws.
183. However, the ACCC considers that the comprehensive nature of the Code, which audits whole supply chains, facilitates the development of current industry specific knowledge by the Code Committee and the TCFUA. This includes the ability to find businesses which have not registered with the Board of Reference or other government entities, as well as identifying outworkers. By contrast, in conducting its review of Queensland clothing manufacturers the Fair Work Ombudsman used the Australian Business Register to select 730 businesses for auditing. However, only 171 were audited with the majority having ceased trading (28%), unable to be found (20%) or no longer employing any workers (13%).⁸⁶ The Fair Work Ombudsman also stated that it strongly suspected that it was likely that it had been unable to find all of the outworkers used by the businesses it had audited.⁸⁷

Conclusion on increased compliance with legal obligations in relation to workers

184. The Code Committee, in accordance with its obligations under the Code, has undertaken a variety of education and auditing activities designed to increase businesses' compliance with their legal obligations to workers. The ACCC considers that there is evidence that some businesses in the industry do not comply with their legal obligations in relation to workers and that the Code Committee's activities are likely to lead to a public benefit in the form of increased compliance. The costs imposed on businesses by the Code in order to gain the benefit of increased compliance are discussed further under 'Public Detriments'.

⁸⁵ Fair Work Ombudsman (2013) *Queensland Clothing Manufacturing Audit Report 2011-2012 Final report April 2013* pp 12-13.

⁸⁶ Fair Work Ombudsman (2013) *Queensland Clothing Manufacturing Audit Report 2011-2012 Final report April 2013* p 11.

⁸⁷ Fair Work Ombudsman (2013) *Queensland Clothing Manufacturing Audit Report 2011-2012 Final report April 2013* p 13.

Conclusion on public benefits

185. Overall, the ACCC considers that the Code is likely to lead to public benefits from:
- a) increased business efficiency due to more efficient management of outsourced supply chain risks (including the risk of not complying with existing legal obligations).
 - b) assisting businesses to efficiently signal their compliance with their legal obligations to customers. In turn, this is likely to assist customers who have a preference for purchasing products made by businesses which are compliant with their legal obligations to workers, to find such products. The ACCC considers that this is likely to lead to a public benefit in the form of better informed markets.
 - c) increased compliance with the TCF Award and workplace laws by businesses in the textile, clothing and footwear industry.
186. The ACCC considers that the size of these benefits will differ depending on the individual circumstances of the accredited business and any suppliers to which it has outsourced work. The ACCC also accepts that there are likely to be some businesses in relation to which the Code is unlikely to lead to public benefit. However, the ACCC does not consider that this is the case in most sectors of the industry. Accordingly, the ACCC is satisfied that, overall, the Code is likely to lead to public benefits.
187. The costs imposed on businesses by the Code in order to gain the public benefits noted above are discussed further under 'Public Detriments'.

Public detriment

188. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:
- ...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁸⁸
189. The ACCC received a number of submissions from the TFIA, the TTNA and from businesses which assert that compliance with the Code is perceived as compulsory for many textile, clothing and footwear suppliers. In particular:
- a) accreditation is a condition of Australian Government industry grants and participation in procurement tenders, to the extent that the products supplied are to be manufactured in Australia. There is no corresponding requirement imposed on overseas suppliers (although overseas suppliers would also be unlikely to qualify for Australian grant programs); and
 - b) if a business becomes accredited, every supplier in any supply chain it has outsourced must undergo compliance auditing, if the suppliers wish to continue supplying in that supply chain. Completion of such compliance auditing does not, by itself, mean that a supplier qualifies for accreditation. The ACCC notes that the supply chain auditing referred to is limited under the Code to auditing of outsourced supply chains only (see 'The extent of businesses audited as suppliers' from paragraph 105).
190. Businesses which oppose the Code have submitted that in the context of a contracting industry, it is difficult to find alternative markets should a supplier not wish to undergo compliance auditing or a manufacturer gain accreditation to participate in a tender. The

⁸⁸ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

businesses noted in this regard the costs of compliance imposed by the Code and the involvement of the TCFUA in the audit and accreditation process.

191. In relation to the Commonwealth procurement and grants policy, the TCFUA submitted that:
- a) If a business considers that the obligations imposed by government in its tender and grant processes are excessively onerous and/or the business will not be adequately compensated for participating in government tenders or grant programs, then the business can freely choose not to participate in those tenders/grants. The government policy to require accreditation does not make accreditation mandatory under the Code.
 - b) In practice, the accreditation requirement imposed by government is just one of a very large number of requirements and obligations that are imposed upon government suppliers. If businesses want to tender for government contracts, the cost of accreditation under the code is relatively low. This is particularly the case if all work is performed in one location and not outsourced. In this case, accreditation will impose a minimal cost and require only a single statutory declaration. Auditing is likely to take less than a day unless, for example, occupational health and safety breaches are found which require follow-up.
192. The ACCC acknowledges that the operation of the Code has the effect of reaching beyond the businesses which choose to become accredited or retail signatories, to other businesses within their supply chain. The ACCC also notes the requirement in the Commonwealth Procurement Rules and grant programs for textile, clothing and footwear suppliers to seek accreditation under the Code to participate in tenders and grants. While this measure was introduced by the Commonwealth Government in its role as a model purchaser, it also reduces the extent to which businesses regard accreditation under the Code as completely voluntary.
193. Therefore, the ACCC has considered the following potential public detriments resulting from the Code:
- a) restriction on competition between suppliers;
 - b) increased business costs imposed by the Code, to the extent that these increased business costs are over and above those due to underlying legal obligations and businesses may consider that these are not incurred on a completely voluntary basis; and
 - c) role of the TCFUA as auditor under the Code, in particular to the extent to which a business must undergo more TCFUA compliance activity than it otherwise would and that businesses may consider that this does not occur on a completely voluntary basis.

Restriction of competition between suppliers

The Code Committee submissions

194. The Code Committee submits that '[w]hilst the [Code] may have the potential to constrain suppliers, the arrangements under the Code do not substantially affect participating parties' ability to compete.'⁸⁹ The Code Committee submits that there is no evidence that previous versions of the Homeworkers Code of Practice have had any adverse effect on competition and that the Code is unlikely to have any adverse effect on competition in any market in the future.

⁸⁹ Homeworker Code Committee *Application for Authorisation A91354-A91357* 21 February 2013 p. 11.

195. The Code Committee advises that to date, instances of a breach of the Retailers' Agreement have been resolved without recourse taken to cancel contracts. The Code Committee submits that enforcement generally takes the form of persuasion directed towards the retailer who is in turn required to attempt to persuade the supplier to remedy instances of noncompliance. In addition, the Code Committee submits that the Code is voluntary for all participants and that accredited manufacturers and retail signatories who no longer wish to participate may easily end their association with the Code. The Code Committee also notes the dispute resolution procedures within the Retailers' Agreement.
196. In relation to accreditation decisions, the Code Committee submits that the Code clearly establishes timelines, notice periods and processes. There is an opportunity for the business subject to de-accreditation to provide material to the Code Committee which will satisfy the Code Committee that the business is in fact compliant with the Code.⁹⁰
197. The Code Committee has also included a dispute resolution process as clause 14 of the Code. The dispute resolution process provides a way for businesses to resolve concerns with the staff of the Code Committee or with the Code Committee itself, separate from and supplemental to any interactions between the business and Compliance Officers from the TCFUA. Finally, in the event of significant differences, there is provision for independent mediation.

Submissions opposing the application

198. Businesses' submissions opposing the Code stated that the businesses did not consider that compliance with the Code was voluntary in all circumstances. This issue has been reviewed above in the introduction to 'Public Detriments'. In many cases these submissions stated that compliance with the TCF Award or particular aspects of workplace laws had inhibited their ability to operate their business due to lack of flexibility and higher costs. Therefore, these businesses objected to the Code on the basis that it would remove their ability to compete in audited supply chains while also operating in ways which do not comply with the TCF Award or workplace laws. The submissions indicated that the constraints imposed by these existing legal obligations had particular impact upon small suppliers.
199. Small suppliers submit that they are often characterised as outworkers by existing laws, particularly to the extent that the business is run from home and employs only family members. However, if these small suppliers wish to provide specialised contracted services to a number of principal businesses on an occasional basis it is likely that this business model would make the principal businesses non-compliant with existing outworker protection laws. The submissions from these suppliers state that principals are increasingly reluctant to breach existing legal obligations, particularly if they are participants in the Code. Therefore, these small suppliers consider that the Code is at least partly to blame for their inability or significant difficulties in operating this form of specialised small business.
200. The submissions from small suppliers also state that the outworker provisions inhibit their ability to outsource work. Therefore, these small suppliers submitted that they have no option but to operate in breach of their existing legal obligations when giving out work. The suppliers submitted that working around their existing legal obligations in this way was increasingly difficult if they operate in supply chains which participate in the Code (including if this is due to the Commonwealth Procurement Rules).

⁹⁰ The ACCC notes that businesses may also be deaccredited if they change their manufacturing operations such that they no longer qualify as a type of business which may be accredited (e.g. if all production of textiles, clothing or footwear products is outsourced overseas).

201. For example, a small designer may wish to give out work to a garment maker with specialised sewing skills. However, as a small business operating in an often highly seasonal industry, the small designer may not have the scale to contract a maker on a permanent part-time basis or to employ the maker as an in-house worker. It is possible in this situation to satisfy existing legal obligations by giving out work to an intermediary business with in-house workers or contracted outworkers.⁹¹ However, some small suppliers submitted that the addition of an intermediary unacceptably raised the costs of their final product.

Submissions supporting the application

202. As noted above, some of the small businesses have submitted that the Code increased the effect of restrictions in existing laws by increasing businesses' compliance with those laws. In contrast, other small businesses have submitted that the laws (and therefore the Code) do not have a restricting effect. In particular, some accredited small businesses indicated that due to lack of industry contacts when starting a business, it was often beneficial to use larger intermediary businesses to access a range of specialist skills. These start-up businesses had been able to find an existing accredited or audited business to act as an intermediary.

ACCC consideration

203. A number of clauses in the Code potentially restrict competition between market participants. In particular, restrictions are likely to arise from clauses that require businesses to:

- reflect the provisions outlined in the Code in agreements with suppliers;⁹² and
- where legally possible, to terminate and not enter into future contracts with suppliers who have been found to be exploiting workers.⁹³

204. The ACCC notes the Code Committee's submission that to date, instances of a breach of the Retailers' Agreement have been resolved without recourse taken to cancel contracts. However, the ACCC considers that the potential for boycotts by accredited manufacturers or retail signatories would give significant weight to the Code Committee's interactions with suppliers.

205. The ACCC notes that these restraints upon business conduct are key to the Code's compliance and enforcement mechanisms. However, the ACCC has also considered whether the restrictions raise competition concerns. For example, the ACCC would have competition concerns if accreditation decisions, use of the Ethical Certification Trademark series or acceptance of retail signatories could be unfairly denied to any party or if the ability to boycott was used inappropriately.

206. In general, a commitment by businesses to only deal with those suppliers who agree to certain conditions is likely to generate significant concerns about effects on competition. For example, such an agreement between retailers has the potential to restrict the number of suppliers who may access retail channels. Further, any constraint on suppliers may affect their demand for inputs which may impact on third parties which supply goods

⁹¹ Outworker intermediaries can aggregate work from a number of small principals and thus can operate at a scale which allows them to employ outworkers permanently on a permanent part-time or full-time basis as required by existing legal obligations.

⁹² Clause 4.3, Part 2 and the terms of the statutory declarations attached to Part 1 of the *Homeworkers Code of Practice* (7 March 2013 version).

⁹³ Clause 9.5, Part 1 and clause 6.3, Part 2 of the *Homeworkers Code of Practice* (7 March 2013 version).

or services to the suppliers. Similarly, a constraint on suppliers is likely to affect the supply of finished garments, which may impact upon businesses at the retail level of the supply chain. Finally, any boycott is likely to harm the boycotted business and its workers.

207. The ACCC acknowledges the submissions, particularly from small suppliers, concerned about the costs imposed on their businesses by existing legal obligations. In particular, the ACCC accepts that existing legal obligations make illegal certain forms of business model and operations which have been historically common in the industry. The ACCC understands that this is due to the potential for these business models to result in problematic production methods, although it accepts that this does not mean that all production that occurs via such models is problematic. The ACCC considers that as a consequence of the current legal prohibitions, businesses with these models have been inhibited in their previous modes of operation and have incurred higher costs. To some extent this may have contributed to the failure of some businesses which were unable to adapt (although other factors are also likely to have contributed such as the global financial problems since 2008).
208. Nonetheless, the ACCC considers that these are issues which arise from existing legal obligations. The ACCC does not consider that these issues are properly attributed to the Code. Therefore, as with previous versions of the Homeworkers Code of Practice, the ACCC considers that the potential anticompetitive impact is limited by the following attributes of the Code:
- a) retail signatories and accredited manufacturers are only able to agree to boycott suppliers who are not compliant with their legal obligations. That is, the Code does not provide for boycotts of suppliers for commercial reasons;
 - b) the Code contains specific clauses which provide a method to ensure that businesses have the opportunity to present their case and mediate disputes regarding unfavourable decisions under the Code including decisions regarding boycotts. These include:
 - i. the TCFUA is required to provide notice of its concerns to the relevant retail signatory or accredited manufacturer;
 - ii. the retail signatories and accredited manufacturers have an opportunity (and are required) to investigate any concerns raised by the TCFUA in relation to a supplier in their supply chain;⁹⁴ and
 - iii. if there is disagreement between the TCFUA and a retailer regarding whether any business in the retailer's supply chain is complying with the law, there is provision for meetings to discuss the issue followed by independent mediation if necessary;⁹⁵ and
 - c) the structure of the Code Committee (with representatives of workers, industry bodies and individual businesses) provides some assurance that decisions made under the Code will be objective.
209. As described in paragraph 69, the Code incorporates a dispute resolution process which is accessible in relation to disputes over accreditation decisions.

