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Dr Richard Chadwick
General Manager
Australian Competition and Consumer Commission (ACCC)
Adjudication Branch
Australian Competition and Consumer Commission
Level 35 | 360 Elizabeth Street
Melbourne, Victoria 3000

7 March 2013

Dear Richard,

Please find attached a submission to vary our application on behalf of the Homeworkers Code of Practice Committee Inc (The Committee) for revocation and substitution of the existing authorisation (ref A91252-A91255).

With respect to the variation we are submitting a revised Code of Practice as approved by the Committee, and requesting authorisation for a 5 year period.

The attached submission considers the arrangements for which 're-authorisation' is sought are unlikely to have any adverse effect on competition in any market in the future and public benefits have significantly outweighed any adverse effect on competition (if any) that might arise from the arrangements, and will continue to do so.

We also note that the Council of Textile and Fashion Industries Ltd (TFIA) has been removed as a party to the Code of Practice.

The Committee would be happy to provide any further submission on these matters should the Commission require further information.

Yours sincerely

Simon McRae
National Manager
Ethical Clothing Australia



**Australian
Competition &
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Commission**

Our Ref: NA
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19 February 2013

Simon McRae
National Manager
Ethical Clothing Australia

By email: simon@ethicalclothingaustralia.org.au

Dear Mr McRae

Fee waiver request

I refer to your letter of 18 February 2013 to the Australian Competition and Consumer Commission (ACCC) in respect of the Homeworker Code Committee's (HWCC) proposed application for revocation of its existing authorisations A91252-A91255 and substitution of new authorisations. In your letter you have requested that the ACCC grant a fee waiver in respect of this proposed application.

In particular, you have requested that the fee to be paid in relation to an application for revocation and substitution to be lodged by the HWCC be waived in whole.

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

- HWCC (trading as Ethical Clothing Australia) is a not-for-profit organisation.
- HWCC relies on government funding from the Department of Education, Enterprise and Work Relations (DEEWR) to enable it to administer, implement and promote the Homeworker Code of Practice (HWCP).
- HWCC's revenue from fees charged to textile, clothing and footwear businesses in relation to accreditation of these businesses' compliance with the HWCP is very low and the cost of accreditation is largely subsidised by government funding.
- HWCC's current funding has been reduced significantly in real terms.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that the application fee to be paid by the HWCC has been waived in whole. No application fee will apply with respect to the application for revocation and substitution to be lodged by the HWCC.

This decision will remain in force for a period of three months. The three month period will expire on 18 May 2013.

A copy of this letter should accompany the application for revocation and substitution to be lodged by HWCC. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

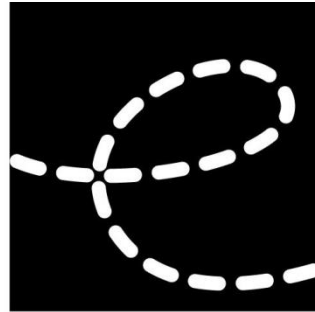
If the application for revocation and substitution is lodged by HWCC after 18 May 2013, a full application fee of \$2500 will apply, unless a subsequent request for a fee waiver is made and ultimately approved by the ACCC.

Should you have any queries in relation to this matter, please do not hesitate to contact Tanya Hobbs on 02 6243 1029.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch



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Variation on 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*
(Ref A91252-A91255)

7 March 2013

Prepared by Simon McRae, National Manager

e: simon@ethicalclothingaustralia.org.au p: 03 9419 0222

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Variation on 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*

1. Introduction

1.1 Current authorisations

The current authorisations were granted on 17 February 2011 in respect of the following four applications:

- A91252 – Exclusionary Provisions (Primary Boycott)
- A91253 – Secondary Boycott
- A91254 – Boycott Agreements
- A91255 – Agreements Affecting Competition

The authorisations were granted for a period of two years and are due to expire on 11 March 2013.

The Homeworker Code Committee Incorporated (**the Code Committee**) seeks to have the above named authorisations revoked and substituted with the authorisations sought in the application specified in Form FC in respect of the Homeworkers Code of Practice parts 1 and 2 (**the Code of Practice**).

Authorisations are sought for:

- *Exclusionary provisions (primary boycott)*
Giving effect to a contract, arrangement or understanding that may contain an exclusionary provision within the meaning of section 45 of the *Competition and Consumer Act 2010 (CCA)*
- *Secondary Boycotts*
Engaging in conduct that may hinder or prevent the supply or acquisition of goods or services by a third person within the meaning of sections 45D, 45DA or 45DB of the CCA.
- *Boycott Agreements*
Giving effect to a contract, arrangement or understanding with an organisation of employees that contains a provision that may have the purpose of preventing or hindering the first person supplying goods or services to, or acquiring goods or services from, another person within the meaning of sections 45E or 45EA of the CCA.
- *Agreements Affecting Competition*
Giving effect to a contract, arrangement or understanding that may substantially lessen competition within the meaning of section 45 of the CCA.

The agreements that comprise the Code of Practice are:

- Part 1 – Manufacturers Agreement
- Part 2 – Retailers Agreement

Authorisations are sought in relation to both of these agreements.

1.2 Anti-competitive Effect

The Code Committee is of the view that although the arrangements which constitute the Code of Practice have the potential to constrain suppliers, they do not substantially affect participating parties' ability to compete in the market place. In fact, through the accreditation system, businesses are able to utilise their ethical credentials as a point of distinction amongst consumers. Arguably, the Code of Practice and its accreditation system can be seen to in fact enhance competition beyond pure price considerations. Crucially, the arrangements which underpin the Code of Practice serve to prevent businesses from gaining an unfair competitive advantage through not according workers in their supply chains with their minimum legal entitlements.

There is no evidence that the arrangements have had any adverse effect on competition in any market over the past 2 years.

The Code Committee is of the view that the arrangements are unlikely to have any adverse effect on competition in any market in the future.

1.3 Public Benefits

The arrangements have provided and continue to provide public benefits including:

- Lessening the exploitation of Textile Clothing and Footwear (TCF) workers, in particular home based workers (**homeworkers**¹);
- Providing information and advice to TCF workers, in particular homeworkers about their entitlements and helping them access them;
- Facilitating and improving business compliance with statutory requirements through the provision of information, training and support to TCF businesses regarding compliance with the Textile, Clothing, Footwear & Associated Industries Award² (the **TCF Award**), relevant legislation and the Code of Practice;
- Helping to ensure the provision of Award pay and conditions for workers who work in the TCF industry, both in the formal sector (factory based) and informal sector (homeworkers/outworkers);
- Achieving improved compliance with occupational health and safety laws, through addressing TCF industry working conditions, such as excessive hours and unsafe working environments;

¹ Home based workers are generally referred to as homeworkers throughout this submission, however are also referred to as outworkers in Awards and legislation.

² *Textile, Clothing, Footwear & Associated Industries Award 2010*

- Improving the social environment for children of homeworkers by providing more standardised working conditions for parents;
- Enabling consumers to readily identify and purchase ethically produced Australian made TCF products and support the local industry;
- Providing a platform for businesses to promote their ethical credentials to the growing consumer base interested in purchasing goods that are made in Australia under fair working conditions; and
- Educating consumers about working conditions in the industry so they can make informed ethical choices when purchasing Australian TCF products.

It is the Applicant's submission that these public benefits have, over the past 2 years, significantly outweighed any adverse effect on competition (if any) that might arise from the arrangements, and will continue to do so.

2. Overview

This submission is made in support of the four applications for authorisation sought regarding arrangements in the TCF industry to protect and improve conditions for workers, particularly homeworkers.

The Code of Practice (parts 1 and 2) is included at **Appendix A** of this submission.

The Code of Practice was established as a voluntary tool for TCF businesses that manufactured in Australia and retailers that stocked Australian made goods, to ensure they were complying with TCF Award and legislative requirements in relation to homeworkers.

The Code of Practice was originally established to reflect and supplement the outworker and contracting out provisions of the *Clothing Trades Award 1999*³, which was replaced by the modern TCF Award in 2010. Since the establishment of the Code of Practice, there has been a strengthening of protections under the Award and legislative regime for TCF workers. Rather than creating new substantive obligations, the Code of Practice provides businesses with a voluntary framework for achieving compliance across their supply chains.

Since the previous authorisation, the Code Committee has conducted a review of the Code of Practice which culminated in a number of amendments to the Code of Practice. Although these amendments deliver some important changes and efficiencies to the accreditation process, they do not materially alter the objectives or conduct which has previously been authorised.

The key changes to the Code of Practice include

- simplification in terms of layout and language
- adoption of a privacy policy;
- expanded objectives to include outcomes for businesses;

³ *Clothing Trades Award 1999*, available online at http://www.fwc.gov.au/consolidated_awards/ap/ap772144/asframe.html

- expanded and simplified definitions to ensure they comply with the TCF Award (this includes explicit acknowledgment that the Code covers workers as well as homeworkers)
- inclusion of textile manufacture (note: footwear manufacture was adopted by the Code Committee in 2010 as its already included in the Code of Practice as ‘wearable apparel’);
- clarification of the respective roles of the Code Committee, TCFUA and ECA;
- acknowledgement of the role of ECA in administering and promoting the Code of Practice;
- addition of a general obligation for applicant (and existing accredited businesses) to co-operate with the accreditation process;
- simplification of the schedules to make them easier to understand; and
- reduction in the number of statutory declarations from 6 to 4

The Code of Practice aims to ensure that TCF workers, particularly homeworkers, receive the benefit of the Award and other legislative entitlements. The TCF Award differs from other industry Awards in that it provides for the terms and conditions of employment of persons who perform work outside of the employer’s premises. The Award also requires that businesses ensure that everyone in the supply chain is covered by an Award compliant work arrangement. Businesses retain responsibility for any arrangements that occur after they pass on work to other businesses or individuals.