Conclusion on restriction of competition between suppliers

210. The ACCC acknowledges that the Code imposes restrictions on accredited manufacturers' and retail signatories' dealings with other businesses in order to provide

⁹⁴ Clause 9.5, Part 1 and clause 6.1, Part 2 of the *Homeworkers Code of Practice* (7 March 2013 version).

⁹⁵ Clause 7, Part 2 of the *Homeworkers Code of Practice* (7 March 2013 version).

an effective mechanism for businesses to ensure they (and their supply chains) are compliant with legal obligations. However, the ACCC considers that any anticompetitive detriment is likely to be limited by the fact that the Code is voluntary in most circumstances, only businesses which are noncompliant with their legal obligations are potentially subject to boycott and there are safeguards against misuse of the Code.

211. To the extent that any additional costs imposed by the Code are not incurred voluntarily, the ACCC considers that it is appropriate to consider whether these costs are likely to constitute a public detriment. This issue is considered further below.

Increased costs imposed by the Code

The Code Committee submissions

212. The Code Committee submits that it has made significant efforts to minimise the costs imposed by the Code, including:
- a) reducing the number of statutory declarations from 6 to 5, with templates of each form of statutory declaration provided as an attachment to the Code. The Code Committee submits that it has investigated alternatives to the statutory declarations but that based on legal advice these are considered necessary to the integrity of the Code;
 - b) the audit procedures have been developed so that the vast majority of information required for the audit can be accessed from the records that a business in the industry is required to maintain by law in any case. This limits the amount of new paperwork required by the Code to completion of one or two forms; and
 - c) development of checklists and guidelines (in Vietnamese and Chinese as well as English) to assist businesses to identify and rectify any missing records prior to commencement of the audit.
213. The Code Committee submits that as a result of its efforts to minimise costs, the only paperwork which may need to be created afresh by a business which has complied with its legal obligations is:
- a) completion of the yearly payment form if it is an accredited manufacturer (as retail signatories and audited suppliers are not charged fees);
 - b) a list of its suppliers (if it does not have such a list already); and
 - c) the relevant statutory declarations by itself and its suppliers.⁹⁶
214. The Code Committee also notes that it is run on a not-for-profit basis and that the level of fees charged for accreditation are subsidised by the Australian Government grant funding. Current fees charged to businesses range between \$330 and \$6600, depending upon business turnover and employee numbers.⁹⁷ This may be compared with earlier versions of the Code which charged a flat \$2200 fee.
215. Finally, Ethical Clothing Australia, the TCFUA and the TFIA have provided extensive training to businesses prior to and during auditing and have developed template documentation in order to assist businesses to efficiently meet their record keeping obligations under the TCF Award and legislation.

⁹⁶ Homeworker Code Committee *Submission* 1 March 2013.

⁹⁷ Eg: \$330 - businesses less than three years old and many sole traders, \$440 - businesses with four employees or less, \$1100 - businesses with 16-40 employees, to a maximum of \$6,600 – businesses which outsource more than \$10 million worth of manufacturing. Homeworker Code Committee *Submission* 3 March 2013 *HWCP Fees Form & Discounts Explained*.

Submissions supporting the application

216. The TCFUA has provided supporting submissions regarding its efforts to minimise the costs of compliance with the Code.⁹⁸ In addition, a number of small, medium and large businesses which have undergone accreditation have provided submissions supporting the Code including an assessment 'that complying with the [TCF] Award and going through Ethical Clothing's re-accreditation process [was not] a significant administrative burden'.⁹⁹ The businesses also submitted that they considered that the fees charged were reasonable and start-up businesses benefited significantly from the heavy discount for businesses less than three years old.

Submissions opposing the application

217. The TFIA submits that consideration of the costs of the Code should be holistic rather than considering the impact of the Code in isolation. The TFIA submits that considering only the direct impact of the Code fails to take into account the interactions with and between the TCF Award, the Fair Work Act and other legal obligations. The TFIA submits that these interactions have the effect of substantially amplifying the cost impact of each individual legal obligation and these effects are missed when each legal obligation is considered in isolation.¹⁰⁰

218. The TFIA provided the Commonwealth Government's procurement policy as an example of the compounding effects of legal obligations and the Code. The TFIA submits that this requirement of accreditation of manufacturers can only be imposed because the Code is authorised by the ACCC and that no equivalent requirement is imposed on overseas suppliers.

219. The direct costs of accreditation are subsidised through the Department of Education, Employment and Workplace Relations. However, the TFIA submits that there can be significant indirect costs passed through the supply chain. For example, the TFIA submits that in a long supply chain there can be significant costs imposed by audit visits and provision of statutory declarations by every business in the supply chain.¹⁰¹ Therefore, the TFIA submits that the Code, in conjunction with Australian Government Procurement Rules, makes Australian manufacturers less competitive with overseas manufacturers in Australian Government tenders.

220. Several businesses cited the results of the Chamber of Commerce and Industry Queensland's (CCIQ) study into the costs of the Queensland Mandatory Code of Practice for Outworkers in the Clothing Industry (since repealed).¹⁰² The CCIQ used the Australian Government's Business Cost Calculator¹⁰³ and feedback from its member businesses to calculate that the average cost of compliance for each business was \$43,360 per annum with around 10 hours per week spent filling out the required forms and report writing.

221. The TFIA has provided a similar table (see Table 2 below) to that published by the CCIQ, which it submits demonstrates the average cost to a small business in establishing and maintaining accreditation under the Code. The TFIA notes that the table does not include accreditation fees. In accordance with its submission that any consideration of the effects

⁹⁸ Vivienne Wiles, *TCFUA submission* 8 April 2013.

⁹⁹ Michelle Kent, *So Stella submission* 3 April 2013.

¹⁰⁰ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013 Letter p 5.

¹⁰¹ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013 Appendix pp 6-7.

¹⁰² Chamber of Commerce and Industry Queensland *Submission to the Attorney General and Minister for Industrial Relations regarding mandatory code for outworkers* 15 October 2010.

¹⁰³ Available from Department of Finance and Deregulation website: <https://bcc.obpr.gov.au/>.

of the Code must also consider its holistic effect, the TFIA acknowledges that the majority of the tasks in the table are existing legal obligations (rather than additional obligations imposed by the Code).

Table 2 - Cost of compliance activity for accreditation (including the costs of becoming compliant with the TCF Award and workplace laws)¹⁰⁴

COST OF COMPLIANCE ACTIVITY FOR AN ECA ACCREDITATION (does not include ECA accreditation fee)						
<ul style="list-style-type: none"> Based on SME / Brand contracting work out to 3-5 makers (pa) who engage an average 2-4 outworkers each Includes emails, phone calls, compliance visits and meetings to all stakeholders including time taken in securing Statutory Declarations Maintaining manual records and generating manual reports in compliance with code (outside of existing systems and databases) such as value volume data calculations for each order Monitoring of entire supply chain to ensure records are kept by all parties 						
<i>Task</i>	<i>Cost Category</i>	<i>Frequency</i>	<i>Number of Times Performed</i>	<i>Time Required</i>	<i>Labour cost per hour</i>	<i>COST TO BUSINESS</i>
Set up, meetings and understanding ECA / Regulatory Obligations	BOR Notification	Start-up	1 (involves on average 3-5 staff)	76 hours	\$75	\$5,700
Completing Mandatory Fields & Forms for each new order/agreement including value volume data calculations & Stat Decs	Procedural	Weekly	28 per week (average)	30 mins each (728 hrs p.a.)	\$40	\$29,120
Filing and Storage of Records/ Compliance	Monitoring Supply Chain	Weekly	1	1 hours	\$40	\$2,080
Reporting to ECA, BOR & TCFUA	Reporting	Annual	2	15 hours	\$75	\$2,250
Annual Cost to Business						\$39,150
Annual Hours Spent on Compliance						578 hours
Average hours per week per business						11 hours

222. The TFIA submits that the costs of the Code (including the fees and the government subsidy of auditing) may be compared with the costs of international corporate responsibility programs such as Worldwide Responsible Accredited Production (WRAP). TFIA submits that the cost of applying for WRAP certification for a facility is \$1,195. This certification is audited at a cost of \$US600/day, with most factories of 500-1200 employees requiring two days to audit.¹⁰⁵

ACCC consideration

The effect on business costs of the interaction between the Code and existing legal obligations

223. The ACCC acknowledges the submissions from businesses that they incur increased costs due to compliance with their existing legal obligations in relation to workers. The ACCC notes the submissions which state that the effect of participating in the Code, in particular the effect of the auditing under the Code, is that these businesses incur a higher level of costs due to the need to become more rigorous in their observance of their existing legal obligations. The ACCC understands that these increased costs are likely to be a significant concern for many businesses.

224. The ACCC notes the TFIA's submission that this means that the effect of the Code is to compound the costs of other legal obligations and that the total compounded cost should therefore be attributed to the Code. However, the ACCC considers that it is inappropriate

¹⁰⁴ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013 Appendix 1.

¹⁰⁵ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013.

to assign to the Code the whole cost of regulatory compliance required by existing legal obligations. The ACCC considers that in the absence of the Code, textile, clothing and footwear businesses would continue to be required to comply with their legal obligations and would incur costs from doing so.

225. In particular, the ACCC notes the Code Committee's proposed inclusion of an additional clause in the Code that: with the exception of clause 9.4(d), to the extent of any inconsistency, the obligations under the relevant Award or workplace laws will prevail over the obligations under the Code (paragraph 5 of this Final Determination).¹⁰⁶
226. The ACCC considers that the additional clause would ensure that any unintentional inconsistencies between the Code and a business's legal obligations now or in the future (for example due to legislative changes during the life of the authorisation) would not disadvantage participating businesses.¹⁰⁷
227. The ACCC also notes that one of the aims of the Code Committee is to reduce the costs of complying with existing legal obligations in order to facilitate this compliance. The ACCC notes that the Code Committee has introduced a range of measures which are likely to reduce the costs to businesses in complying with their legal obligations. For example, Ethical Clothing Australia has developed spreadsheets which may be downloaded which are structured so as to record all supplier information which a business is required to collect by the TCF Award and workplace laws. Alternatively, if all of this information is already captured by the business (as it is required to do under existing workplace laws) then its existing systems may be utilised to provide the information required.
228. The ACCC also considers that the industry training and guides overseen by the Code Committee, the assistance provided through Ethical Clothing Australia's Accreditation Advisors and the telephone helpline are likely to assist businesses to reduce their compliance costs. In particular, these measures are likely to substantially reduce the amount of time or cost of professional advisors which a business may require in order to be aware of and comply with its legal obligations.
229. The ACCC considers that any decrease in the costs of compliance with legal obligations as a result of the Code must be offset against the costs, identified below, of complying with the Code.

Costs of paperwork required by the Code

230. The ACCC notes that a number of submissions referred to the costs of Code compliance. However, in many cases where extensive paperwork was cited as a specific concern, the paperwork in question is a requirement ultimately imposed under either the TCF Award or workplace laws. Particular examples mentioned were the difficulty of completing work records and calculating remuneration to meet the minimums established under the TCF Award.
231. For example, a number of submissions opposing the Code raised concerns regarding the complexity and cost of completing a work record in relation to an outsourced piece of work. This involves writing a detailed description of the work to be done (which may include sketches) and a precise estimate of the length of time that the outsourced work will take to complete, which is impacted by many variables. The Fair Work Ombudsman's report also commented on the difficulties its investigators faced in estimating the length of

¹⁰⁶ With the exception of clause 9.4(d) which intentionally extends the obligations of businesses in relation to unpaid outworkers (as discussed under 'Scope').

¹⁰⁷ That is, extensions beyond those already discussed under 'Scope'.

time a worker would take to complete work. However, the report noted that its investigators were able to complete this task using the instructional materials developed by the Code Committee.¹⁰⁸

232. Other businesses which outsource work have submitted that it is difficult to convert the required TCF Award remuneration rates (which are hourly and include overtime and other loadings) into an appropriate piece rate. However, the need for the conversion is a consequence of the protections afforded to outworkers due to their status as effective employees, a long standing feature of industrial relations law due to their manner of work. As an employee, an outworker is entitled to certain minimum remuneration and hours; therefore if a business chooses to pay by piece rate, a conversion is necessary in order to ensure that the business is meeting these conditions.
233. The ACCC acknowledges that the completion of work records and remuneration calculations imposes a cost on businesses. However, the legal obligation (and therefore any additional costs to business) is ultimately imposed by Schedule F of the TCF Award rather than the Code. Further, Ethical Clothing Australia has attempted to reduce the costs and difficulty of creating the work records required by the TCF Award by publishing a paper explaining the methodology which may be used to create them.¹⁰⁹ To the extent that businesses have complied with Schedule F, the only cost imposed by the Code in relation to work records and remuneration calculations is the cost of providing a physical copy of the work record and remuneration records to Ethical Clothing Australia and the TCFUA.
234. The ACCC acknowledges the CCIQ report cited in business submissions but considers that the report's cost findings are not appropriately attributed to the Code due to the differing nature of the obligations imposed compared to the former mandatory Queensland outworkers code of practice. For example, the CCIQ report noted that a large proportion of the costs from the mandatory Queensland outworkers code of practice arose from the need to regularly fill in by hand detailed hard copy forms for reporting purposes. By comparison, the Code only requires copying of existing records.
235. Statutory declarations are a commonly used way for businesses and governments to verify information provided by a business. However, the ACCC accepts the TFIA's and other submissions that ensuring the proper creation of witnessed statutory declarations may be an involved process, particularly from people with little or no understanding of written English. It also needs to be done by each business and homemaker in an accredited manufacturer's outsourced supply chain. However, the ACCC notes the Code Committee's submission that, contrary to the assertions in many submissions, this needs to be done only once per audit period (which is yearly).
236. The ACCC accepts that under the obligations imposed specifically by the Code, the only paperwork which may need to be created afresh by a business which has complied with its legal obligations is completion of:
 - a) the statutory declarations,
 - b) the yearly payment form, and
 - c) a list of its suppliers.

¹⁰⁸ Fair Work Ombudsman (2013) *Queensland Clothing Manufacturing Audit Report 2011-2012 Final report April 2013* pp 9-10.

¹⁰⁹ Ethical Clothing Australia *Guide to the Textile, Clothing, Footwear and Associated Industries Award – helping you meet your legal obligations*.

237. The ACCC considers that the statutory declarations are likely to be the most costly of these obligations to comply with but accepts that they are important for businesses to gain assurance that they and their outsourced supply chains are compliant with the TCF Award and workplace laws.
238. Accordingly, the ACCC considers that the additional paperwork required by the Code, in particular the business time and costs required to gain the required statutory declarations, is likely to increase business costs. The ACCC does not however accept that the increase in business costs as a result of the Code (as distinct from underlying compliance costs arising from the TCF Award and other work place laws) are of the magnitude suggested by the CCIQ study or by the TFIA. Notwithstanding this distinction, to the extent that obligations under the Code are not assumed voluntarily, these costs are likely to constitute a public detriment.

Accreditation fees

239. The yearly accreditation fees paid by accredited manufacturers are \$330-\$6600, depending on the size (in terms of employees and turn over) of the manufacturer. New businesses and small businesses with less than 5 employees which perform the core manufacturing processes in-house would pay \$440 or less. Businesses which are more than 3 years old and outsource up to \$200,000 dollars of work including core manufacturing processes may pay up to \$1,000. There is a 10% discount for such businesses if the business was accredited and used the Ethical Clothing certification trademark labels in the previous 12 months and a 20% discount if the business uses accredited manufacturers as suppliers.¹¹⁰
240. The ACCC notes the TFIA's and other submissions that the Code provides poor value for money as a way of assuring compliance with workplace laws, particularly as compared to other certification schemes.¹¹¹ For example, the TFIA has submitted that WRAP certification for a facility is \$1,195, which is audited at a cost of \$US600/day, with most factories of 500-1200 employees requiring two days to audit.
241. The ACCC considers that the scope and methods of the other certification schemes cited are not comparable with those of the Code. For example, the cost of the WRAP certification discussed by the TFIA and others applies only to the certification of a single facility and does not attempt to find and assess the working conditions of any outworkers associated with that facility. The Code, by contrast, accredits a business and the entirety of any outsourced supply chains. In most cases this requires assessment of smaller facilities and businesses (including outworkers) in a number of disparate locations. Taking the example of the WRAP certification scheme, in order for a retailer or manufacturer to replicate the effect of the Code on its entire outsourced supply chain using the WRAP process, it would need to require every business facility and outworker location in its outsourced supply chain to pay for individual WRAP certification and auditing. The ACCC considers that in many cases this would impose a substantially larger total cost on the supply chain than certification under the Code.
242. The ACCC notes that the costs of the Code are heavily subsidised by the grant funding from the Department of Education, Employment and Workplace Relations (DEEWR) and in kind contributions from entities with representatives on the Code Committee. Accordingly, the question of the value for money of the Code must incorporate these subsidies as noted by the TFIA.

¹¹⁰ The ACCC notes that the Code requires suppliers to be audited but does not require that they are accredited. Auditing, alone, does not qualify a supplier for accreditation.

¹¹¹ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013 Letter p. 3, 7.

243. While accreditation costs and the costs of the Code more generally are relevant to the assessment of likely public detriments, the ACCC considers that it is a matter for DEEWR and the committee members whether they consider that they are receiving value for money in terms of the subsidy provided. The ACCC notes in this regard that DEEWR has renewed the Code Committee's grant funding and supported the Code Committee's application for authorisation. In particular further funding was provided to ECA for the period between 2011 and 2014 because:

[Ethical Clothing Australia] demonstrated that it is effective in meeting program objectives, assessed by reference to education activities or compliance visits per quarter, the level of contact with homeworkers and accreditation rates including new applications for accreditation.

Some 3000 workers currently in accredited supply chains would be put at risk if the funding was discontinued and fewer Australian businesses in the [textile, clothing and footwear] industry would be informed of their legal and award obligations and assisted to meet those obligations.

Since the existing funding has been provided to [Ethical Clothing Australia] (i.e. since 2007/08), [Ethical Clothing Australia] has worked with over 100 brands and accredited 68 businesses and has received more than 100 applications for accreditation.¹¹²

244. The ACCC accepts that the Code requires a contribution from accredited manufacturers in the form of fees towards the costs of the accreditation process, although this contribution is a small proportion of the overall costs of administering the Code. However, the ACCC accepts that accreditation fees may contribute to an overall increase in business costs as a result of the Code. The ACCC considers that businesses undertaking accreditation are likely to consider the increased business costs from fees when assessing the costs and benefits to the business of seeking accreditation. To the extent that accreditation is not undertaken voluntarily, these fees are likely to constitute a public detriment.

The costs of compliance auditing

245. The ACCC accepts that businesses undergoing an audit incur some compliance costs. These costs include the cost of management time interacting with the auditor and disruption to workers' ordinary work practices. Provision of physical copies of existing records to the TCFUA for auditing purposes may also impose some cost, although in most cases the audit requirements can be satisfied by a small sample of different types of documents.¹¹³
246. The ACCC notes that the Code relies on the TCFUA's existing powers under existing legal obligations to enter premises, interview workers and inspect and copy records to conduct the required auditing. In particular, these existing legal obligations avoid the need for accredited manufacturers or retail signatories to renegotiate contracts with their suppliers to allow access by an auditor. As such, the form of the audit under the Code is the same as what would be likely to occur during a normal TCFUA inspection of a workplace. The ACCC acknowledges that some businesses have objected to the auditing on the basis that participation in the Code makes such an inspection a certainty as opposed to a possibility.

¹¹² Department of Finance *Australian Government Procurement Statement Post-implementation Review* 12 April 2013 p. 6.

¹¹³ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013 Letter p. 6-9.

247. However, the ACCC considers that some of this additional cost of more frequent compliance auditing would also be imposed were a business to utilise any other form of certification or method to ensure that its outsourced supply chain complies with the TCF Award and workplace laws. That is, any alternative compliance audit is likely to require access to premises, interviews with workers and inspection and copying of records to ensure its integrity. Suppliers subject to such auditing costs, whether under the Code or under another scheme, are likely to attempt to pass the costs onto the accredited or principal business which has imposed the obligation. Each accredited businesses is also required to undergo auditing and thus also incurs a cost for this.
248. Therefore, the ACCC considers that it is only to the extent that the costs of increased compliance auditing are not voluntarily incurred that the increased costs are likely to constitute a public detriment.

Conclusion on increased costs imposed by the Code

249. The ACCC recognises the Code imposes a number of different costs upon businesses from increased paperwork, compliance auditing and fees. It is incumbent upon the Code Committee to ensure that these costs are minimised and to maximise the offsetting cost savings from measures to facilitate compliance with businesses' underlying legal obligations. To the extent that the Code is voluntary in nature, the ACCC considers that it is a matter for each business to decide whether to incur these costs by assessing the costs and benefits of becoming accredited or a retail signatory or supplying such a business.
250. However, the ACCC accepts that the requirements of the Code are such that some businesses will view their involvement as involuntary in some circumstances, either because they plan to participate in Commonwealth Government tenders or grant programs or because another business or businesses in their supply chain has decided to seek accreditation or to become a retail signatory. To the extent that compliance with the Code is involuntary in some circumstances, the ACCC considers that the Code imposes a cost on businesses which would not be incurred if authorisation is not granted. The ACCC considers that this constitutes a likely public detriment.

The role of the TCFUA as auditor under the Code

The Code Committee submissions

251. The Code Committee submits that the choice of the TCFUA as the auditor under the Code is due to the Code's reliance upon the existing powers and operations of the TCFUA under workplace laws. In particular, the Fair Work Act and the TCF Award grant the TCFUA wide powers to enter workplaces and inspect and copy documents.
252. The Code Committee submits that it strongly opposes using an alternative auditor to the TCFUA. In particular, the Code Committee submits that:
- a) the records of the TCFUA's audits indicate that a business's outsourced supply chain will rarely be compliant with the Award and relevant legislation (it cites a figure of 98% of audited businesses having some level of non-compliance);
 - b) the TCFUA routinely identifies major deficiencies in relation to employee records, pay slips, leave accruals, rates of pay, public holidays and superannuation contributions for in-house workers as well outworkers;
 - c) poor occupational health and safety is also very common in factories as well as amongst outworkers; and
 - d) in relation to outworker specific requirements, it is common for suppliers not to be registered with the Board of Reference and not record the details of their outsourcing

contracts. The prescribed minimum safety net of terms and conditions for outworkers are almost uniformly not adhered to.

253. In this context, the Code Committee submits that the auditing undertaken by the TCFUA does not just involve checking compliance but involves intensive education and training of principal businesses and their supply chains of their obligations under the Award and relevant legislation. This element of the compliance auditing under the Code is critical in ensuring systems and structures are in place to ensure ongoing compliance.
254. In particular, the Code Committee considers that an alternative commercial auditor would be unable to replace the TCFUA since:
- a) the audits would be significantly more costly, both because the TCFUA currently heavily subsidises audits and due to an introduction of inefficiencies into the process;
 - b) the time taken to undertake audits will increase as alternative auditors are unlikely to be familiar with the industry and therefore unfamiliar with:
 - i. the industry's multilayered, complex, unstable and often hidden supply chains;
 - ii. the complexity and implications of the applicable laws including the Award, the Act, common law, state outworker laws and other relevant workplace laws including occupational health and safety. This will substantially inhibit both auditing and the ability of the auditor to advise businesses regarding cost effective methods of complying with workplace laws;
 - iii. the languages used by workers in the industry, requiring the use of an interpreter to interview the bulk of outworkers who do not speak English well or at all;
 - c) commercial auditors will not have an existing relationship of trust with workers (particularly outworkers) in audited supply chains. Therefore, even if the outworkers can be identified, without existing trust, it is probable that outworkers will simply refuse to be interviewed and/or otherwise participate in the auditing process;
 - d) the lack of experience of an alternative auditor would demand significant resources from the Code Committee in terms of training and education. This would take substantial resources away from the Code Committee's key functions of providing general accreditation advice and resourcing to businesses, industry education and promotion of the Code. There is also a question of who would train the alternative auditor if there is a question regarding the objectivity of both the Code Committee and the TCFUA;
 - e) the TCFUA compliance officers have a consistent, national approach with a clear communications strategy outlining the basis of the audit and what is required, including a timeline for completion. This is facilitated by the fact that the auditing is undertaken by a single entity;
 - f) if an audit conducted by an alternative auditor is found to be incomplete, incorrect or generally unsatisfactory then a further audit would be required requiring additional time. This does not occur with the TCFUA as the single auditor;
 - g) in order to maintain the rigour of the Code and the confidence of stakeholders, the Accreditation Sub-committee of the Code Committee would need to develop a system to audit the work of the alternative auditor. This would add a further layer of complexity and expense;
 - h) the integrity of the Code is interlinked with the use of the TCFUA as the sole auditor. Overseas codes are seen as weak due to conflicts of interest caused by commercial auditing (i.e. businesses appointing their own auditor), in this context the TCFUA

provides credibility for consumers which have genuine concerns regarding the ethics of production; and

- i) legal issues are likely to arise from the use of a private auditor. In particular, the TCFUA's relies on its existing legal powers in order to access workplaces in order to conduct audits. In return for these existing powers, the TCFUA is subject to strict regulation under the Fairwork Act. In particular, it is strictly prohibited from divulging confidential information except in relation to Court or Tribunal proceedings. The Code Committee notes that there is no provision for similar statutory powers or regulation of private auditors. The Code Committee is currently able to share confidential information in its supply chain mapping database with the TCFUA but this would not be the case for private auditors engaged by a competitor of the businesses in the database.