It is the Applicant’s submission that, considering the nature of the TCF industry and the continued prevalence of non-compliance with legal minimum standards, an important and discernible public benefit is apparent through the operation of the Code of Practice, which outweighs any potential detriment of the kind envisaged by the CCA. In effect, the Code of Practice prevents businesses in the TCF industry gaining an unfair competitive advantage from exploiting workers through not providing at a minimum, Award rates of pay and statutory entitlements.

3. On whose behalf is substitute authorisation being sought?

The operation of the Code of Practice is governed by the Code Committee, which is made up of an equal number of representatives from:

- The Textile Clothing and Footwear Union of Australia (**TCFUA**); and
- Employers and Employer bodies including:
 - The New South Wales Business Chamber (**NSW Business Chamber**)
 - The Australian Industry Group (**AIG**)
 - Jets Swimwear
 - Pacific Brands Limited
 - Cue Clothing Company

The following industry bodies are signatories to the Code of Practice:

- TCFUA
- NSW Business Chamber
- AIG
- The Australian Retailers Association (**ARA**)

Individual companies and businesses (including Retailers, Fashion Houses, Wholesalers and Manufacturers) can become signatories. A full listing of business currently accredited or signatories to the Code of Practice is provided at **Appendix B**.

The Code Committee's role is to oversee the operation of the Code of Practice, and to take steps to ensure that participating businesses are complying with the Code, within the framework of the regulatory regime. The Code Committee provides strategic direction and oversight for the operations of Ethical Clothing Australia, which is the body that carries out the day-to-day running of the Code of Practice and its accreditation system.

The Code Committee's principal functions are to:

- Accredite businesses and oversee the accreditation process;
- Re-accredit and de-accredit businesses
- Register and maintain the Certification Trademark Series (Ethical Clothing Australia Mark, Ethical Textiles Australia Mark, Ethical Footwear Australia Mark – together referred to as '**the Certification Trademark Series**')⁴, and other logos and identification items;
- Administer education, publicity and compliance funds;
- Establish grievance procedures and settles disputes arising from the operation of the Code of Practice and use of the Ethical Trademark Series; and
- Develop and maintain accreditation tools including an industry supply chain database, the Guide to the TCF Award (**Award Guide**), and garment timing resources.
- Provide training and education to industry
- Promote the Code of Practice and accredited businesses

The Code of Practice provides a compliance system which aims to monitor the TCF production chain from the retailer through to the homemaker, to ensure transparency at each level of the supply chain.

The Code of Practice is composed of both overarching agreements between the signatories to the Code as well as individual agreements between the TCFUA and individual retailers or businesses.

3.1. Amendments to the Code of Practice

The terms of the Code of Practice were originally negotiated in 1996 between the TCFUA, the AIG, the NSW Business Chamber, the TFIA⁵ and the ARA.

The Code Committee conducted a consultation and review process regarding the Code of Practice during 2010-2013, which resulted in amendments to Part 2 of the Code of Practice. Amendments were adopted by the Code Committee in February 28 2013. These changes are principally revisions to the operational procedures for accreditation which underpin the

⁴ Note that the Code Committee retains ownership of the 'No Sweatshop' Label trademark.

⁵ Note that as at 28 February 2013, the TFIA are no longer a party to the Code of Practice

Code of Practice and do not materially alter the obligations and conduct created by the original Code of Practice.

As a matter of practice, throughout the accreditation compliance process, businesses have been required to ensure all workers, whether within a factory environment or a home environment, are receiving minimum pay and conditions. The amendments to the Code of Practice make express provision for these arrangements to remove any ambiguity that all workers are afforded coverage of the accreditation system.

In addition, the changes strengthen the re-accreditation process for accredited businesses, to ensure that businesses are maintaining appropriate records and capturing changes to the supply chain as required.

The changes endeavour to improve the accreditation process and clarify the obligations of parties and principles which underpin the Code of Practice, making the accreditation process easier to navigate for business.

The Retailers Agreement, which now forms Part 2 of the Code of Practice, was not amended through the review process.

4. What is the Conduct for which authorisation is sought?

4.1 Overview

Substitution of a new authorisation is sought for the arrangements that comprise the Code of Practice being:

- Part 1 – Manufacturers Agreement
- Part 2 – Retailers Agreement⁶

4.2 Part 1 – Manufacturers Agreement

The Manufacturers Agreement exists between the TCFUA, the AIG and the NSW Business Chamber at the first level. At the second level, the agreement operates between the TCFUA and individual TCF businesses, namely the manufacturer. Although both parts of the Code of Practice share the same broad objectives, the Part 1 Agreement establishes at the first level an accreditation system which businesses are able to participate in, once they have satisfied the criteria for accreditation.

Part 2 establishes the Code Committee, which is comprised of equal representatives from trade unions (TCFUA); employer bodies (AIG, NSW Business Chamber); and individual businesses (Jets Swimwear, Pacific Brands Workwear and Cue Clothing Co). Members of the Code Committee are responsible for accrediting manufacturers in accordance with the criteria prescribed in the Agreement and assessing the development and implementation of the Code.

⁶ Note that Part 1 of the Code of Practice is now the Manufacturers Agreement, whilst Part 2 is the Retailers Agreement

In order to become accredited, businesses must commit to ensuring that workers in their supply chain, especially homeworkers, receive their Award and legislative entitlements. Once accredited, a business becomes licensed to display the Code Committee's certification trademark series⁷. Displaying the certification trademark on products, swing tags, packaging, promotional materials, website and signage is a means by which accredited businesses can promote their accreditation to consumers and buyers. Use of the certificate trademark is optional for businesses.

Accredited businesses are given the opportunity to be promoted through the Ethical Clothing Australia website⁸, and through other activities including media coverage, industry events, trade shows and promotional campaigns. Businesses pay an annual accreditation application fee which contributes to costs associated with processing applications, auditing supply chains for compliance, licensing of the certification trademark and ongoing promotional activities.

Under the Agreement, the TCFUA are responsible for verifying and monitoring compliance with the Award, relevant legislation and the Code of Practice among participating businesses. This includes identifying compliance breaches and making them known to the fashion house, manufacturer or retailer. Compliance Officers and businesses work collaboratively to achieve compliance across the supply chain. Applicant businesses are obliged to engage with the accreditation and compliance process in a committed and timely manner. Where a problem in a supply chain is not resolved in accordance with the time frame, the applicant business must consider whether they will continue contracting a particular supplier. In the event that an applicant or accredited business elects not to cease contracting a supplier that is in breach, the Code Committee can determine to revoke a businesses' accreditation or deny an applicant's accreditation. Through the Ethical Clothing Australia outworker outreach program, homeworkers also play an important role in monitoring and reporting on conditions to ensure compliance by accredited businesses.

4.3 Part 2 – Retailers Agreement

As with Part 1 of the Code of Practice, the Part 2 Agreement exists at two levels, both as an agreement between the TCFUA and the ARA, and between the TCFUA and individual retailers.

The Part 2 Agreement is an agreement between the TCFUA and the ARA and involves a commitment to ensuring that homeworkers in the TCF industry receive the legal (Award) wages and conditions that they are entitled to receive from their employer (**Recital A**).

The ARA endorses this objective by agreeing to undertake the obligations contained in the Agreement (**Recital B**).

⁷ The Committee maintains ownership over the *Ethical Clothing Australia*, *Ethical Textiles Australia* and *Ethical Footwear Australia* trademark series, in addition to its original *No Sweatshop* trademark.

⁸ www.ethicalclothingaustralia.org.au

The TCFUA agrees to assist the ARA by providing it with regular information and advice regarding the Federal Award and any relevant State Awards⁹ and their operation (**Recital C**).

The TCFUA also agrees to publicly acknowledge that while the ARA observes the conditions of the Agreement it will be acknowledged by the TCFUA as an Outwork best practice organisation (**Recital D**).

The agreement commits the parties to the principle that all employers of TCF workers (including homeworkers) should pay to their employees no less than the appropriate Award skill level rate or product rate calculated on the loaded Award skill level in the TCF Award, (including any increased in Award minimum rates of pay).

The industry groups, by virtue of being signatories to the Retailers Agreement, do not purport to bind their members to its terms; however at the second level, retailer members bind themselves to the Agreement by becoming signatories to the Agreement alongside the TCFUA and the ARA.

By becoming a signatory to the Agreement, retailers agree that they will act in accordance with its commitment not to sell products which have been produced by exploited labour. This would include cancelling the affected purchase and/or terminating the relationship with the supplier.

5. Developments since 2010

5.1 The Code Committee

Since the Code of Practice was last authorised in February 17 2011, the Code Committee has undertaken some of the following activities:

- Obtained a second round of program funding through the Department of Education, Employment and Workplace Relations (**DEEWR**) for a four year period (2011-2015);
- Maintained a program staff team of a national manager, two accreditation advisors (in NSW & Victoria), an administrative officer, a finance officer and a media and communications coordinator;
- Maintained program delivery of compliance services & outworker outreach programs and the provision of industry education & training through Service Level Agreements with the TCFUA and the TFIA respectively;
- Successfully achieved trademark registration over the Certification Trademark Series;
- Launched a consumer campaign 'Meet Your Maker', to publicise the Ethical Clothing Australia accreditation system;
- Currently has 141 retailer signatories to Part 1 of the Code of Practice (see **Appendix B**);

⁹ As noted in the 2010 submission, State Awards have limited operations as a result of the move to a fully national industrial relations system. However, Western Australia has not referred its powers in relation to non-constitutional corporations). As at 1 January 2010, non-constitutional employers and their employees who were formerly covered by State Awards will be transitioned (subject to the transitional arrangements include in the TCF Award).