Submissions supporting the application

255. The TCFUA submitted that it has a critical and legitimate role in ensuring that the textile, clothing and footwear industry operates on an ethical and sustainable basis. This includes ensuring that appropriate labour standards are observed and that unfair advantage is not gained by businesses who seek to undercut their reputable competitors by exploiting the workers within their supply chains who make their products.¹¹⁴
256. The TCFUA submitted that it has a policy of not taking any enforcement action in a tribunal or court in relation to breaches of the Award or workplace laws which it may discover in the course of an audit under the Code. Instead, it works with businesses to resolve issues and, as a last resort, has the ability to request that the Code's boycott mechanisms be utilised. The TCFUA submitted that it is overseen in detail by the Code Committee, which includes an equal number of employers and employer representative bodies as it does union representatives. It is the Code Committee that ultimately decides accreditation. Therefore, it submits there is no conflict between its enforcement and compliance roles and its auditing role.
257. The TCFUA notes that, when auditing a business under the Code, its practice is to notify the business of its intention to conduct an audit and send the business the checklists that its Compliance Officers will use to assess the business. Businesses also have access to extensive guidelines regarding their legal obligations prepared by the Code Committee and assistance from Ethical Clothing Committee staff. If businesses become aware that they are not compliant with their legal obligations upon receiving this information, the businesses also have some opportunity prior to the audit to utilise the tools developed by the Code Committee to commence remedying this non-compliance.
258. The TCFUA advises that its practice in conducting the audit is to arrange the audit for a time that suits the business and that it accommodates cancellations. In conducting the audit, its Compliance Officers seek to work with the business to remedy non-compliance with legal obligations. This may require a number of visits to a business, although it is also common in the case of businesses with relatively short and simple supply chains that the audit process takes relatively little time.
259. Five submissions received after the pre-decision conference were received from accredited businesses indicating that they are very satisfied with the TCFUA's auditing process and the assistance that it could provide in relation to understanding workplace laws.

¹¹⁴ Vivienne Wiles, *TCFUA submission* 8 April 2013 p. 23.

260. Oxfam stated in its submission that key features that have led to the success of the Homeworkers Code of Practice are the supply chain transparency and the ability of the union to access workplaces to assess working conditions.¹¹⁵ Oxfam and FairWear stated in submissions post draft-determination that they consider that the role of the TCFUA as the auditor is vital to the credibility of the Code.

Submissions opposing the application

261. As well as the costs of compliance with the Code, a number of suppliers have expressed concerns that the TCFUA is the only choice of auditor under the Code.

262. In addition to general objections to a union presence on their premises, some submissions expressed the concern that the TCFUA had a conflict of interest in undertaking the role of auditor. Some businesses that had undergone auditing expressed concerns that the TCFUA appeared to treat the audit visit as a recruiting opportunity (by engaging in discussions with workers and providing a letter regarding union membership) and had spent little time checking records. Other businesses expressed concerns that the TCFUA required unreasonable access to records and required an excessive amount of documentation.

263. Many submissions, such as the TFIA's submissions, expressed overall concerns that the lack of competition for the role of auditor contributed to the high cost of auditing and a heavy handed approach.¹¹⁶ Other submissions expressed doubts as to whether auditing actually occurred at all or if the Code Committee just depended upon the statutory declarations from businesses.

ACCC consideration

264. The ACCC considers that competition between auditors of various ethical assurance schemes can promote efficiencies in the delivery of such schemes, which may potentially lead to reduced costs and higher quality service. The use of the TCFUA as the sole auditor under the Code removes the potential for such competition. However, the ACCC notes that the majority of the auditing costs are subsidised through government grants and that the business being audited does not pay any auditing fees. The cost of engaging the auditor in this instance is effectively paid by government grants, through the Code Committee.

265. Weighed against the removal of potential competitive pressure, the ACCC considers that there are advantages to the use of the TCFUA as the sole auditor. In particular, the Code draws upon the TCFUA's extensive industry experience and existing powers to enter industry workplaces and examine industry documents. The use of a single auditor facilitates the pooling and cross-checking of information, as for example the development of supplier mapping across the whole industry. The ACCC accepts that it is likely that the training and coordination of supply chain auditing by the Code Committee with an alternative auditor could be complex and more costly in terms of resources.

266. In response to the submissions that the TCFUA does not actually conduct any auditing, the ACCC is satisfied on the evidence before it that the TCFUA does in fact audit the businesses in the outsourced supply chain of an accredited manufacturer and does not simply rely solely on the presentation of statutory declarations. In relation to the concerns raised in submissions regarding the TCFUA's potentially mixed motives as auditor, the ACCC would be concerned if the TCFUA were to use its auditing role as a means of

¹¹⁵ Daisy Gardener, *Oxfam submission* 26 March 2013 p. 1.

¹¹⁶ Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 5 April 2013 Letter p 3; Jo Kellock, *Council of Textile and Fashion Industries of Australia submission* 4 March 2013 Letter p 5.

recruiting new members. However, the ACCC notes that a letter regarding union membership is attached to the Code and accredited manufacturers agree in signing Part 1 of the Code that it will be provided to their workers and the workers in any outsourced supply chain.

267. The ACCC notes the concerns expressed regarding the TCFUA's use of interviews with workers rather than extensive examination of records. In contrast, other businesses have complained of the excessive paperwork required and intensity of the TCFUA's auditing.
268. The ACCC notes that for efficiency reasons, it is a common auditing technique to use interviews with key personnel to identify likely areas of concern and to sample only a small proportion of records relating to other areas. In addition, some breaches of workplace laws (for example failure to properly extract dust) may not be readily apparent from documentation but may be discovered through discussions with workers. The ACCC notes that this issue was extensively discussed in the 2007 study conducted by Harpur (noted in the 'Industry Background' section).¹¹⁷ Finally, the ACCC notes that the audit has an educative as well as compliance focus. Therefore, to the extent that a business's managers are able to demonstrate knowledge of the business's legal obligations, the auditing is likely to require considerably less time to complete (as the educational component is less).
269. Therefore, the ACCC also considers that it is not inappropriate for the TCFUA to assess a business's compliance with its legal obligations via verbal interviews with its workers and samples of documents rather than by extensively reviewing written records. A letter provided regarding union membership is attached to the Code and accredited manufacturers agree that it will be provided.
270. The ACCC also notes that complaints regarding the auditing process may be submitted to the Code Committee and/or to DEEWR which both provide oversight. In particular, it is the role of the Code Committee to determine the priority to be given to factors such as: risk management as opposed to risk minimisation, the relative weight given to verbal as opposed to written evidence, an educative or enforcement approach, and the overall cost effectiveness of the audit program.
271. The ACCC notes that the TCFUA's ability to enter a workplace means that accredited manufacturers do not need to renegotiate their supply contracts to incorporate specific terms to allow compliance auditing of their outsourced supply chains. Therefore, the use of an alternative auditor would need to occur on the understanding that otherwise the auditing would be conducted by the TCFUA. The auditor would also need to be approved and overseen by the Code Committee and would provide all documentation and coordination with Ethical Clothing Australia as is done by the TCFUA.
272. The ACCC would have significant concerns were it to receive specific, detailed evidence that the TCFUA has engaged in misconduct in the course of its auditing as this would call in doubt the claimed public benefits likely to arise under the Code and would be likely to increase the public detriments.
273. The ACCC acknowledges the concerns expressed by businesses which would prefer a wider choice of auditor. However, the ACCC accepts that there are efficiencies from utilising the TCFUA rather than an alternative commercial auditor. The ACCC also considers that effective use of its dispute resolution mechanism by the Code Committee should provide it with a means of objectively and fairly resolving any complaints regarding the TCFUA's auditing practices.

¹¹⁷ Harpur, Paul D. (2007) *Occupational health and safety duties to protect outworkers: the failure of regulatory intervention and calls for reform* Deakin Law Review, 12(2) pp. 74-75.

Conclusion regarding the role of the TCFUA as auditor under the Code

274. The ACCC considers that there are a number of potential advantages arising from the use of the TCFUA as the sole auditor under the Code. These include efficient use of existing contacts and efficiencies in the development and cross-checking of industry information. The TCFUA also has existing powers under legislation which facilitates its auditing role. The ACCC considers that effective use of its dispute resolution mechanism by the Code Committee should provide a means of objectively and fairly resolving any complaints regarding the TCFUA's auditing practices.

Conclusion on public detriments

275. The ACCC considers that that the Code is likely to result in some public detriment in the form of greater costs to businesses, to the extent that these costs are not incurred on a completely voluntary basis in some circumstances. As noted above, the ACCC would also have concerns were evidence of misconduct in the course of compliance auditing to emerge.

Balance of public benefit and detriment

276. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.

277. In the context of applying the net public benefit test in subsection 90(8)¹¹⁸ of the Act, the Tribunal commented that:

... something more than a negligible benefit is required before the power to grant authorisation can be exercised.¹¹⁹

278. The ACCC considers that the key benefits likely to arise from the Code are efficiencies in the management of supply chain risks and the signalling of compliance with the TCF Award and workplace laws. The ACCC considers that public benefits are also likely to arise from increased compliance by businesses in the industry with their legal obligations to workers. The ACCC considers that, to the extent that businesses do not participate voluntarily in the Code, some public detriments are likely to arise from the Code in the form of an increase in business costs and businesses being required to undergo auditing.

279. On balance, for the reasons outlined in this Determination in relation to the Code, the ACCC is satisfied that these likely benefits to the public would outweigh this detriment to the public including the detriment constituted by any lessening of competition that would be likely to result. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met.

Length of authorisation

280. The Act allows the ACCC to grant authorisation for a limited period of time. The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances.

¹¹⁸ The test at 90(8) of the Act is in essence that conduct is likely to result in such a benefit to the public that it should be allowed to take place.

¹¹⁹ Re Application by Michael Jools, President of the NSW Taxi Drivers Association [2006] ACompT 5 at paragraph 22.

281. The ACCC grants authorisation to the Code for five years, as requested.

Determination

The application

282. On 21 February 2013, the Homeworker Code Committee Incorporated (the Code Committee) lodged applications under section 91C(1) of the Competition and Consumer Act 2010 (the Act) for the revocation of authorisations A91252-A91255 and the substitution of A91354-A91357 for the ones revoked.
283. Application A91354-A91357 was made using Form FC Schedule 1, of the Competition and Consumer Regulations 2010. The Code was initially authorised under sections 88(1), 88(7) and 88(7A) of the Act.¹²⁰ The current application for reauthorisation of a revised version of the Code has been assessed as if it were a new application for authorisation under sections 88(1A), 88(1), 88(7) and 88(7A) of the Act.¹²¹

The net public benefit test

284. The ACCC's evaluation of the Conduct is in accordance with the relevant net public benefit tests contained in the Act. The holder of an authorisation may apply to the ACCC under section 91C of the Act to revoke an existing authorisation and grant another authorisation in substitution for the one revoked (reauthorisation). In order for the ACCC to reauthorise conduct, the ACCC must consider the application for reauthorisation under the same statutory tests as if it were new applications for authorisation under section 88 of the Act. That is, the ACCC has applied the tests in section 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the Act (see **Attachment A**).
285. While there is some variation in the language of the tests, in broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition and weigh the two. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public would outweigh the public detriments.
286. For the reasons outlined in this Determination, the ACCC is satisfied that in all the circumstances the Code would result or be likely to result in a public benefit that would outweigh the likely detriment to the public. The ACCC is also satisfied that the Conduct for which authorisation is sought is likely to result in such a benefit to the public that the conduct should be allowed to take place.
287. The ACCC therefore revokes authorisation A91252-A91255 and **grants** authorisation to applications A91354-A91357 in substitution.

Conduct for which the ACCC grants authorisation

288. Authorisation extends to the Code Parties to engage in the conduct described by the Code attached to this document (see **Attachment C**) until 26 October 2018.

¹²⁰ Pursuant to section 177(2) of the Act, which came into force on 24 July 2009, authorisation was also deemed to have been granted on the basis that it was applied for under section 88(1A) of the Act.

¹²¹ See section 91C(7) of the Act.

289. Further, the authorisation is in respect of the Code as it stands at the time authorisation is granted. Any changes to the Code during the term of the authorisation would not be covered by the authorisation.
290. Although the ACCC has found that the Conduct is likely to produce a net benefit in this matter, the ACCC strongly recommends that the Code 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.
291. This determination is made on 3 October 2013.

Interim authorisation

292. At the time of lodging the application, the Code Parties requested interim authorisation to the previously authorised version of the Code. The ACCC granted interim authorisation under subsection 91(2) of the Act on 8 March 2013.
293. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Date authorisation comes into effect

294. This determination is made on 3 October 2013. If no application for review of the determination is made to the Australian Competition Tribunal (the Tribunal), it will come into force on 25 October 2013.

Attachment A - Summary of relevant statutory tests

Sections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of section 90(5A) would result, or be likely to result, or in the case of section 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of section 90(5A), would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of section 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Sections 90(6) and 90(7) state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of section 90(6) would result, or be likely to result, or in the case of section 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of section 90(6), would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of section 90(7) has resulted or is likely to result from giving effect to the provision.

Subsection 90(8) states that the ACCC shall not:

- make a determination granting:
 - i. an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - ii. an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
 - iii. an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - iv. an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision

has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

Section 91C(7) requires the Commission, in making a determination to revoke an authorisation and substitute another authorisation, to apply the tests in section 90(5A), (5B), (6), (7) (8), (8A), (8B), or (9) (as applicable) as if the authorisation were a new authorisation sought under section 88.