- Currently has 80 businesses accredited to Part 2 of the Code of Practice (see **Appendix B**). Total number of businesses accredited is 123.
- Currently have 21 pending applications for accreditation to Part 2 of the Code of Practice;
- Have approximately 497 participants in accredited supply chains, including businesses, contractors and individual homeworkers;
- Expanded the reach of the accreditation system across Australia, including 14 new accreditations in Queensland, Western Australia, Tasmania, South Australia and the Australian Capital Territory;
- Provided ongoing and regular advice, education and information to businesses interested in accreditation to Part 1 of the Code of Practice. Particular emphasis is given to assisting small and emerging businesses on how to meet their legal obligations;
- Conducted presentations to tertiary level fashion, design and marketing students to inform them about labour rights issues, the regulatory framework and the advantages of accreditation; (see **Appendix E**)
- Participated in major fashion events such as L’Oreal Melbourne Fashion Festival, Rosemount Australian Fashion Week, Perth Fashion Week, Fashion Exposed; Mercedes Brisbane Fashion Week, Perth Fashion Spring Festival, Design Made Trade and the Clothing Exchange National Clothing Swap; (see **Appendix E**)
- Educated the community about issues surrounding homeworkers and promotes the Ethical Clothing Australia trademark at community events such as the Sustainable Living Festival, Fairtrade Fortnight, and Fair@Square Ethical Festival;
- Conducted training programs and public presentations for industry and at educational institutions; (see **Appendix E**)
- Developed and launched a comprehensive guide to the TCF Award for businesses to assist them in understanding and navigating their legal obligations, including pro form tools for record keeping and other compliance requirements; (**Appendix F**)
- Updated industry training presentation slides to incorporate the development of the Award Guide and associated tools
- Developed and launched an industry supply chain database and supply chain mapping tool;
- Undertook a review and completed an update of the Code of Practice and its practices and procedures to improve the accreditation and compliance process;
- Maintained outworker education programs in NSW and Victoria and produced education materials and resources which assist homeworkers to understand their Award and other legal entitlements (see **Appendix D**);
- Developed a secure website on Government procurement to assist Commonwealth Government departments and agencies (e.g. Defence Material Organisation) to process tenders for clothing and footwear contracts;
- Developed a compliance checklist for use by officers and businesses through the accreditation process; and
- Updated the Guidelines for Accreditation

5.2 Legislative developments

The regulatory regime for TCF Employers and Principals (those who engage outworkers) is underpinned by the National Employment Standards (**NES**), the *Fair Work Act*¹⁰, and the terms and conditions contained in the TCF Award.

Owing to the prevalence of sham contracting arrangements in the TCF industry, wherein outworkers are commonly told that they are not employees of those that engage them meaning they are not entitled to protections under the regulatory regime, the FW Act contains specific provisions relating to the establishment and operation of 'sham arrangements'.¹¹ The FW Act provisions provide a remedy where an employer misrepresents an individual's employment as an independent contracting arrangement. To further address this prevalence of these sham contracting arrangements, various state Awards and legislation deemed outworkers to be employees and therefore entitled to the same pay and entitlements as factory workers, however this deeming differed from state to state. As a result, amendments were made to the FW Act in 2012 to provide consistent national deeming provisions in relation to outworkers.

The *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*¹² came into force in April 2012. In addition to deeming all home based workers to be outworkers in certain circumstances¹³, the amendments provide for an improved process for outworkers to recover their wages and entitlements in the event the employer does not pay them¹⁴, and improves the right of entry for investigations of suspected breaches in factories or other business premises. The amendments further provide for the government to make a national Code of Practice for the TCF industry. Although many of the protections which were introduced by these amendments already existed at a state level, these changes ensure that outworkers are afforded consistent recognition and protection regardless of which state they operate in.

Since authorisation was last sought, there have not been any variations to the TCF Award which have impacted on obligations under the Code of Practice. It is noted that the Fair Work Commission is presently undertaking a review of the modern TCF Award¹⁵.

At a state level, the South Australian mandatory *Outworker (Clothing Industry) Protection Code*¹⁶ and the New South Wales *Ethical Clothing Trades Extended Responsibility Scheme*¹⁷ continued operation, which require that clothing retailers, suppliers and contractors must provide and maintain records related to the engagement of outworkers. Both mandatory

¹⁰ *Fair Work Act 2009*

¹¹ Chapter 3, Part 3-1 (General Protections); Division 6 (Sham Arrangements).

¹² *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*

¹³ Section 789BB, *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*

¹⁴ Section 789CA. 'Recovery of unpaid amounts'

¹⁵ More information available at

<http://www.fwc.gov.au/index.cfm?pagename=awardReview2012&page=underReview&awdId=MA000017>

¹⁶ ¹⁶ The South Australian *Outworker Protection Code* is made by regulation under section 99C of the *Fair Work Act 1994*.

¹⁷ The New South Wales *Ethical Clothing Trades Extended Responsibility Scheme*

http://www.industrialrelations.nsw.gov.au/oirwww/Industries_and_Awards/Clothing_industry.page

Codes provide that businesses are exempt from complying if they are accredited under the voluntary Code of Practice exempt from complying with the state-based Code. The Queensland government introduced the *Mandatory Code of Practice for Outworkers in the Clothing Industry*¹⁸ in 2010, which contained similar requirements as the SA and NSW Codes. The Queensland Code was repealed by the new Queensland government in December 2012.

The ongoing development and consolidation of regulation by state and federal governments in relation to workers in the TCF industry supports the public benefit arguments advanced for the existence of the Code of Practice and its continued authorisation.

The continuation, and in some cases, extension of specific legislative and Award protections for workers in the TCF industry demonstrate the ongoing recognition by governments at all levels and the national industrial tribunal the Fair Work Commission of the continued need for specific mechanisms to protect vulnerable workers in the TCF industry. Significant public benefit arguments for the existence of the Code of Practice can be advanced in the context of the ongoing commitment of legislators to pursue specific regulations for the TCF industry. However, it remains the Code Committee's view that despite the strong regulatory regime in place for the TCF industry, non-compliance with Award and legislative obligations in relation to TCF workers remains prevalent and regulation alone has not prevented exploitation of TCF workers.

5.3 Other developments – government support

The Commonwealth Government has continued to recognise and support the operation of the Code of Practice since 2010 through a variety of measures.

a) Program Funding

The Commonwealth Government, through the Department of Education, Employment & Workplace Relations (DEEWR) has provided a second round of financial assistance over four years (July 2011 to June 2015) to the Committee to support the promotion of Ethical Clothing Australia by increasing awareness and voluntary adoption of the accreditation program by businesses. The second grant of funding for the Program commenced on 1 July 2011.

b) The Fairwork Principles & the Australian Government Procurement Statement

In July 2009 the Commonwealth Government published the Australian Government Procurement Statement that includes the provision that;

'All government contractors in the textile, clothing and footwear industry must be accredited or seeking accreditation, with the Homeworkers Code of Practice'.

The purpose of the Procurement Statement is encouraging value for money including ensuring '*...ethical and transparent processes*' and that government agencies don't make choices that have a '*...detrimental social or environmental effect*'. The Procurement

¹⁸ *Mandatory Code of Practice for Outworkers in the Clothing Industry*

Statement acknowledges that with respect to fairness in the workplace the government recognises the need to address areas of poor work practice and inconsistent compliance with legal entitlements, hence the inclusion of provisions covering homeworkers in the TCF industry.

The adoption of the Procurement Statement and Fairwork Principles¹⁹ demonstrates recognition of the Code as an essential mechanism for promoting fairness in the workplace and furthering Award compliance amongst Australian TCF businesses. The continued operation of the Fair Work Principles also highlights the importance the Commonwealth Government places on ensuring the Australian-made products that it sources are produced in ethical conditions by accredited businesses.

c) AusIndustry TCF – Strategic Capability Program

Businesses applying for Federal Government funding through the AusIndustry's Textile, Clothing and Footwear Strategic Capability Program (TCF SCP), are required to be accredited or seeking accreditation with Ethical Clothing Australia to be eligible for this government grant.

d) TCF Ethical Quality Mark

The TCF Industry Innovation Council engaged the Code Committee in 2010 to oversee a feasibility study into a possible Ethical Quality Mark for the Australian TCF industry. A feasibility study was completed and presented at a roundtable of the Council in July 2011. The TCF Industry Innovation Council did not make formal recommendations arising from the study and the work of the Council concluded in 2012.

6. How long is the Code of Practice to operate?

The original Code of Practice came into effect in November 1996. The accreditation and signatory systems that are made up of Parts 1 and 2 of the Code commenced in 2000. The Code of Practice has had authorisation since the accreditation and signatory systems began.

The Part 1 Manufacturers Agreement grants accreditation to a business for a period of 12 months. Businesses must under-go an annual re-accreditation process. A business may cancel their accreditation at any time, or can be de-accredited by the Committee in accordance with the processes set out in the Code of Practice.

The Part 2 Retailers Agreement as it applies to individual retailers is ongoing, with a review after the initial 12 months. Parties to the agreement may withdraw from the agreement after giving three months notice to each other party.

The Committee envisages that the Code of Practice will continue to operate indefinitely. As a result, an authorisation for the maximum five years is sought.

¹⁹ Australian Government, Fairwork Principles User Guide, January 2010

7. Restrictive Provisions in the Agreements

7.1 Part 1 – Manufacturers Agreement

The Part 1 Agreement provides for the accreditation of manufacturers and for the accreditation process to be administered by the Code Committee. Once accredited, businesses are licensed to display the Ethical Clothing Australia mark on their Australian made products and promote their accreditation. The Code Committee is responsible both for the accreditation and the withdrawal of accreditation of manufacturers. The Committee also has the power to settle disputes in relation to the operation of the Agreement and the use of the CTM.

In conferring accreditation, the Committee considers broadly compliance with criteria to include²⁰:

- *Timely completion of required documentation and payment of a new accreditation fee to Ethical Clothing Australia;*
- *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;*
- *Cooperating 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 Agreement sets out general obligations for applicant and accredited businesses, including obligations to notify ECA of changes to its business, operations or supply chain, cooperating with the TCFUA compliance processes and maintaining adequate work records and documentation regarding contractors and homeworkers²¹.

Specific obligations also exist which businesses must comply with for:

- ensuring legal compliance with the TCF Award and relevant legislation (such as the NES, Workers Compensation and Occupational Health and Safety laws) for in-house workers;
- ensuring compliance with TCF Award and relevant legislation across the whole supply chain and compliance with requirements including registration with the Board of Reference; and
- ensuring compliance with TCF Award and legislative obligations to homeworkers, including the specific minimum conditions as stipulated at clause 9.4²².

It is also necessary for an accredited manufacturer to ensure that, wherever a product is manufactured by a contractor and that contractor employs homeworkers, that contractor also complies.

²⁰ Part 1, Homeworkers Code of Practice, clause 8.

²¹ Part 1, Homeworkers Code of Practice, Clause 9.1

²² Part 1, Homeworkers Code of Practice, Clause 9

The Agreement requires the manufacturer to *“cease further commercial dealings with that contractor unless and until the contractor has remedied its breach of the Agreement within fourteen days”*²³.

In addition, *“if it is shown to the reasonable satisfaction of the manufacturer that a homeworker has not been paid in accordance with this Agreement, the manufacturer must pay the homeworker the amount due and deduct that amount from the payment otherwise due to the contractor, where such payment to the contractor is still outstanding.”*²⁴ It is noted that under the FW Act amendments of 2012, provision is made for such recovery of monies.

Aside from the procedural steps required to achieve accreditation (such as payment of the application fee and furnishing of statutory declarations once legal compliance is achieved), the obligations created by these arrangements are already imposed on businesses by the TCF Award, or exist as a matter of statutory obligation.

In terms of obligations, the Code of Practice does not impose anything on businesses which goes beyond what they are already required to fulfil under the TCF Award and relevant legislation. As was noted by the ACCC in its 2011 Final Determination, *“...in the absence of authorisation, employers would continue to be required to comply with the relevant TCF Award, the Fair Work Act 2009, and other applicable legislation”*.²⁵ For businesses that were unable to fulfil these obligations, the consequence would be that they were unable to achieve accreditation under the voluntary Code of Practice.

7.2 Part 1 - Retailers Code

The Part 1 Agreement consists of four recitals and ten clauses. Whilst the TCFUA and the ARA are parties to this Agreement, it is submitted that the absence of capacity to bind signatories to meeting the principles set out limits against any anti-competitive impact potentially caused by the Code. Regardless, it is acknowledged that agreement by industry bodies to adopt this Agreement is intended to encourage eligible retailers to individually agree to be bound by this agreement.

The following restrictions are found in the Agreement:

1. *“For the benefit of its members and other workers in the clothing 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 relevant State Award”*. (Recital A).
2. *Retailers will require their suppliers in their purchase contracts, to undertake to comply with all the laws and regulations, including the payment of the rate relevant to the engagement of homeworkers.* (Clause 4)

²³ Part 1, Homeworkers Code of Practice, Clause 9.5

²⁴ Part 1, Homeworkers Code of Practice, Clause 9.4(d) and 9.5

²⁵ Final Determination, *Australian Competition & Consumer Commission*, February 2011

3. *The Union shall have the responsibility of enforcing compliance with this Agreement. Where the Union has cause to believe that there is a case of exploited homeworkers, they will inform the manufacturer and the relevant retailer. (Clause 5)*
4. *The retailer will investigate the case with its supplier, giving a fair opportunity for the manufacturer to demonstrate that it is complying with this Agreement. If it is proven that the supplier has not complied, the retailer will act in accordance with its commitment not to sell products which have been produced by exploited labour. This will include cancelling the affected purchase contract and/or terminating the relationship with the supplier (Clause 6).*

In relation to point 1, all homeworkers would be entitled to benefits no less favourable than those applicable under the TCF Award. Accordingly, adherence to this principle would simply require observance of mandatory legal obligations.

In relation to point 2, there is no compulsion upon retailers to agree to the terms of the Code of Practice. Retailers are able, at any time, to withdraw from the agreement without pressure or consequences being imposed upon them by either the TCFUA or the industry groups. Furthermore, as per point 1, fulfilling point 2 is requiring nothing further than compliance with legal requirements in relation to workers.

In relation to points 3 and 4, enforcement generally takes the form of persuasion directed towards the retailer who is in turn required to seek to persuade the supplier to remedy/address instances of non-compliance. In some cases, the TCFUA may institute Award breach proceedings against the supplier in order to recover underpayments of Award rates. The Part 1 Agreement provides for cooperation between the ARA and the TCFUA in monitoring the application of the Award.

More specifically, Clause 6.3 provides that:

“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 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”.*

Despite the strong sanctions contained in Part 2 of the Code to deal with breaches, to date there has not been instances where a breach by a retailer supplier has been resolved by the retailer having recourse to cancel a contract. Rather, the existence of obligations under Part 2 of the Code of Practice has provided significant leverage to enable Retailers to facilitate compliance with Award and legislative obligations across the whole supply chain.

8. Non-compliance with legal obligations

Through the accreditation process and routine visits to accredited businesses, compliance officers encounter daily examples of non-compliance by businesses with their Award and legislative requirements. This non-compliance extends to both factory based workplaces as well as among people working from home.

Typically the areas of non-compliance encountered by compliance officers include issues with record keeping, wages, acknowledgement of entitlements, worker compensation and occupational health and safety. The worst conditions are routinely seen among homeworkers. In many cases, compliance officers identify activities in a principal business' supply chain that they are unaware of prior to compliance audits occurring.

Examples of such conditions include:

- Businesses not registered with the Board of Reference to contract out work
- Inadequate or non-existent record keeping
- Non-payment of superannuation, to both factory based and home-based workers
- Workers not covered by Workers Compensation Insurance
- Serious breaches of occupational health & safety legislation
- Underpayment of wages in factories
- Significant underpayment of wages for home-based workers, averaging \$6-7 per hour, but sometimes as low as \$4-5 per hour

Case studies outlining some of these conditions are provided in Appendix D.

9. The Award & Legislative Environment

9.1 Fair Work Act 2009 (incorporating 2012 TCF Amendments) and the NES

The FW Act provides that employers in the national system who engage outworkers must provide them with entitlements as required by the NES. In addition, rates of pay and other minimum conditions are set out in the relevant modern Award.

For the purposes of the Fair Work Act²⁶, an outworker is:

- An employee who, for the purpose of business of his/her employer, that works at residential premises (e.g. in their own home) or at other premises that would not conventionally be regarded as being business premises; or
- An individual who works in the textile, clothing or footwear industry, at residential premises, or at other premises that would not conventionally be regarded as business premises.

As noted, under the 2012 amendments to the FW Act, all outworkers are deemed to be employees and accordingly must receive the same terms and conditions as workers that are employed in a factory.

²⁶ *Fair Work Act 2009*, section 12

9.2 Award Protections for Outworkers

The outworker (and related) provisions are maintained in the TCF Award by virtue of section 140 of the FW Act. The continuation and strengthening of these provisions in the national industrial relations legislation demonstrates the recognition by the Commonwealth Government of the entrenched nature of the problems experienced by home-based workers in the TCF industry. The issue of outworker provisions in the Award have been subject to a number of major determinations by the former Australian Industrial Relations Commission (AIRC) and more recently Fair Work Australia²⁷. The first was in 1987 when the outworker and contracting out provisions were first inserted in the then Clothing Trades Award 1982, and again in 1999 when the AIRC reviewed the provisions as part of the Award Simplification process.