Attachment B – Accredited businesses and retail signatories

Application for Revocation of A Non-Merger Authorisation and Substitution of a New Authorisation pursuant to section 91C of the *Competition and Consumer Act 2010*

APPENDIX B



Accredited Businesses to Part 1 of the Code as at 7/03/2013

- | | |
|----------------------------------|-----------------------------------|
| 1. A Plus Schoolwear | 42. Merino Country Australia |
| 2. Acline | 43. Metalicus |
| 3. ADA | 44. Mont Adventure |
| 4. Akubra Hats | 45. Mountcastle Hats |
| 5. Alma Fudge | 46. Mr Charles |
| 6. Ambassador Clothing | 47. Mr K |
| 7. Ampersander | 48. NathanPaul |
| 8. Art Kabanyana | 49. New Model Beauty Queen |
| 9. Aussie Mills Embroidery | 50. Nico Underwear |
| 10. Australian Contract Clothing | 51. Nobody |
| 11. Babylon Industries | 52. Novatek International |
| 12. Baxter Boots | 53. Novo Socks |
| 13. Blue Gum Clothing | 54. Oliver Footwear |
| 14. Buxwear | 55. Pacific Brands Workwear Group |
| 15. Cameron James Dixon Design | 56. Perry Cutten |
| 16. Candy & Lace | 57. Platypus Outdoors |
| 17. Carla Zampatti | 58. Protop Australia |
| 18. Cash's | 59. Puma Australia |
| 19. Christie's | 60. Qualitops |
| 20. Collette Dinnigan | 61. Queensland Swimwear Company |
| 21. Cue | 62. Redback Boot Company |
| 22. Dayoub Clothing | 63. Review Australia |
| 23. Dina Corporate | 64. Rossi Boots |
| 24. DNA Manufacturing | 65. Snugglerite Industries |
| 25. Drummond & Kindred | 66. So Stella |
| 26. Elegant Knitting Co | 67. Spunky Bruiser |
| 27. Elliott Australia | 68. Stockpile |
| 28. Fixed Race | 69. Tate & Lawson |
| 29. Fraser & Hughes | 70. Tatyana Ariyan Design & Co |
| 30. Gideon Shoes | 71. The Ark |
| 31. Ginger & Smart | 72. The Social Studio |
| 32. Harmony Fashions | 73. Totally Corporate |
| 33. Humphrey Law | 74. Tote Systems Australia |
| 34. J Robins Manufacturing | 75. Tuffa Workwear |
| 35. Jets Swimwear | 76. Tuffys & Tuffetts |
| 36. Kitbag | 77. Urbaneearthwear |
| 37. Lisa Ho | 78. Valour Apparel |
| 38. LMB Knitwear | 79. Wildnerness Wear |
| 39. Lydra | 80. Woolerina |
| 40. Mattt | |
| 41. Melbourne Made | |

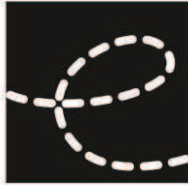
Signatory Business to Part 2 of the Code as at 7/03/2013

1. Abbey Bridal
2. Adam Larissa Fashions
3. Airdid
4. Alexander Michaels Clothing for Men
5. Anita Holland's Boutique
6. Anthea Crawford Australia
7. Apricot
8. Armondilloxtreme
9. Australian School of Mountaineering
10. Australian Surfing Headquarters
11. Barrakets Fashion Centre
12. Batalin Boutique
13. Bay Collection Boutique
14. Berrima Natural Australia
15. Best & Less Retail Stores
16. Big W Discount Department Stores
17. Billingham's Menswear
18. Bonza Brats
19. Born in the Blue Mountains
20. Boutique Capri
21. Bowral Country Sports
22. Butterfly xx
23. BW Benson Fashion
24. Carla Zampatti
25. Cascade Butterfly
26. Catherine Smith t/a Duck Creek Clothing
27. Christine Coon t/a Country Chique Boutique
28. Cinnamon Boutique
29. City Classics
30. Clare Ellen Fashions
31. Clothing Haven Menswear, Ladieswear & Surfwear
32. Corfu Blue
33. Country Road
34. Cue & Co
35. CW & AE Bird t/as Ultimate Underwear
36. David Jones
37. Dotti
38. D'Vine D'Zine
39. Eda Michelle Designs
40. Emma James
41. Esprit
42. Events Fashion
43. Eve's of Mittagong
44. Fandango
45. Fetts
46. Final Touches
47. Flanagans Menswear
48. Fuller Figure with Style
49. G Retail
50. Galleria Boutique
51. General Pants Group
52. Gloucester Town and Country
53. Have to Shop (Zena Sutton)
54. Herro International (Mens Avenue)
55. Hunter Gatherer
56. Infinite Abundance t/as Visage Mens Boutique
57. J.H. Barsby & Sons
58. Jeans West
59. Jim Mills/John Douglas Menswear
60. Jiva
61. Jodi of Umina
62. John Grahams Mens Wear
63. John Santalucia t/as Tainey Boutique
64. Jory Family Trust t/as Enhance U
65. Joseph's Menstore
66. Jourdan Fashions
67. K Mart
68. Kennedy's
69. Kerry's Klothes
70. La Boutique Fantasque
71. Langcru PL t/as Amazon Fashions
72. Leura Mall Outback Clothing
73. Looking Class
74. Lowes
75. Man to Man
76. Marves Shoppe
77. Matilda Janes C & G Enterprises
78. Mays Ladies Fashion
79. Mr Sports
80. My Style Boutique
81. Myer
82. Nick Brown Menswear

- | | |
|--|--|
| 83. Noaron / XS Surf t/as Woopi Bizare | 112. Shoppe Two Ten |
| 84. Noni B | 113. Simona |
| 85. Nunee Boutique | 114. Simone Louise |
| 86. Oliver NSW | 115. Smyths Specialty Store |
| 87. Orientique Byron Bay | 116. Snellings Clothing Store |
| 88. Paleface | 117. Specialty Fashion Group |
| 89. Pat Kearins' Mensland | 118. Sportsgirl |
| 90. Peg Hargreaves Fashion | 119. Stewart's Menswear |
| 91. Peter Pan Baby & Childrens Wear | 120. Sussan Corp |
| 92. Petl & Co | 121. Suzanne Grae Corp |
| 93. Pink Pomegranate t/a Treehouse Childrens Décor | 122. Swans of Tumut |
| 94. Pizazz Boutiques | 123. Sweethearts Bridal |
| 95. PJ's Warehouse | 124. Syndicate |
| 96. Plumage for Clothes | 125. Synergie Fashion Co. |
| 97. Posh & Chic | 126. Target |
| 98. Pretty Girl Fashion Group | 127. The Avenue Bridal Boutique |
| 99. Pretty Things | 128. The Discovery Group |
| 100. Reilly's Quirindi | 129. The Just Group |
| 101. Review Australia | 130. Totalook Clothing |
| 102. Rifoba t/as Heppy's | 131. Trachelle Boutique |
| 103. RM Williams | 132. Trumps Boutique Leura |
| 104. Robinson's Department Store | 133. V & M Wear t/as Monza Mens |
| 105. Robyn Hunter | 134. Vince Maloney & Co. |
| 106. Robyn's Lets Dance | 135. Vivian Chan Shaw |
| 107. Roger David | 136. Von Troska |
| 108. S M Brands | 137. Wahney Boutique |
| 109. Shebu Contemporary Fashion | 138. Webster Holdings (Jigsaw, David Lawrence) |
| 110. Sheike & Co. | 139. Who Knows Where |
| 111. Sheppards of Albury | 140. Witchery Fashions |
| | 141. Zig Zag Boutique at Yamba |

Attachment C – Homeworkers Code of Practice

(Please see next page)



ethical
clothing
AUSTRALIA

Homeworker Code Committee Inc

PO Box 2087, Fitzroy VIC 3065

Telephone: 03 9419 0222

Facsimile: 03 8415 0818

Email: info@ethicalclothingaustralia.org.au

Website: www.ethicalclothingaustralia.org.au

Homeworkers Code of Practice

and

Application for Accreditation

Part 1 (Manufacturers)

*For further information & assistance contact
Ethical Clothing Australia*

Postal address: PO Box 2087, Fitzroy VIC 3065

Phone: 03 9419 0222 / Fax: 03 8415 0818

Email: info@ethicalclothingaustralia.org.au

www.ethicalclothingaustralia.org.au

HOMEWORKERS CODE OF PRACTICE

ETHICAL CLOTHING AUSTRALIA (ECA) PRIVACY POLICY

We collect, use and disclose information according to the ECA Privacy Policy which can be found at our website: <http://www.ethicalclothingaustralia.org.au/privacy-policy/privacy-policy>. By signing this application, you acknowledge and agree that you have read and understood our Privacy Policy, and agree to your information being handled in accordance with it. Amendments to the Privacy Policy will come into effect immediately when posted on our website. Because of this, you should access the Website and read the latest Privacy Policy prior to disclosing personal information to us. Important Note: If you do not consent to the ECA Privacy Policy please be aware that ECA will be unable to process your application for accreditation or any subsequent re-accreditations.

COMPANY NAME

COMPANY ABN

ADDRESS

.....

PHONE..... FAX.....

EMAIL..... WEBSITE.....

Signature

Name.....

Position.....

Date

The Homeworkers Code of Practice ('the Code of Practice') is a voluntary Code established to ensure textile, clothing and footwear workers and homeworkers receive appropriate legal award entitlements and legislative protection.

Accreditation is only available to businesses who manufacture textile, clothing and footwear products in Australia.

[Insert Company Name]

A business is complying with the Code of Practice when its workers and its suppliers' workers (including outworkers) are receiving their lawful pay and entitlements under the TCF Award 2010 and relevant legislation.

Acknowledges that compliance with the requirements below is necessary to become accredited and maintain accreditation under the Code of Practice

- a) Copy of the signed Code of Practice agreement (Part 2 – Signatories)
- b) Completed fees form, to be provided annually
- c) Payment of the Accreditation Application fee and ongoing annual fees
- d) Ongoing cooperation regarding compliance checks and the facilitation of legal compliance, internally and regarding applicant company's suppliers
- e) Provision of documentation for initial accreditation, annually and whenever a supply chain changes
- f) Statutory declaration/s of company seeking accreditation (Schedule 1-5 depending on manufacturing circumstances)
- g) Contractors list (Schedule 2 Attachment 1) or homeworkers list (Schedule 4, Attachment 1)
- h) Completed Schedule/s with each contractor listed in Schedule 2, Attachment 1
- i) Example of a work record for each contractor used
- j) Statutory declarations from all contractors) (Schedules 3, 4 or 5)
- k) Copies of outworker wage records, work arrangements and work records and satisfactory evidence of superannuation and Workcover payments

HOMEWORKERS CODE OF PRACTICE

PART 1 – MANUFACTURER’S AGREEMENT

CLAUSE 1 - AGREEMENT

between

The Textile Clothing and Footwear Union of Australia (TCFUA), and

The Australian Industry Group (AiGroup), and

The New South Wales Business Chamber (NSW BC)

CLAUSE 2 - PARTIES

The TCFUA

The AiGroup

The NSW BC

Individual companies who are signatories to this Agreement

CLAUSE 3 - OBJECTIVES

The objectives of this Agreement include:

- To end exploitation of workers and homeworkers in the textile, clothing and footwear industry
- To enable workers and homeworkers to clearly understand their employment entitlements
- To ensure workers and homeworkers receive their appropriate award entitlements and legislative protection
- To establish a system of accreditation for Manufacturers who comply with this Agreement,
- To educate workers, manufacturers, contractors, fashion labels and the wider community about the purposes and operation of this Agreement
- To assist homeworkers by supporting, consistent with this Agreement, community and industry education securing compliance with this Agreement and promoting its purpose.
- To facilitate for an accredited business, a transparent, ethical and more sustainable supply chain
- To provide a mechanism to an accredited business to achieve, and ensure ongoing compliance with the TCF Award and relevant legislation
- To provide opportunities to accredited business, to promote their products as ethically produced, Australian products and enabling them through a licence agreement to use Ethical Clothing Australia trademarks.

CLAUSE 4 - DEFINITIONS

- 4.1 **“Accreditation”** means a system of accreditation whereby a Manufacturer may indicate that it complies with the terms of this Agreement.
- 4.2 **“Accreditation Register”** means the register of accredited manufacturers held and maintained by Ethical Clothing Australia.
- 4.3 **“Code of Practice”** or **“Agreement”** means the Homeworkers Code of Practice.
- 4.4 **“Committee”** means the management committee of the Homeworkers Code of Practice.
- 4.5 **“Contractor”** means a business engaged to produce or arrange the manufacture of products in the textile, clothing and footwear industry.
- 4.6 **“ECA”** or **“Ethical Clothing Australia”** means the organisation responsible for the accreditation of manufacturers and the administration and promotion of the Code of Practice.
- 4.7 **“Manufacturer”** means a business that manufactures or arranges the manufacture of TCF products in Australia (including the value adding onto Australian made product), and may include a supplier, fashion house or wholesaler.
- 4.8 **“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.

4.9 **“Products”** means the whole, or part of:

any garment; or
any article of wearing apparel; or
any article of footwear; or
any textile product.

4.10 **“Rate per product”** means the rate calculated in accordance with the TCF Award (outworker provisions). This is determined by reference to the skill level classification, and the ‘Time Standards and payment’ outworker provisions in the TCF Award.

4.11 **“Relevant award” or “TCF Award” or “award”** means the Textile, Clothing Footwear and Associated Industries Award 2010, and as amended from time to time to provide increases in wages and/or conditions as determined by the Fair Work Commission (or any successor body).

4.12 **“Relevant superannuation fund”** means in relation to a worker or homeworker, a superannuation fund into which superannuation contributions are to be paid on behalf of the worker or homeworker in accordance with the TCF Award and federal superannuation legislation.

4.13 **“Standard Statutory Declaration”** means a statutory declaration as set out in Schedules 1,2, 4 and 5, of this Agreement. Completion of relevant standard statutory declarations is necessary for an applicant business to acquire accreditation.

4.14 **“Supplier/Fashion house/wholesaler”** means an entity that agrees to manufacture or arrange to manufacture products and /or components thereof.

4.15 **“Supply Chain”** in relation to a manufacturer (whether accredited or seeking accreditation under this Code), means one or more arrangements entered into by the manufacturer, with any legal or natural person, to have work performed for them (directly or indirectly) as the principal.