The AIRC, in the latter decision, summarised the critical importance of the outworker provisions in the Award as follows:

- *Clause 26 governs the relationship between the parties in the contracting or production chain ...The clause controls each link in that chain in a manner which, firstly, ensures that outworkers' conditions retain parity with those of factory workers; secondly, in a manner which limits Award evasion; and, thirdly, in a manner which simplifies and aids Award enforcement The mechanisms used in this clause control that chain ...Firstly, there are record keeping requirements; records have got to be given to outworkers and lists kept for inspection; secondly, there is no less favourable requirement on the middle person who in turn employs the outworkers; and that of course is to prevent Award evasion by simply contracting out; and, thirdly there are the enforcement mechanisms, the presentation of the statutory declaration and the reverse onus of proof..."*
- *"Clause 27" contains all the provisions which set terms and conditions of employment for outworkers and provides various mechanisms for ensuring parity with the terms and conditions of factory workers. For example, it provides such things as provisions concerning part-time and full-time workers, guaranteed minimum levels of income, provides for hours of work, detailed provisions aimed at ensuring regularity of hours and minimum levels of income, provisions preventing unpaid weekend and overtime work. Then also in this clause there are sub-clauses relating to record keeping. There are detailed requirements in relation to records given to the outworker containing all the information necessary for determining the correct rate of pay. These details are essential because of the way the industry works: in particular, the employers generally pay at a unilaterally determined piece rate rather than an hourly rate. This has the effect of driving down the hourly rate...."*
- *"Clause 27A* is the linchpin of this protective regime. It provides the registration requirements, the means of monitoring who is employing outworkers and who the outworkers are and where they are located. Now, we acknowledge that this is a unique requirement but we say this is a unique industry. Neither the employers nor the employees are easily identifiable and this is the only mechanism available".*

²⁷ Now the Fair Work Commission

Clause 26, 27 and 27A were subsequently retained as a new Part 9: Outwork and Related Provisions (clauses 46, 47 and 48) in the simplified Clothing Trades Award 1999²⁸.

More recently, these provisions were upheld (and enhanced) by the former AIRC as part of the Part X Award Modernisation process conducted during 2008-09 under the former Workplace Relations Act²⁹. The Provisions now appear as Schedule F 'Outwork and Related Provisions', of the modern TCF Award³⁰ (**See Appendix G**).

10. The Code and Restrictive Trade Provisions in the Competition & Consumer Act (CCA)

As has been the case in prior applications for authorisation, the Code Committee does not concede that any of the arrangements which comprise the Code contravene the CCA. The applications are made as a matter of caution to remove doubts about the lawfulness of the Code of Practice and to encourage greater participation in the program.

Authorisation is sought to protect:

- The industry bodies as legal entities (that is as distinct from their members) and their members who are signatories to either part of the Code in respect of any possible breach of section 45 to the extent that the arrangements could affect competition or constitute exclusionary provisions;
- Ethical Clothing Australia, the TCFUA, the industry groups and individual signatories to the Code to the extent that the arrangements could be seen to constitute a "secondary boycott" of persons who do not accord to workers the benefits of the Award terms and conditions of employment; and
- The TCFUA and individual signatories to the Code and to the extent that entering into an arrangement between the TCFUA and an individual signatory whereby the signatory agreed not to purchase from a former supplier could breach section 45E.

Given that new participants in the Code are engaged in the accreditation process on a regular basis, it follows that at the point of making this application, all future persons and businesses who might subsequently become a party to Parts 1 or 2 of the Code are not yet known. The Committee notes that under subsection 88(14) of the CCA a process is provided for notifying the Commission of additional parties. The Committee also notes that up to date listings of participating businesses are available online at <http://ethicalclothingaustralia.org.au/consumer/accredited-brands>.

It is the Committee's intention that any authorisation granted by the ACCC would protect employees of Ethical Clothing Australia, industry bodies and the TCFUA from any prosecution in respect of conduct undertaken by those individuals in the course of their duties as members or employees of the Code Committee.

²⁸ Clothing Trades Award 1999; [AP772144CAV], (See pages 3 & 4 of the decision)

²⁹ *Workplace Relations Act 2004*

³⁰ Textile, Clothing, Footwear and Associated Industries Award 2010; [MA000017]

11. Public Benefit Arguments

11.1 Reducing Exploitation in the TCF Industry

The Committee's previous submissions in 2000, 2005 and 2010 highlight the findings of the two Senate Committee Inquiries into the experiences of outworkers in the clothing industry, as well as numerous other academic and governmental publications and reviews about conditions for outworkers³¹. As was canvassed in the 2010 submission, two recent studies, *Ethical Threads Report (2007)*³² and *Building Innovative Capability (2008)*³³ have reinforced the ongoing nature of poor working conditions for outworkers. The *Ethical Threads Report* found that working conditions for garment outworkers had worsened in the previous five years, and in comparison with conditions ten years prior, companies were increasingly demanding quicker turnaround times³⁴. The report also found that amongst Australian TCF businesses there was a general lack of awareness of Award requirements particularly amongst small to medium enterprises. *Building Innovative Capability*, the report coming out of the TCF Review conducted by the Federal Government in 2008 also acknowledged the need for better protection of outworkers through Award and legislative mechanisms³⁵.

In 2012, a Senate Committee Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill considered the need for greater legislative protection for homeworkers in the context of continued exploitation.

A submission to that Senate Inquiry by Ms Shelley Marshall documented some observations arising from her 'in-progress' research regarding the success of regulation and the Code of Practice in improving conditions for homeworkers³⁶. Marshall's early observations from her research are that conditions are consistent with previous studies into homeworkers, with the exception of those homeworkers that are working in supply chains of businesses that are accredited under the Code of Practice³⁷.

Similarly, with respect to the current Fairwork Commission review of the TCF Award, there have been numerous submissions, including from the TCFUA, Asian Women at Work and FairWear confirming the ongoing exploitation of homeworkers in the TCF industry³⁸.

The experience and ongoing work of the Code Committee and Ethical Clothing Australia in this area attests to the fact that exploitation, underpayment and widespread non-

³¹ Senate Economic Reference Committee Report 1996, Senate Economic Reference Committee Report 1998, C, Cregan, *Home Sweat Home*, 2001, Victorian Ethical Clothing Trades Council Report 2004.

³² Diviney, E, and Lilywhite, S (2007), *Ethical Threads: Corporate Social Responsibility in the Australian Garment Industry*, Brotherhood of St Laurence.

³³ *Building Innovative Capability: Review of the Australian Textile, Clothing and Footwear Industries*, 2008.

³⁴ Diviney, E, and Lilywhite, S, p. 4.

³⁵ Recommendation 15, *Building Innovative Capability*, p. 117.

³⁶ Marshall, Shelley, Submission to the Senate Standing Committee on Education, Employment and Workplace Relations, Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011, Monash University.

³⁷ *Ibid*, pp 15-17

³⁸ Fairwork Commission, Modern Awards Review 2012, March 2013

(<http://www.fwc.gov.au/index.cfm?pagename=awardReview2012&page=allAwards>)

compliance with legal minimum standards remain commonplace in the TCF sector. Accreditation advisors, compliance officers and outworker outreach workers encounter instances of non-compliance by businesses on a routine basis.

11.2 Public benefits of the Code of Practice

Through the operation of the accreditation system for 13 years, the Code of Practice has delivered numerous benefits for workers in the TCF industry, both in factories and private homes. Case studies attesting to these achievements are included at Appendix D. Since Federal government funding for the Code of Practice commenced in April 2008 more than 2500 compliance audits covering more than 500 suppliers have been completed, and more than 6000 homeworkers have been assisted to ensure they receive their legal pay and entitlements.

Crucially, the Code of Practice provides businesses with a voluntary mechanism to fulfil mandatory obligations of ensuring legal pay and conditions are being provided to all workers across the supply chain. The accreditation system emphasises educating workers in the TCF sector to ensure they understand their rights and entitlements. This is demonstrably a public benefit.

A key component of the Ethical Clothing Australia program is awareness raising, education and training. Promotional activities are designed to: Raise general awareness of the aims and methods of Ethical Clothing Australia; promote ethical clothing/businesses to consumers; promote the program directly to industry as a tool to ensure ethical production and as a way of demonstrating a business's ethical credentials; and raise industry awareness of the TCF Award and other laws designed to protect workers in the industry. This is done through training workshops, media opportunities, community and industry events, public presentations and the development of educational resources. A list of examples is provided in Appendix E. The development and launch of the Guide to the TCF Award, including tools and templates to aid businesses in achieving legal compliance is demonstrative of the significant benefit of the Code of Practice and its associated accreditation system.

Since the last authorisation for the Code of Practice was sought, there has been a considerable expansion in the number of businesses who are seeking accreditation or have been accredited. The number of accredited brands has almost doubled to 80 and some 500 suppliers have been audited through the process. As such, the coverage of the Code of Practice on the TCF industry is increasingly significant, with a diverse variety of businesses, from iconic fashion brands to uniform manufacturers and lifestyle brands achieving accreditation. As the ACCC observed in its 2011 Determination re-authorising the Code of Practice, "*the greater the coverage of the Code, the more significant the public benefits will be*"³⁹. Since 2010, the number of participants has grown from 42 to 80 accredited businesses, whilst the Retailer participation has remained steady at 141 signatories.

The increased promotion of the Ethical Clothing Australia trademark has resulted in not only a higher rate of uptake of the program, but a stronger consumer identification of ethical

³⁹ Australian Competition and Consumer Commission, Determination in respect of the Homeworkers Code of Practice, 17 Feb 2011, p. 15, 5.22

brands. This has meant more businesses are able to demonstrate through promotion and labelling their ethical Australian-made credentials in the marketplace. Not only does this provide a public benefit for business, but consumers can readily identify and support accredited brands. The Code Committee is of the view that both the public and the TCF industry at large benefit from the existence of a mechanism which can promote choice and competition when it comes to the ethical credentials of Australian TCF brands.

11.3 Potential public detriments of the Code of Practice

The Code Committee acknowledges that sections of industry have expressed a dissatisfaction and confusion regarding their obligations under the TCF Award and relevant legislation, and notes that the high Australian dollar and pressures from overseas create a difficult environment for manufacturing.