Workers in a manufacturer’s supply chain include workers directly engaged by the manufacturer (including homeworkers) and/or those workers engaged by any of their suppliers or contractors (including homeworkers).’

4.16 **“TCFUA”** means the Textile, Clothing and Footwear Union of Australia.

4.17 **“Worker”** means a person who performs work on, or in relation to products in the textile, clothing and footwear industry.

4.18 **“Workers compensation”** means workers’ compensation as prescribed by the relevant state or federal legislation.

4.19 **“Work records”** means a ‘work record’ as defined under the TCF Award (formerly known as a garment specification sheet).

4.20 **“Work agreement”** means a ‘work agreement’ as defined under the TCF Award (outworker provisions) applicable to homeworkers and all contractors (regardless of whether that contractor employs homeworkers)

CLAUSE 5 COMMITTEE

The Committee is responsible for the overall administration, implementation and promotion of the Code of Practice.

The Committee comprises an equal number of representatives from the TCFUA and a combined group of employer parties to the Agreement, and has a minimum of six members. Decisions of the Committee are made by a majority vote.

The duties of the Committee shall be to take whatever steps may be necessary to ensure promotion of, and compliance with this Agreement, including:

- Accreditation of applicant businesses and re-accreditation of accredited businesses
- Withdrawing a manufacturer's accreditation
- Holding and maintaining the accreditation register of accredited manufacturers
- Licensing Accredited Manufacturers and Registered Manufacturers to use the Accreditation Marks
- Allocating monies from the education, publicity and compliance fund
- Settling any disputes that may arise in relation to the operation of this agreement, which may include the participation of an independent mediator, where agreed (where the committee cannot resolve a dispute the matter will be referred to the agreed independent mediator for resolution)
- Establishing processes and procedures to rapidly and efficiently deal with issues which come before it, in particular those which require mediation.

CLAUSE 6 – ROLE OF THE TCFUA

The TCFUA will have the responsibility for enforcing compliance with the labour standards under this Agreement. Compliance activities, consistent with this Agreement, shall include:

- Undertaking compliance audits as part of the accreditation process;
- Identifying incidents of non compliance with the TCF Award and relevant legislation and/or this Agreement;
- Securing compliance through the promotion of this Agreement;
- Ensuring compliance with the TCF Award and relevant legislation by non – accredited businesses;
- Ensuring ongoing compliance with this Agreement by accredited businesses.

CLAUSE 7 – ROLE OF ETHICAL CLOTHING AUSTRALIA

Ethical Clothing Australia (ECA) is established by the Committee to promote ethical behaviour in the textile, clothing and footwear industry, administer the Code of Practice and assist applicant and accredited businesses.

CLAUSE 8 - ACCREDITATION

8.1 Accreditation

The Committee shall confer accreditation on a manufacturer which establishes it is in compliance with all obligations under this Agreement, including:

- Timely completion of required documentation and payment of a new accreditation fee to Ethical Clothing Australia (ECA)

- Ensuring all workers and homeworkers (if any) in its supply chain involved in the performance of work in relation to its products, are receiving wages and conditions as provided for in the TCF Award and under all relevant legislation;
- Co-operating with the TCFUA regarding compliance checks; and
- By the provision of standard statutory declarations and other required documentation to ECA as required under the Agreement.

The period of time required to become ECA accredited is dependent on the co-operation of the applicant business and the fulfilment of obligations by the applicant and its supply chain. In addition, the specific nature of the applicant's manufacturing circumstances will impact on the time for accreditation; for example, whether the company gives work out or does all of its work in-house, and the number of participants in the supply chain.

Where accreditation is conferred on a manufacturer, that manufacturer will be entitled to be known as an Accredited Manufacturer and licensed accordingly. In addition all Accredited Manufacturers will be provided with an 'Accreditation Certificate' renewed annually.

An Accredited Manufacturer shall be entitled to attach to its products a label indicating (in a form of words decided by the Committee), that they have been made by an Accredited Manufacturer.

8.2 Reaccreditation

Reaccreditation for an accredited business is required annually and does not occur automatically.

To be reaccredited, a business is required to fulfil a number of obligations under this Agreement. These obligations include, for example:

- Timely completion of required ECA documentation and payment of an annual accreditation fee to Ethical Clothing Australia;
- Co-operation with the TCFUA regarding updated compliance checks;
- Ongoing compliance with the TCF Award and related legislation by the business' supply chain; and
- the provision of accurate statutory declarations and other required documentation to Ethical Clothing Australia as required under this Agreement.

8.3 De-accreditation

De-accreditation can occur if:

- the accredited business or its supply chain becomes non-compliant with the requirements of this Agreement; and/or
- the manufacturing circumstances of the accredited business change (for example, the business ceases to be eligible under the Code of Practice because it stops manufacturing in Australia; or the business ceases trading and/or becomes insolvent).

If the Committee considers that an Accredited Manufacturer has failed to comply with this Agreement, it may give the Accredited Manufacturer notice stating:

- the grounds on which it considers that the Accredited Manufacturer has failed to comply with this Agreement; and

- that the Committee may cancel the accreditation of the Accredited Manufacturer unless the Accredited Manufacturer provides, within twenty-eight (28) days of delivery of the notice, material which satisfies the Committee that the Accredited Manufacturer has complied with this Agreement.

CLAUSE 9 - OBLIGATIONS OF ACCREDITED MANUFACTURERS

A manufacturer is entitled to accreditation only if it complies with this Agreement.

9.1 General obligations of an applicant or accredited business

The responsibilities of an applicant or accredited business include:

- Advising ECA within 7 days of any changes to its manufacturing circumstances, including for example, the removal or addition of suppliers from their supply chain; taking manufacturing off shore; moving location, changing contact or entity details; corporate restructure which impacts on the accreditation of individual brands within the accredited business.
- Co-operating with the TCFUA regarding ongoing legal compliance and auditing. This includes responding to requests in a timely manner and facilitating the cooperation of all contractors and sub contractors within their supply chain.
- Co-operating and providing ECA with requested schedules and other documentation and the payment of fees within the requested timeframe.
- Keeping and maintaining the following records in connection to arrangements made with other contractors or homeworkers:
 - Work Agreements
 - Work Records
 - Wages Records
 - Superannuation fund and payments
 - Workers compensation fund and payments.

9.2 Obligations regarding in-house workers

The applicant, or accredited business must ensure that their in-house manufacturing workers are receiving, at a minimum, the legal wages and conditions as provided for under the TCF Award and relevant legislation (for example, National Employment Standards under the Fair Work Act 2009, superannuation and Work Cover entitlements, OH&S).

Once legally compliant as confirmed by the TCFUA, the applicant or accredited business is required to provide to the ECA, a signed statutory declaration (Schedule 1 and Schedule 2), attesting they are and will remain compliant with this Agreement.

9.3 Obligations in relation to supply chain

The applicant or accredited business must ensure that their entire supply chain is compliant with the obligations of the TCF Award and relevant legislation. This includes registration with the Board of Reference of the Fair Work Commission if giving work out. Compliance extends from first and second tier suppliers through to all subsequent tiers.

Once legally compliant as confirmed by the TCFUA, the applicant or accredited business is required to provide to the ECA, a signed statutory declaration (Schedule 2), and a Schedule 3, attesting they are and will remain compliant with this Agreement.

9.4 Obligations to homeworkers

If an accredited business or any of its supply chain is giving work out to be performed by homeworkers, they must comply with the (Outworker and related provisions) of the TCF Award and requirements under this Agreement. Many of these obligations are cascading, and as such, apply to each business within a supply chain that gives work out to homeworkers.

Once legally compliant as confirmed by the TCFUA, the applicant or accredited business is required to provide to the ECA, a signed statutory declaration (Schedule 4 or Schedule 5), attesting they are and will remain compliant with this Agreement.

a) Requirements to be registered and provided lists

An accredited business and any of its supply chain must, prior to arranging for homeworkers to perform work on its behalf, be registered with the Board of Reference of the Fair Work Commission ('BOR'). They must also provide a quarterly list containing the details of each homeworker they have engaged to both the BOR and to the TCFUA. On the request of the TCFUA, the accredited business must provide to the TCFUA within 7 days, details of the name and address of any homeworker which the accredited business is using in the manufacture of its products.

b) Requirements to provide written agreement and work records

Each accredited business and any of its supply chain who arranges for a homeworker to perform work must first make and retain both a Written Agreement with the homeworker and a Work Record in relation to the work, which is the subject of the arrangement. The TCF Award (outworker and related provisions) sets out the details of the information which must be included in the Work Agreement and the Work Record.

c) Minimum conditions for outworkers

Each accredited business and each entity within its supply chain who arranges for a homeworker to perform work must ensure that the homeworker is receiving the following conditions:

- The appropriate time standard rate for work performed by the homeworker based on the TCF Award hourly rate (minimum skill level 3);
- At least the minimum number of hours per fortnight as defined by Schedule F of the TCF Award and a maximum workload per fortnight (76 hours);
- The homeworker is not being required to work on a Saturday, Sunday or public holidays, or beyond 7.6 hours in one day, unless they agree to do so and the homeworker receives the appropriate rate of pay under the TCF Award;
- Appropriate workers compensation protection as per the relevant state or federal legislation;
- Appropriate notice and redundancy entitlements as per the TCF Award;
- Appropriate superannuation contributions are being made on the homeworker's behalf in accordance with the TCF Award and federal legislation;
- Appropriate pay slip records containing specified information as per the Fair Work legislation; and
- The standard letter as provided for in Schedule 6.

d) Non payment of money to outworkers

If it is shown to the reasonable satisfaction of the accredited business that a homeworker has not been paid by a contractor in accordance with this Agreement, the accredited business must pay the homeworker the amount due, and deduct the payment otherwise due to the contractor, where such payment to the contractor is still outstanding.

e) Records

Each accredited business which arranges for a homeworker to perform work on products must satisfy itself that all required records are maintained and are capable of being provided as required by Ethical Clothing Australia.

An accredited business shall, on the request of the TCFUA within 7 days provide the TCFUA all details of the name and address of any homeworker which the accredited manufacturer is using in manufacturing the products.

Where an accredited business uses a contractor to make products the accredited business shall, on the request of the TCFUA within 7 days provide to the TCFUA all details of the name and address of any contractor which the accredited business is using in manufacturing the products.

An accredited business shall, within 7 days of engaging a contractor to arrange for the making of products, ensure that the contractor compiles a list of names and addresses of all homeworkers that the contractor proposes to engage in the making of the products. Upon receiving a request from the TCFUA the accredited business shall ensure that the list is provided to the TCFUA within 7 days.

9.5 Breach of Agreement

Where the TCFUA gives notice to an accredited business that a contractor is in breach of this Agreement, the accredited business shall, within 14 days of the notification, investigate the alleged breach and report its findings to the TCFUA and the Committee.

If the accredited business's report confirms a breach of this Agreement by a contractor, the accredited business shall cease further commercial dealings with that contractor unless and until the contractor has remedied its breach of the Agreement within 14 days.

9.6 Precedence of Federal Award

With the exception of clause 9.4(d) of Part 1 of the Code, the Code is intended to reflect requirements of the Award and relevant workplace laws. A party who complies with the Award or workplace law will also have complied with a provision of the Code that is intended to reflect the relevant requirement of the Award or workplace law as in force from time to time.

CLAUSE 10 – LICENSING AND USE OF TRADEMARKS

An accredited business is able to display and use the ECA trademark subject to strict licensing conditions. All successful accredited manufacturers wishing to use the ECA trademark are required to sign a Licensing Agreement that covers the use and promotion of Ethical Clothing Australia, Ethical Footwear Australia and Ethical Textiles Australia trademarks. The licensing agreement is also supported by Trademark Usage Guidelines for accredited brands. The

guidelines cover both the products the Ethical Clothing Australia trademark can be used on, and how the trademark can be displayed.

The Committee shall register and maintain whatever trademarks, logos or other identification items (“**Accreditation Marks**”) it deems appropriate to promote compliance with the Award and this Agreement (see examples below).



CLAUSE 11 – ACCREDITATION FEES

A business seeking accreditation or re-accreditation under this Agreement is required to pay an annual accreditation fee as determined by the Committee.

CLAUSE 12 - EDUCATION, PUBLICITY AND COMPLIANCE FUND

Contributions shall be made to this Fund by the parties to this Agreement on the following basis:

- Contributions in kind by the TCFUA, NSW Business Chamber & AIG
- Contributions from retailers and manufacturers, through payment for accreditation and licenses
- Financial assistance from State and Commonwealth Governments

All parties agree that they will make representations to State & Federal Government for funds to be provided to assist in activities associated with this Agreement.

Any direct funds shall be allocated on the following priority basis:

- To the TCFUA for compliance activities;
- Towards education and publicity activities;
- Towards the development of accreditation tools and resources;
- other Homeworker Code Committee Inc. costs

Education and Publicity activities supported by this Fund will be for the purposes of educating homeworkers, contractors, manufacturers, retailers and the wider community about the operation and purposes of this Agreement.

CLAUSE 13 - RECORDS TO BE KEPT

- a) Any records required to be kept under this Agreement shall be preserved, by accredited manufacturers and their contractors, for a period of 6 years.

- a) The TCFUA may inspect any records required to be maintained under this Agreement.
- b) The TCFUA shall be given copies, if requested, of any records required to be kept under this Agreement.
- c) ECA retains all records required to be kept under this Agreement

14. DISPUTE RESOLUTION

- 14.1 It is the intention of the parties to co-operate in good faith to resolve any grievance in relation to a matter arising under this Code of Practice. However, this dispute resolution procedure does not include any matter or grievance relating to the statutory interpretation of the TCF Award or relevant legislation.
- 14.2 As a demonstration of good faith, it is a requirement of raising a grievance in accordance with this clause that the complainant party is complying with the Code and its processes.
- 14.3 In the first instance, a complainant party should first raise and attempt to resolve the grievance directly with the other party.
- 14.4 If the grievance cannot be resolved directly between the parties in dispute pursuant to 14.3, within 3 months, the complainant party may write to the ECA National Manager specifically outlining their concerns. The National Manager will acknowledge receipt of the correspondence and will attempt to resolve the matter with the parties in dispute as soon as reasonably practicable.
- 14.5 If the ECA National Manager considers it appropriate, the National Manager may establish a sub- committee of the Committee ('Dispute Resolution subcommittee) as required to assist in the resolution of the matter. The Dispute Resolution subcommittee will comprise of the National Manager, one TCFUA and one employer representative.
- 14.6 At the conclusion of the process pursuant to 14.4 or 14.5, the National Manager will communicate the outcome in writing to the complainant party.
- 14.7 If the complainant party is dissatisfied with the outcome they may write to the ECA National Manager requesting that the matter be considered by the Committee, including the grounds as to why they are seeking such a referral.
- 14.8 If the matter is referred to the Committee pursuant to 14.7, the Committee will consider the grounds detailed by the complainant party as soon as is practicable, including at its discretion, convening a special meeting of the Committee for such a purpose.
- 14.9 The Committee, after reviewing the matter, will communicate to the complainant party in writing as to the outcome of its consideration.
- 14.10 If the matter still remains unresolved, the matter may be referred to mediation to be conducted by an independent mediator as agreed between the parties.
- 14.11 Where the parties have entered into mediation pursuant to 14.10, the parties agree that:
 - (a) they must each pay half the costs of the mediation;
 - (b) they will participate in the mediation process in good faith and in a timely manner;
 - (c) they agree to be bound to any agreement reached arising from the mediation process.

14.12 If the parties can't agree then the Committee will appoint an independent mediator

CLAUSE 15 - AMENDMENT

This Agreement may be amended by agreement of all the parties to it.

SIGNATORIES

TCFUA

AiGroup

NSW BC

Individual Companies

PART 2 – SIGNATORIES

The individual company that has agreed to be a signatory to this Agreement.

SIGNATORIES

Signed by

.....
on behalf of the Textile, Clothing and Footwear Union of Australia

Name

Position

Date

Signed by

.....
on behalf of

Name

Company Name

Position

Date

SCHEDULES

Schedules attached to Part 1 of the Code of Practice include the statutory declarations, contract between accredited businesses and contractors and letter to homeworkers as all requirements to be fulfilled by signatories as part of becoming accredited to the Code of Practice. The schedules are integral to the content and workings of Part 1 of the Code of Practice.

SCHEDULE 1

Statutory Declaration for Manufacturers Who Do Not Give Out Work to Contractors or Homeworkers

STATUTORY DECLARATION

I
[full name]

of
[address]

do solemnly and sincerely declare as follows:

I am the of
[position] [name of company or business]

.....
[address of company or business]

..... [ABN of company or business] [ACN of company or business, if applicable]

I do not give any work outside my premises to contractors and or homeworkers. This company exclusively engages employees based at our factory premises to perform work or arrange the performance of work

Should I begin to contract any work out to contractors or homeworkers:

- I will complete the Statutory Declaration as set out in *Schedule 2* and/or *Schedule 4* from the Code of Practice and notify Ethical Clothing Australia of this change within 7 days.
- I will require the Statutory Declaration forms provided to me to be completed by each contractor and notify Ethical Clothing Australia of this change within 7 days.
- I will co-sign the *Schedule 3* Contract between Accredited Business and Contractor of the Code of Practice.
- I will make the Statutory Declaration completed by each contractor available for inspection on written request by the TCFUA.

- All new contractors from this day on will be supplied with and asked to fill in a relevant Statutory Declaration (*Schedule 1, 2; or Schedule 5*), and co-sign the Schedule 3 Contract between Accredited Business and Contractor. Copies of these will be forwarded to Ethical Clothing Australia and made available for inspection on written request by the TCFUA.
- I will have Work Agreements and Work Records completed and co-signed with each Contractor and Homeworker

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 (Cth) and subject to the penalties provided by that Act for making of false statements in Statutory Declarations, conscientiously believing the statements made in this declaration to be true in every particular.

.....
 [Signature of person making the Declaration]

Declared at in the State of
(name of city or town)

on this day of in the year 20.....
(numeric date) (month)

Before me
 [Signature of Witness]

.....
 [Name of Witness]

.....
 [Title of Witness]

SCHEDULE 2

Statutory Declaration for Manufacturers Who Give Work Out to Contractors

STATUTORY DECLARATION

I
[full name]

of
[address]

do solemnly and sincerely declare as follows:

I am the of
[position] [name of company or business]

.....
[address of company or business]

..... [ABN of company or business] [ACN of company or business, if applicable]

I have put in place with every contractor this company engages either to perform work or arrange the performance of work, a Work Agreement and Work Record, and have co-signed the Schedule 3 Contract between Accredited Business and Contractor.

Each of the contractors who supply our company with goods has completed a relevant Statutory Declaration (*Schedule 1, Schedule 2 or Schedule 5*) of the Code of Practice

The Statutory Declaration completed by each contractor has been provided to me and are available for inspection on written request by the TCFUA within 7 days.

All new contractors from this day on will be supplied with and asked to fill in a relevant Statutory Declaration (*Schedule 1, Schedule 2 or Schedule 5*) of the Code of Practice and a copy will be forwarded to Ethical Clothing Australia and made available for inspection on written request by the TCFUA.

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 (Cth) and subject to the penalties provided by that Act for making of false statements in Statutory Declarations, conscientiously believing the statements made in this declaration to be true in every particular.

.....
[Signature of person making the Declaration]

Declared at in the State of
(name of city or town)

on this day of in the year 20.....
(numeric date) (month)

Before me
[Signature of Witness]

.....
[Name of Witness]

.....
[Title of Witness]

SCHEDULE 3

Contract Between an Accredited Business and Contractor

- It is a term of this Contract that any contractor must act in accordance with, observe and do nothing to undermine the Code of Practice Agreement between the TCFUA, and

.....*

- It is a term of this Contract that any textile, clothing and footwear workers employed to perform work referred to in this Agreement shall be covered by the provisions of the agreement between the TCFUA and

.....

- The Contractor must, in addition to their obligations under the Agreement, make and retain for not less than 6 years and make available for inspection by the TCFUA and/or

.....

at times reasonably required by the TCFUA and/or a person authorised by

.....

the records specified in the Attachment of the Agreement.

- If a Contractor breaches any provisions of the Agreement,

.....

shall cease further commercial dealings with the Contractor unless and until the Contractor has fully remedied the breach of the Agreement within 14 days.

- If it is shown to the reasonable satisfaction of

.....

that a worker has not been paid in accordance with this Contract,

.....

must pay that worker the amount due and deduct that amount from the payment otherwise due to the Contractor where such payment to the Contractor is still outstanding.

- In observing its obligations under the Contract, the Contractor must observe the relevant provisions of relevant state or federal legislation and the TCF Award.

* *Insert name of applicant business on dotted line throughout Contract*

Name Name

Company Company
(Accredited Business) (Contractor)

Signature: Signature

Date Date

SCHEDULE 4

Statutory Declaration for Accredited Business Who Give Work Directly to Homeworkers

STATUTORY DECLARATION

I
[full name]

of
[address]

do solemnly and sincerely declare as follows:

I am the of
[position] [name of company or business]

.....
[address of company or business]

..... [ABN of company or business] [ACN of company or business, if applicable]

I supply work directly to homeworkers.

I have read and understood the contents of the "Code of Practice" Agreement between the Textile Clothing and Footwear Union and my business

..... dated

I have completed and co-signed a Work Agreement and Work Record with each homeworker.

I have paid all homeworkers I employ (doing the work referred to above) their legal wages and provided their legal entitlements according to the TCF Award and relevant legislation.

I will hereafter provide to each of these homeworkers, (referred to above) the minimum fortnightly workload defined in Clause 9 of the 'Code of Practice' and in the TCF Award.

I have ensured that each of these homeworkers is fully insured for workers compensation insurance in accordance with the requirements of the relevant Workers Compensation Act.

I have paid to the relevant superannuation fund superannuation contributions on behalf of each of these homeworkers with the requirements of the TCF Award and federal superannuation legislation.

I have kept the following (in regard to each of these outworkers) records in accordance with the TCF Award and the "Code of Practice": Work records, Work Agreements, Wages records, Workers Compensation and Superannuation fund evidence. I will provide these records to the TCFUA in accordance with Clause 9 of the "TCF Code of Practice."

I have only terminated the services of any of these homeworkers after providing to them the appropriate written notice upon termination in accordance with the requirements of the TCF Award and the Fairwork Act (2009).

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 (Cth) and subject to the penalties provided by that Act for the making of false statements in Statutory Declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

.....
[Signature of person making the Declaration]

Declared at in the State of
(name of city or town)

on this day of in the year 20.....
(numeric date) (month)

Before me
[Signature of Witness]

.....
[Name of Witness]

.....
[Title of Witness]

SCHEDULE 4 – Attachment 1

(List all of the outworkers that your company gives work out to)

Name	Address	Date of Contract	Contact Person	Phone Number
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

(If there is insufficient space to list all makers please photocopy this sheet)

SCHEDULE 5

Statutory Declaration for Contractors Who Receive Work from another Business and then Supplies Work to Outworkers

STATUTORY DECLARATION

I
[full name]

of
[address]

do solemnly and sincerely declare as follows:

I am the of
[position] [name of company or business]

.....
[address of company or business]

..... [ABN of company or business] [ACN of company or business, if applicable]

I have received work from
[insert accredited businesses name]

These Orders will be given to homeworkers to complete.

I have read and examined the contents of the "Code of Practice" Agreement between the Textile Clothing and Footwear Union of Australia and

..... dated

I will hereafter pay each of these homeworkers (doing the work referred to above) their legal wages and entitlements according to the TCF Award and the "Code of Practice",

I will hereafter provide to each of these homeworkers, (referred to above) the minimum fortnightly workload defined in Clause 9 of the 'Code of Practice' and in the TCF Award.

I will hereafter ensure that each of these homeworkers is fully insured for workers compensation insurance in accordance with the requirements of the relevant workers compensation legislation.

I will hereafter pay to the relevant superannuation fund superannuation contributions on behalf of each of these homeworkers with the requirements of the TCF Award and federal superannuation legislation.

I will hereafter keep (in regard to each of these homeworkers) records in accordance with the TCF Award and Clause 9 of the "Code of Practice": Work Records, Work Agreements, Wages Records, Workers Compensation and Superannuation fund evidence. I will provide these records to the TCFUA when requested.

I have only terminated the services of any of these homeworkers after providing to them the appropriate written notice upon termination in accordance with the requirements of the TCF Award, or appropriate award.

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 (Cth) and subject to the penalties provided by that Act for the making of false statements in Statutory Declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

.....
[Signature of person making the Declaration]

.....
[Signature of person making the Declaration]

Declared at in the State of
(name of city or town)

on this day of in the year 20.....
(numeric date) (month)

Before me
[Signature of Witness]

.....
[Name of Witness]

.....
[Title of Witness]

SCHEDULE 6

Letter to Homeworker

Dear Homeworker

A landmark Agreement has been reached between the Textile Clothing and Footwear Union of Australia (TCFUA) and your employer that is designed to eliminate the exploitation of homeworkers in the fashion industry.

This Agreement was achieved through your employer working cooperatively with the union to develop a framework that will ensure you receive your appropriate award entitlements and enjoy the legislative protection of workers compensation coverage and superannuation contributions.

Your employer considers that the Agreement is an important initiative and welcomes the Union's positive approach in working towards a lasting solution to end exploitation.

The Textile Clothing and Footwear Union of Australia (TCFUA) is the union which represents homeworkers in this industry.

Should you wish to join the TCFUA, an application form for membership is attached for your convenience.

As your employer, I support the TCFUA and you joining that union and you will not be discriminated against if you do so.

The Agreement is presently being implemented. You will soon receive information on how its operation will benefit you.

Yours sincerely



Homeworkers Code of Practice

Part 2 (Retailers)

AGREEMENT between

The Textile Clothing and Footwear Union of Australia (TCFUA), and

The Australian Chamber of Manufacturers Industry Group (AiGroup), and

The New South Wales Business Chamber, and

The Australian Retailers Association (ARA)

PARTIES

The TCFUA

The AiGroup

The NSW Business Chamber

The ARA

Individual companies who are signatories to this Agreement

HOMEWORKERS CODE OF PRACTICE

PART 2 – RETAILERS

AGREEMENT

Between **TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA**
 ("the TCFUA")

and **THE AUSTRALIAN RETAILERS ASSOCIATION**
 ("the ARA")

RETAILER SIGNEE

RECITALS

- A. For the benefit of its members and other workers in the textile, clothing & footwear industry, the TCFUA wishes to ensure that employees and contractors to Suppliers are engaged upon terms and conditions no less favourable than those contained in either the Federal Award or the relevant State Award.
- B. The ARA endorses the objective of the TCFUA set out in Recital A and has agreed to assist the TCFUA to achieve this objective by undertaking the obligations contained in this Agreement.
- C. The TCFUA has agreed to assist the ARA by providing it regularly with information and advice relating to the Federal Award and the relevant State Award and their operation.
- D. The TCFUA has agreed to publicly acknowledge that while the ARA observes the conditions of this Agreement it will be acknowledged by the TCFUA as an Outwork Best Practice Organisation.