However, the Code Committee is concerned that the sections of industry are conflating the apparent detriment caused by the existence of legal obligations to comply with the TCF Award and relevant legislation with the distinct and voluntary process of seeking accreditation or becoming a signatory under the Code of Practice. Whilst the Code Committee welcomes all eligible businesses to participate in the accreditation process, it is noted that the process remains a voluntary one, and businesses may elect not to undergo the process if they believe there is no benefit.

It is noted that the ACCC took the view in its 2011 determination that the public detriments that result from the Code of Practice are likely to be minimal⁴⁰. The Code Committee is of the view that this remains the case, and that the existence of the Code of Practice has not had an adverse effect on competition in the past two years.

12. Conclusion

The public benefit derived from the Code of Practice is evident across the spectrum, for workers, businesses and consumers. In making out the public benefit submission, the Code Committee points to previous submissions, in addition to the documents noted above, as to the nature and structure of the industry and the disadvantaged position of homeworkers.

The Code Committee invites the ACCC to endorse these findings in terms of the ongoing importance of the Code of Practice in securing Award compliance and to accept that the TCF Award and the Code of Practice are important measures to bring to an end the exploitation of disadvantaged groups of workers in the TCF industry.

⁴⁰ Australian Competition and Consumer Commission, Determination in respect of the Homeworkers Code of Practice, 17 Feb 2011, para 5.43, p 19.

GLOSSARY

ACCC – Australian Competition and Consumer Commission

CCA – Competition & Consumer Act 2010

CTM – Certification Trade Mark

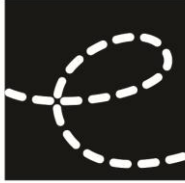
Code Committee – The Homeworkers Code of Practice Committee

Code of Practice – the Homeworkers Code of Practice Parts 1 & 2

FW Act – Fair Work Act 2009

TCF Award – Textile, Clothing, Footwear & Associated Industries Award 2010

TCF Industry - Textile, Clothing, Footwear Industry



ethical
clothing
AUSTRALIA

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Homeworkers Code of Practice

and

Application for Accreditation

Part 1 (Manufacturers)

For further information & assistance contact
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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

CLAUSE 2 - PARTIES

The TCFUA

The AiGroup

The NSW Business Chamber

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 **“TCFUA”** means the Textile, Clothing and Footwear Union of Australia.
- 4.16 **“Worker”** means a person who performs work on, or in relation to products in the textile, clothing and footwear industry.
- 4.17 **“Workers compensation”** means workers’ compensation as prescribed by the relevant state or federal legislation.
- 4.18 **“Work records”** means a ‘work record’ as defined under the TCF Award (formerly known as a garment specification sheet).
- 4.19 **“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 manufacturers' 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 immediately 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 (30 hours) 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 homemaker 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.

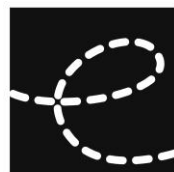
If the accredited business's report confirms a breach of this Agreement by a contractor, the accredited business shall cease further commercial dealings with that contractor unless and until the contractor has remedied its breach of the Agreement within 14 days.

CLAUSE 10 – LICENSING AND USE OF TRADEMARKS

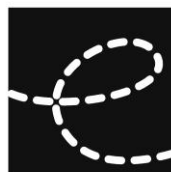
An accredited business is able to display and use the ECA trademark subject to strict licensing conditions. All successful accredited manufacturers wishing to use the ECA trademark are required to sign a Licensing Agreement that covers the use and promotion of Ethical Clothing Australia, Ethical Footwear 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).

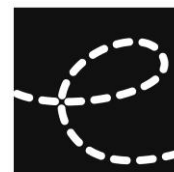
Trade Mark



ethical
clothing
AUSTRALIA



ethical
textiles
AUSTRALIA



ethical
footwear
AUSTRALIA

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

CLAUSE 12 - AMENDMENT

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

SIGNATORIES

TCFUA
AiGroup
NSW Business Chamber
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 2 – Attachment 1

(List all of the contractors that your business gives work out to)

Name	Address	Date of Contract	Contact Person	Phone Number
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(If there is insufficient space to list all makers please photocopy this sheet)

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, 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]

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
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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 5 – Attachment 1

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

Name	Address	Date of Contract	Contact Person	Phone Number
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(If there is insufficient space to list all makers please photocopy this sheet)

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 clothing 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:

- (a) the whole or any part of any male or female garment or of any article of wearing apparel including articles of neckwear and headwear, and

- (b) handkerchief, serviette, pillowslip, pillowsham, sheets, tablecloth, towel, quilt, apron, mosquito net, bed valance, or bed curtain, and
- (c) ornamentations made of textiles, felts or similar fabrics, and artificial flowers.

"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 the National Secretary of the TCFUA 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 the ARA with a current copy of the Federal Award and the relevant State Award and promptly provide the ARA with any variations to those Awards, and
- (b) provide reasonable assistance to each Retailer in interpreting the provisions of the Federal Award or the relevant State Award, and
- (c) 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

- (d) upon request promptly meet with the Retailer concerned to consider any matter arising out of this Agreement, and
- (e) 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 the Chairperson of an Ethical Clothing Trades Council or by a 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

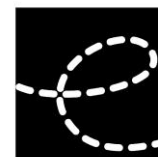
Name of Supplier	Address	Contact person/s	Phone and email address	State	Does supplier give any work to sub-contractors? (Y/N)	If company does give work out, please provide its BOR Number ¹

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: TCFUA National Secretary, Michele O’Neil, nationaloffice@tcfvic.org.au or fax (03) 9639 2944

And CC: info@ethicalclothingaustralia.org.au or fax (03) 8415 0818

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.



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APPENDIX B

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

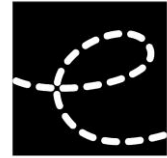
1. A Plus Schoolwear
2. Acline
3. ADA
4. Akubra Hats
5. Alma Fudge
6. Ambassador Clothing
7. Ampersander
8. Art Kabanyana
9. Aussie Mills Embroidery
10. Australian Contract Clothing
11. Babylon Industries
12. Baxter Boots
13. Blue Gum Clothing
14. Buxwear
15. Cameron James Dixon Design
16. Candy & Lace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

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

1. Abbey Bridal
2. Adam Larissa Fashions
3. Airdd
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 Taaney 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. Synergee Fashion Co. |
| 97. Posh & Chic | 126. Target |
| 98. Pretty Girl Fashion Group | 127. The Avenue Bridal Boutiqe |
| 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 |

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*

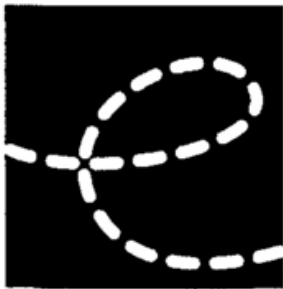


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APPENDIX C

CERTIFICATION TRADE MARK SERIES

No. 1338510



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AUSTRALIA



ethical
textiles
AUSTRALIA



ethical
footwear
AUSTRALIA



APPENDIX D

COMPLIANCE AND OUTWORKER CASE STUDIES

COMPLIANCE CASE STUDIES

The work of the compliance officer has had a significant impact on the accredited supply chains, by improving the wages and conditions of workers. Since January 2010 compliance officers have conducted more than 2100 compliance audits.

See below where the compliance process has had a positive impact for workers and businesses.

Case study 1

When undertaking the compliance audit at a maker in Springvale, we received information from an anonymous caller who said she was a worker there and told the union that the workers were paid substantially less than the award rate of pay but were scared to speak out in front of the boss.

After conducting an initial audit, we discovered:

1. Many of the workers were paid less than the Award rate
2. There were serious storage issues in the factory creating a tripping risk to the workers
3. The owner was paying peoples balance of personal leave out as a bonus at Christmas time so their personal leave did not accumulate
4. The workers didn't receive 17 ½ % loading on their holiday pay

After 4 attempts to do a follow up visit to check if the factory had reached compliance, the owner refused to co-operate with the union.

We asked the principal company who was giving this maker work and had a pending ECA application, to speak to the maker and ask him to cooperate with the union for compliance checks. The principle company had a meeting with the company and reminded the maker that he is expected to operate within the laws anyway and as part of an ethical supply chain he needs to cooperate with the Union and be checked for compliance in order to continue to work for the company.

The union then met again with the maker with intentions of completing the audit. At this meeting it was discovered that the owner had still not raised the wages to the minimum award wage. He believed that he could pay people according to how long they have worked with him, not according to their relevant skill level as the

Textile Clothing, Footwear and Associated Industries Award sets out. The starting wage for an employee was lower than even the training wage under the award and the new employee was a skilled machinist.

Once again we advised him he must comply with the award provisions. During this visit we also met with the workers. Most of them were non-communicative with us and we sensed they may have been fearful of the boss. Many of the workers were Vietnamese and we had language support so we could effectively communicate with them about Ethical Clothing Australia accreditation and the audit process. Two workers were very keen to speak out about their low wages and wanted information about what they are entitled to under the award. We spoke to them about their rights.

We advised the maker that he must raise many of the workers' wages to the minimum award rates. He argued that he cannot pay new starters the same as what he pays people who have worked for him for a long time. We explained and reiterated that he must comply with the award minimum requirements.

During this audit we also reminded him again about the condition of the factory being below the Victorian OHS standards. The owner disputed this and said the workers were happy eating their meals in the filthy area provided.

We decided to report the workplace to WorkSafe and they did an inspection and issued 5 Provisional Improvement Notices.

Once again the owner of the factory would not allow us to come back and finish the audit. The company with the pending application were impatient to get their accreditation finalised so we asked them to speak to the company once more regarding their legal obligations.

Eventually we received a call from the maker. He has now rectified the wages, the OHS issues have been fixed and now we are waiting for a suitable time to speak to the workers again to get them to verify that the company is operating within the legal parameters of the Award, the Fair Work Act and the Victorian OHS Act 2004. We also want to make sure that their personal leave is not paid out and that they receive the 17 ½ % loading they are entitled to when they take holidays during the Christmas close down period.

Case study 2

A worker heard of the work the union was undertaking in relation to fixing OHS issues and wages. The worker contacted the union and told us of a workplace that was in a very bad condition.

The compliance officer had called by to find a decrepit looking shop with approximately 20 machinists inside sewing uniforms. The workers were crammed into a small space. The compliance officer said that she noticed as we looked in that the label on the uniforms was an accredited label. She had left quickly because the owner of the factory was quite aggressive.

The TCFUA contacted the accredited company and called for a meeting to discuss the factory and which of its makers we believed might have given the work to this factory.

The label's representative were shocked that one of its makers was giving out work to this company because the maker had been audited and was BOR registered but no mention of the small shop front factory.

The company which gave the work to the sweat shop were told by the accredited company that it must be complaint to continue to get work. The accredited company insisted that the maker fix the problem within 24 hours and become fully compliant.

The union had concerns about the 20 machinists who were working in the small sweat shop and we asked that if there is enough work for the company to give out, could the maker employ those machinists in house with the label's support.

Within 1 day the 20 machinists were working hard in the 1st tier maker's factory and enjoying the Award wages and conditions they are entitled to.

Case Study 3

During an audit of a small factory, it was discovered that the work records of a large company who had a pending accreditation were barely legible. The company scribbled what they wanted on a piece of paper with no names, BOR detail, ABN number, garment specifications or minute rate. This was clearly a breach of Schedule F of the Textile Clothing Footwear and Associated Industries Award 2010. The small factory said they always received orders in this way from the label.

This made it difficult for the union to educate the smaller factory about how they should prepare their work records for giving work to their makers so we met with the first tier company.

During our first meeting we explained what is required by law to be on the work record. We gave the company copies of the work record template and we explained that they could use because it includes all the elements that must be on a work record. We met with them twice more before their records were compliant because they wanted to make the records specific to their products.

During the last visit it was identified that the work record had been rectified and they had used the templates from the Award Guide as a guide but has streamlined them to suit their company- including their logo, standard product specifications and pricing.

The first tier company is also now educating all its makers and assisting them to make their work orders compliant too.

Case Study 4

A school Uniform label identified one of its makers as a principle. During the audit it became apparent that the maker was an Outworker.

The Outworker asked the union to assist her to employ someone because she believed that if she was an Outworker she would not receive any work from the uniform company. She mistakenly believed that if she got an ABN number and employed her husband as a casual worker, she would not be regarded as an Outworker.

We explained that she would not lose work or be penalised because of her status as an Outworker. We also explained that setting up a sham working arrangement is against the law and would not change her status as an Outworker.

We then met with the company and explained to them that she is an Outworker and after looking at the value and volume report the company had sent us, we could see that she was regularly receiving 20 hours a week work.

The company agreed to transition her to Outworker status and she signed an agreement for 20 hours a week work with the company. We arranged a meeting with the company and the Outworker where the new arrangement was discussed with language support for the Vietnamese speaking Outworker so that all issues and potential problems were raised and discussed and so the Outworker could see that the company was acting in good faith.

The Outworker is happy with her new working arrangements and she is now looking forward to a 2 week paid break over the Christmas holiday close down period.

HOMEWORKER CASE STUDIES

The Outworker Outreach Officers have continued to explain outworkers' right and entitlements to outworkers. Since January 2010 outreach officers have assisted more than 1400 outworkers, either through face to face visits and over the phone.

Information was provided about outworker's legal entitlements and outworkers reported on the situation with their wages and working conditions. In conjunction with the Compliance Officers, the Outworker Outreach team assisted outworkers in relation to concerns around pay and conditions. This has resulted in them receiving decent wages and entitlements.

See case studies below.

Case studies

1) School Uniform manufacturer

Two suppliers to a school uniform manufacturer used to give out all their work and treat the outworkers as contractors. As contractors they were paid for each piece of clothing rather than by the hour so as a result they were paid less than the Award rate of pay. In addition they were not receiving their superannuation, Work Cover and other entitlements.

After the school uniform company applied for accreditation, the TCFUA Outreach officers and Compliance officers assisted the company to be compliant. Now the suppliers employ some of their outworkers to work in the factory and they are all receiving their Award rate of pay & entitlements.

Other outworkers who got work directly from the principal school wear company such as outworker A and outworker B are now treated as outworker employees. An outworker said that he is happy to be a full-time outworker, which allows him to work 38 hours and receive sick leave, holidays leave, Super and WorkCover, etc.

2) Fashion Label Manufacturer

- Company A

A husband and wife working from home for many years for company A were getting paid by the piece rather than the hours they worked as required under the Award. The union worked closely with the company to get the agreement signed as outworkers. They are now getting regular work and the minimum wages with superannuation and holidays which they never dreamed of getting.

Another couple of outworkers who supply company A now get work secured weekly, they don't have to worry about next order. In the past getting work involved some kind of auctioning, where whoever agreed on the lowest price got the work.

- Company B

A highly skilled machinist, who had previously worked for a lot of labels, had in the past few years worked solely for the Fashion Label manufacturer. Company B had employed him as a contractor and paid him above Award wages but without any superannuation or Work Cover. The company only put him on the Board of Reference list when the union checked the value and volume records.

3) **Well known Fashion Label Manufacturer**

- Company C

Company C were supplying a well-known national fashion label who was seeking accreditation. Two outworkers for Company C now work part-time at home with entitlements and they are now paid at skill level 3. This came about through the TCFUA compliance officer negotiating with company C to ensure they were paid the right pay and as a result their wages were moved from level 2 to level 3.

An outworker who used to work for company D, after the company closed she then transferred to company C. When the outworker transferred to company C the TCFUA officers made sure she received her Award pay and entitlements. She is now working part-time, with set hours, in level 3 including entitled holidays, superannuation and work cover.

A supplier to company C had employed an outworker as a contractor and was being paid below the Award rate of pay and not receiving any superannuation, Work Cover or other entitlements. They are now receiving the Award wage and their entitlements including superannuation.

Another supplier had employed outworkers as contractors and were not paying the Award rate or receiving superannuation, Work Cover or any entitlements. All of his outworkers are now working in the factory on Award pay with their entitlements as part time or casual workers.

4) **Fashion Label Manufacturer**

Most of the makers on the Fashion Maker supply chain do not use outworkers except for company E. An outworker who worked for company E used to be treated as contractor and so was paid below the Award rate and wasn't getting their entitlements. After the TCFUA outworker outreach team visited the worker and TCFUA Compliance officer worked with the company. The outworker is being treated as an employee and is receiving good pay and entitlements.

5) **Defence clothing manufacturer**

An outworker worked for a Defence clothing manufacturer, who was seeking accreditation, worked for more than 10 years without receiving his rights and entitlements and was treated as a subcontractor. The TCFUA compliance officers and outworker outreach officers came to audit and talked to the company about their obligations about employing this outworker. The outworker is now receiving at least 15 hours work per week. His wage has been kept at \$25/hour plus all the entitlements as a part timer who worked in the factory.

6) **Fashion Label Manufacturer**

The union found 3 outworkers who worked for Company F who supplied a well-known fashion label were treated as contractors on a piece rate without entitlements and being paid below the Award wage. They have been transitioned to outworkers to receive regular work with the Award pay and their entitlements.

An outworker for works for a supplier to the Fashion Label was treated as a contractor and was paid below the Award rate of pay and without benefits. Following intervention from the union he is now treated as an outworker and now receives 20 hours of work every week and is entitled to holidays and superannuation.



APPENDIX E

INDUSTRY TRAINING AND EDUCATION OUTREACH

Below is a list of examples of how ECA provides training, information, education and resources to the industry. Through these activities, the organisation aims to raise awareness of the Ethical Clothing Australia Program and provide information about The TCF Award and worker entitlements to industry representatives, government and students.

INDUSTRY TRAINING

Since January 2010 the TFIA have conducted more than **40 training sessions** for industry participants regarding the ECA accreditation process and information regarding the 2010 Textile, Clothing, Footwear and Allied Industries Award (TCF Award). Training sessions have taken place in Victoria, NSW & Queensland.

The TFIA developed a *Plan for People: HR Strategy and ECA Accreditation*' training program for industry to provide information on the TFCAI Award (2010), the National Employment Standards, forms and records for maintaining compliance, and human resources and OH&S. Participants were also introduced to the process of ECA Accreditation and the benefits for both supply chain management and brand promotion.

Clustering

The TFIA and Australian Fashion Council clusters were started in 2010, through the Fashion Export Cluster. A TCF Cluster Manager was appointed mid-2011, to establish clusters in Victoria, New South Wales, Queensland and Western Australia. The clusters cover a wide range of industry aspects, including Digital printing, fashion design, performance wear and sustainability to name but a few.

The clusters have been used to deliver Award & Operational training their members, starting with the Fashion Design Group.

Textile & Fashion Hub

A new facility for small to medium sized enterprises in the TCF sector, the Textile & Fashion Hub, was opened on March 30 2012. The Hub is collaboration between the TFIA, Kangan Institute in Melbourne and AusIndustry. Industry training is being conducted through the Hub, by the TFIA through the Plan for People forums being held monthly.