AGREEMENT

CLAUSE 1 – DEFINITIONS

In this Agreement including the Recitals:

"Contract" means a contract between the Retailer and a Supplier for the supply or manufacture of Goods for resale by the Retailer.

"Exploitation" occurs where a Supplier breaches the Federal Award or State Award or an award of an industrial tribunal or legislation in respect of the engagement of its employees and/or contractors, and such breach involves either a failure by the Supplier to comply with award obligations binding upon the Supplier to register or provide lists for notification of contracts or keep records or else (in relation to any other type of breach by the Supplier) such breach is, in all the circumstances, detrimental to those employees and contractors.

"Federal Award" means the Textile, Clothing, Footwear and Associated Industries Award 2010 as amended from time to time, or any award replacing that Award.

"Goods" means the whole, or part of:
any garment; or
any article of wearing apparel; or
any article of footwear; or
any textile product

"Records" means the documents referred to in clause 3.1.

"Retailer" means any retailer business which is a member of the ARA.

"State Award" means the relevant state industrial instrument eg. Clothing Trades (State) Consolidated Award (New South Wales) or equivalent in a state jurisdiction.

"Supplier" means a person, company or organisation which agrees with the Retailer to supply or manufacture or arrange the manufacture within Australia of Goods or part of Goods for resale by the Retailer under a Contract.

CLAUSE 2 – TERM

This agreement shall operate from the date of the Agreement and continue until terminated under clause 9.

CLAUSE 3 – RECORDS

- 3.1
- a) Each Retailer must retain for not less than 12 months full details of all Contracts entered into with Suppliers.
 - b) Each Retailer must make available to the TCFUA for up to six years after they were created, those records which the Retailer is required to keep pursuant to legislation such as taxation law and corporations law and which pertain to the manufacture or supply of Goods to the Retailer by a Supplier.
 - c) In order to ensure that employees and contractors involved in the supply or manufacture of Goods are engaged upon terms and conditions no less favourable than those contained in either the Federal Award or the relevant State Award:
 - i) the TCFUA may reasonably request each Retailer to obtain any of the records or other information held by each Supplier of that Retailer in accordance with subclauses 4.3(c) or 4.3(d) of this Agreement, and
 - ii) within five (5) days of such request, the Retailer will require the Supplier to make available to the Retailer such records and other information which have been requested by the TCFUA, and
 - iii) the Retailer will make available to the TCFUA any such records and other information as soon as they have been provided by the supplier to the Retailer.
- 3.2 The Records required to be kept under Clause 3.1(a) must contain the following:
- a) the name of the Supplier
 - b) the address of the Supplier
 - c) the date of the Contract
 - d) the date for the delivery of the goods to be made under the Contract
 - e) the number of Goods to be made
 - f) the relevant standard product specification for that garment contained in sub-clauses (f) (i), (ii) and (iii) of this clause:

- (i) the wholesale price or cost paid by the Retailer for each item of Goods to be made, and
- (ii) the total wholesale price or cost paid by the Retailer for the Goods under the Contract, and
- (iii) a description, including size, style, image or sketch drawing and any other relevant information in order to identify the Goods to be made.

3.3 Each Retailer must:

- a) make the Records immediately available to a person properly authorised in writing by the TCFUA, after that person has given reasonable notice to the Retailer of a request for access to the Records, and
- b) allow the TCFUA to make appropriate copies of the Records as reasonably required by the TCFUA.

CLAUSE 4 – OBLIGATIONS OF EACH RETAILER

4.1 Each Retailer must send to Ethical Clothing Australia and a copy to the TCFUA (National Office) the name and address of each Supplier contained in the Records as follows –

- (a) a full list of the Retailer's current Suppliers within 14 days of the signing of this Agreement, and
- (b) a full list of the Retailer's Suppliers over the preceding six months within 14 days of 28 February and 31 August in each year.

4.2 Each Retailer agrees to inform all its Suppliers of the existence of this Agreement by taking the following action:

- (a) The Retailer will forward a copy of this Agreement to all its existing Suppliers immediately following signing, and
- (b) The Retailer will provide a copy of this Agreement to any new Suppliers with whom it contracts following the signing of this Agreement, and
- (c) The Retailer agrees to advise all Suppliers that, as part of the implementation of this Agreement, the TCFUA will be making regular visits to those establishments operated by the Supplier.

4.3 Each Retailer agrees to use its best endeavours to amend the standard terms and conditions of trading entered into with its Suppliers so that each Contract already entered into with a Supplier prior to the signing of this Agreement contains the further following obligations on the Supplier:

- (a) the Supplier must undertake to comply with all applicable laws and regulations relating to the manufacture of the Goods, and
- (b) the Supplier must warrant that it is registered pursuant to the Federal Award and the State Award for the purposes of sub-contracting out any work associated with the manufacture of the Goods, and
- (c) the Supplier undertakes to keep appropriate records of where and with whom the Supplier has further contracted the work to be performed under the Contract between the Retailer and the Supplier, and

- (d) the Supplier must retain for at least 12 months after the Contract is entered into the Supplier's product specification for each garment supplied or manufactured by the Supplier for the Retailer pursuant to that Contract, and
 - (e) the Supplier must make available to the Retailer those records and product specifications referred to in subclauses (c) and (d) above, within five days of such a request being made by the Retailer, and
 - (f) the Supplier must acknowledge the existence of this Agreement and further acknowledge that the Retailer has entered into this Agreement which provides that the Retailer may either terminate a Contract with that Supplier (where legally possible) or refuse to enter into any future Contract with that Supplier in the event that an incident of Exploitation has been proved to exist during the course of the supply or manufacture of the Goods by that Supplier.
- 4.4 Each Retailer agrees to amend the standard terms and conditions of trading entered into with its Suppliers so that each future contract entered into with a Supplier on or after the date of the signing of this Agreement contains each of the obligations listed above in Clause 4.3(a) to (f) inclusive of this Agreement.
- 4.5 Each Retailer agrees to appoint a liaison officer for the purpose of handling all enquiries or allegations validly raised by the TCFUA for the purposes of this Agreement.
- 4.6 The name of the liaison officer (or officers if more than one) appointed by each Retailer must be provided by the Retailer to the TCFUA on the signing of this Agreement. Any changes to the liaison officer must be advised to the TCFUA by the Retailer.
- 4.7 If any Retailer becomes aware that a Supplier has been or may be, or is using the services of sub-suppliers or contractors or sub-contractors who have been or may be engaging in Exploitation, then the Retailer agrees to immediately inform the TCFUA of this fact.
- 4.8 Each Retailer will enter into a separate Deed of Agreement with the TCFUA whereby the provisions of that separate Deed of Agreement will mirror the obligations upon each Retailer contained in Clause 1 to Clause 10.2 of this agreement.

CLAUSE 5 – OBLIGATIONS OF THE TCFUA

The TCFUA must:

- a) provide reasonable assistance to each Retailer in interpreting the provisions of the Federal Award or the relevant State Award, and
- b) promptly inform each Retailer in writing of any Exploitation or suspected Exploitation of which the TCFUA becomes aware and provide the Retailer with any material it has which supports the allegation, and
- c) upon request promptly meet with the Retailer concerned to consider any matter arising out of this Agreement, and
- d) keep confidential the copy Records made available to it by any Retailer and not disclose their contents to any other person, company or organisation except to the Supplier specified in the Records or as required by law or in enforcement proceedings in a court or in industrial dispute resolution proceedings in an industrial tribunal without the written consent of the Retailer.

CLAUSE 6 – CONDUCT IN THE EVENT OF ALLEGED EXPLOITATION

- 6.1 If the TCFUA has notified any Retailer that it believes a Supplier to that Retailer is engaging in Exploitation then the Retailer agrees to immediately investigate the claims made by the TCFUA and further agrees that it will within 14 days (or such other period of time as is mutually agreed) of receipt of the notice either advise the TCFUA as follows:
- (a) that the Retailer believes that Exploitation has occurred, or
 - (b) that the Retailer believes that Exploitation has not occurred, or
 - (c) that the Retailer has not been provided with sufficient information to formulate a belief as to whether or not either Exploitation has occurred, and in such event, the Retailer must request such further evidence as is reasonable from the TCFUA to enable a belief to be formulated.
- 6.2 If any Retailer believes that Exploitation has occurred, the Retailer agrees that it will take all action reasonably required by the TCFUA to remedy the Exploitation or achieve such other outcome acceptable to both parties ("Agreed Outcome") within not more than 14 days (or such other period of time as is mutually agreed) of that requirement by the TCFUA.
- 6.3 If a Supplier fails to comply with a requirement of any Retailer to remedy the Exploitation or submit to an Agreed Outcome, the Retailer must:
- (a) in relation to any Contract already entered into before the signing of this Agreement, if legally possible and without the Retailer incurring any legal liability, terminate the relevant Contract consistent with its terms and conditions, and
 - (b) in relation to any future Contract entered into on or after the date of the signing of this Agreement, terminate the relevant Contract consistent with its terms and conditions (if reasonably required by the TCFUA), and
 - (c) not enter into any further Contract with that Supplier until the Retailer and the TCFUA agree that the Exploitation has been remedied.
- 6.4 If any Retailer advises the TCFUA that it does not believe that Exploitation by a Supplier has occurred and the TCFUA continues to assert that Exploitation has in fact occurred, then this issue must be mediated pursuant to clause 7 of this Agreement.

CLAUSE 7 – DISPUTE RESOLUTION

- 7.1. It is the intention of the parties that they should co-operate with the other in good faith to resolve any differences arising under this Agreement. In order to achieve this objective the dispute settlement procedure under this clause 7 is agreed to.
- 7.2 The parties must meet to consider any issue if:
- (i) either party considers the obligations of the other party under this Agreement are not being performed, and the other party disagrees,
 - (ii) the TCFUA considers that Exploitation is occurring and any Retailer disagrees, or
 - (iii) the TCFUA believes that any Retailer has not acted reasonably in continuing to contract with the Supplier pursuant to Clause 6.3(b) of this Agreement.

- 7.3 (a) If agreement on any issue referred to in clause 7.2 cannot be reached or a party (or any Retailer) refuses to observe its obligations under this Agreement, the parties must enter into mediation to be conducted by an independent mediator as agreed by both parties.
- (b) the parties must each pay half the costs of the mediation, and
- (c) the mediation must be held and completed promptly.

CLAUSE 8 – ACCREDITATION MARKS

The ARA acknowledges that the Homeworker Code Committee Inc. registers and maintains trade marks, logos and other labels, including the Ethical Clothing Australia label, (jointly called the “Identification Marks”) to promote compliance. Where any Goods have been provided to any Retailer pursuant to a Contract between the Retailer and a Supplier, the Retailer will not discourage that Supplier from attaching a label or a swing ticket to those Goods which incorporates any of the Identification Marks.

CLAUSE 9 – TERMINATION

Either party may terminate this Agreement:

- (a) upon no less than 3 months written notice to the other,
- (b) forthwith if the other party refuses to mediate in good faith as detailed in clause 7, or
- (c) upon the giving of 7 days notice where the other party has committed a breach of this Agreement and that breach has not been rectified within the 7 day notice period.

CLAUSE 10 – ENTIRE AGREEMENT / FUTURE VARIATION

- 10.1 This represents the entire agreement between the parties on the matters referred to in the Recitals.
- 10.2 The parties agree that should this Agreement prove incapable of achieving its objective, then the parties will negotiate in good faith to effect an appropriate variation to its terms.
- 10.3 Within twelve (12) months of the signing of this Agreement, the parties will review the operation of this Agreement.

Signed for and on behalf of the)
Textile Clothing and Footwear)
Union of Australia)
By an authorised officer in the)
Presence of)

.....
Signature of authorised officer

.....
Signature of witness

.....
Name of authorised officer

.....
Name of witness (print)

.....
Office held

Signed for and on behalf of the)
Australian Retailers Association)
By an authorised officer in the)
Presence of)

.....
Signature of authorised officer

.....
Signature of witness

.....
Name of authorised officer

.....
Name of witness (print)

.....
Office held

Signed for and on behalf of)
The Retailer)
By an authorised officer in the)
Presence of)

.....
Signature of authorised officer

.....
Signature of witness

.....
Name of authorised officer

.....
Name of witness (print)

.....
Office held

LIST OF SUPPLIERS TO BE COMPLETED BY RETAIL SIGNATORIES TO THE NATIONAL RETAILERS ETHICAL CLOTHING CODE OF PRACTICE

Name of Retail Signatory Date

Name of person who completed this form Position/title within company

Address

Phone Email

Name of Supplier	Address	Contact person/s	Phone and email address	State	Does supplier give any work to sub-contractors? (Y/N)	If company does give work out, please provide its BOR Number ¹

A full list of the Retailer's Suppliers over the preceding six months is due within 14 days of 28 February and 31 August in each year.

Send the completed suppliers list to: info@ethicalclothingaustralia.org.au or fax (03) 8415 0818

And CC: TCFUA National Secretary, nationaloffice@tcfvic.org.au or fax (03) 9639 2944

¹ Registration with Fair Work Australia's Board of Reference (BOR) is a mandatory legal requirement for any textile, clothing or footwear business that is outsourcing manufacturing or production away from their own premises. Registered businesses are issued a BOR number and must provide lists of their suppliers to the Board on a quarterly basis.