Award Guide

The Award Guide has been developed by Ethical Clothing Australia (ECA) to help businesses understand how to comply with the Textile, Clothing, Footwear and Associated Industries Award 2010. The Guide was drafted by an employment barrister with the assistance of ECA staff and HWCC members.

The Award Guide was also translated into Vietnamese and Chinese, given many business owners and workers in the industry primarily speak these languages. The translations were reviewed to ensure they were accurate and readable for typical Chinese or Vietnamese reader. The TCFUA assisted with the review of Vietnamese version and Asian Women at Work with the Chinese version.

The Award Guide is available to download from our website which saves us money but also ensures industry have the most 'up to date' version. We arranged for a limited number of printed copies in Chinese and Vietnamese as well as English.

EDUCATION OUTREACH

In terms of industry education we aim to speak to a broad range of stakeholders from university graduates to young designers, local manufacturers to major retailers as well as government representatives at both a state and federal level.

Since January 2010 we have given nearly **60 presentations to students and industry representatives** of which many are listed below. We have delivered lectures and presentations to students at universities and TAFEs in Victoria, NSW and Queensland.

These presentations enable us to educate students as well as inform TCF industry representatives about the issues facing workers, the benefits of Ethical Clothing Australia and the support it offers the industry.

Education: Colleges & Universities.

- The TFIA gave a presentation to 35 students at *RMIT Catholic Education* in Melbourne in August on current trends in employment for fashion & TCF sector, including Ethical Clothing in August 2012.
- The ECA National Manager gave a presentation to around 15 fashion design students at *Holmsglen TAFE* in Melbourne in August 2012.
- The ECA NSW Accreditation Advisor gave a presentation to 30 fashion & design students at *St George TAFE in Kagorah* in Sydney in September 2012
- The ECA NSW Accreditation Advisor gave a presentation to 50 fashion & design students at *Hunter Institute TAFE* in Newcastle in September 2012
- The TFIA gave a presentation to 12 final year students and 2 teachers at *Ultimo TAFE*.
- *MSIT Mt Gravatt TAFE (QLD)* - 3 presentations, including 2 presentations at an industry seminar with an audience of 250 industry members and students.
- *University of Technology Sydney*, fashion students - 1 presentation

- Melbourne University, marketing and business students - 1 presentation.
- RMIT TAFE (MELB), fashion and marketing students, 7 presentations (over 100 students were presented to in total).
- Macquarie Fields TAFE. (SYD) - 2 presentations
- Victoria University (Melbourne) - Community Development students
- RMIT TAFE (Melbourne) Sustainability Evening Lecture Series – 2 presentations
- Coogee Public School (Sydney) – Presentation at the ‘*spring into summer*’ event, attended by over 200 Coogee residents. A student fashion show took place with participants from UTS, UNSW, TAFE Ultimo and Whitehouse Institute, and prizes were donated by ECA accredited brands.
- RMIT TAFE Brunswick Campus – 4 sessions held with Marketing and Fashion Design Students, attended by a total of 180 students across the 4 sessions
- Melbourne University – Marketing & Society Students, attended by approximately 100 students.
- Newcastle TAFE – Fashion Students
- In addition, the Industry Liaison Officer also conducted two lectures in the Sustainability Lecture series, one at RMIT University Brunswick, and one at University of Technology Sydney (UTS), which bring industry attention to issues of sustainability and provide an opportunity to promote ECA.
- RMIT TAFE Brunswick Campus – 4 sessions held with Marketing and Fashion Design Students and was attended by over 180 students
- Melbourne University to 180 Marketing and Society students
- Newcastle TAFE fashion students

Industry

- The TFIA gave a presentation to 100 industry participants at the *International Sourcing Fair* in Sydney in November 2012.
- The TFIA gave a presentation to 90 industry participants at an Export Cluster Event in NSW in September 2012.
- The ECA Media & Communications Coordinator gave presentations to *RMIT School of Fashion & Textiles* students on February 28 2012 for approximately 20 students
- The ECA Media & Communications Coordinator gave presentations to *RMIT School of Fashion & Textiles* students on February 29 2012 for approximately 60 students
- The NSW ECA Accreditation Advisor gave a lecture to the Design class of *Macquarie Fields TAFE*. There was around 40 students and teachers in attendance.
- The ECA media officer made a presentation on ethical manufacturing at a NSW government sponsored seminar to around 40 people representing largely indigenous owned small to medium sized TCF businesses.

- The ECA National Manager spoke at a Social Sustainability seminar at Fashion Exposed conference in Melbourne before around 50 people.
- The ECA National Manager spoke to around 40 trade union members at a TCFUA state conference about the ECA program and the launch of the *Meet Your Maker* campaign.
- An event, *Building Consumer Confidence in Textile & Fashion Sustainability*, was hosted by the TFIA and NRA (National Retailers Association). The forum was aimed at building awareness of Sustainability issues in the TCF industry. The ECA, National Coordinator gave a short presentation on labour compliance and ECA accreditation.
- A presentation was given to approximately 80 designers and manufacturers in Queensland. The event titled *Innovation Runway* was organised by the Enterprise Connect Creative Industries Innovation Centre.
- In April the TFIA gave a presentation *applying the Fair Work Principles through Sustainable Supply Chain Management*, at the Defence Materials Organisation (DMO) Clothing Forum. The presentation outlined the ECA accreditation process. Jeff Willing, from DEEWR also attended the event presenting information about the Fairwork Principles.

Public Procurement

Australian Government TCF procurement is a major driver of accreditations and source of work for the local TCF industry.

Government procurement website and public materials

At the ECA we undertook a review of our website and public materials to ensure that TCF businesses bidding for Commonwealth procurement contracts were aware of their obligations regarding accreditation with ECA. During the review we worked closely with the Defence Materials Organisation (DMO) who is responsible for procurement for the Defence Department.

A key concern for DMO was ensuring they had an up to date and accessible list of local TCF business that satisfy the criteria of either seeking accreditation or are accredited. The DMO wanted to be able to identify companies who were manipulating the system to win contracts such as winning a tender then not completing their accreditation application or becoming de-accredited for non-compliance after contract was awarded.

Those companies manipulating the accreditation system without any commitment to become accredited or maintain accreditation simply disadvantage genuine applicants for government contracts. Also it isn't an effective use of ECA resources in terms of time spent processing applicants who are highly unlikely to be accredited.

In response we reviewed and updated our website along with the ECA accreditation guidelines and our public brochure on government procurement to ensure they are clear and easy to understand.

We have completed the revamp of the government procurement website so that Commonwealth Government officials involved in TCF procurement can now verify the accreditation status of TCF companies.

A critical element of our upgraded website is the development of a 'secure' web portal for registered users from government entities to check on companies' accreditation status. Via this secure section, authorised users will be able to view and download lists of currently accredited and pending companies who have applied for government TCF contracts for the purposes of verifying their accreditation status.

The website was developed in collaboration with DMO and AusIndustry, who allocate SCP grants to TCF businesses, as they both require applicants to be accredited or seeking accreditation. As a result of that feedback we made modifications to our secure website including adding ABN numbers, unsuccessful pending applicants and de-accredited companies.

We have also developed a 'disclaimer' for registered users who sign up to help ensure that information from the secure webpage are not disseminated beyond those approved users.

Tender training for Defence TCF procurement contracts

We have also given presentations to industry representatives at Defence Materials Organisation industry briefing regarding TCF procurement.

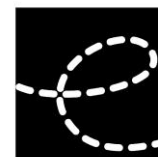
The TFIA has collaborated with the TCFIIC's TCF Advocate and the Defence Materials Organisation to deliver a number of tender training workshops to industry in Victoria, Queensland and New South Wales.

Industry and community events

Representatives from ECA, TCFUA and TFIA have all given presentations or attended events to raise awareness of outworkers and promote Ethical Clothing Australia.

We have participated in major fashion shows and industry events including Fashion Exposed, L'Oreal Melbourne Fashion Festival, Perth Fashion Week, Rosemount Australian Fashion Week in Sydney, Mercedes Brisbane Fashion Week, Perth Fashion Spring Festival, Design Made Trade Show, Melbourne Spring Fashion Week and the Clothing Exchange National Clothing Swap.

We have also participated in community events including Fairtrade Fortnight, Fair@Square Ethical Festival and the Melbourne Sustainable Living Festival.



APPENDIX G

http://www.fwc.gov.au/documents/modern_awards/pdf/MA000017.pdf

Textile, Clothing, Footwear and Associated Industries Award 2010

Schedule F—Outwork and Related Provisions

[Sched D renumbered as Sched E by [PR988362](#); Schedule E—Outworkers renamed as Outwork and Related Provisions and varied by [PR993032](#) ppc 18Feb10; Sched E renumbered as Sched F by [PR994546](#) from 01Jan10]

F.1 Definitions

F.1.1 Arrangement means any arrangement made by a principal with any legal or natural person to have work carried out for the principal, whether or not the person carries out the work, but does not include employment of an employee who is not an outworker to carry out the work.

Note: The obligations in this part apply whether or not a principal has obtained the work which is the subject of the arrangement pursuant to any other arrangement or from any other person.

F.1.2 Ordinary working week means the hours and days occurring between midnight on Sunday night and midnight on Friday night in any week.

[Definition of **Outworker** varied by [PR993032](#) ppc 18Feb10]

F.1.3 Outworker has the same meaning as that contained in section 12 of the *Fair Work Act 2009* (Cth).

[Definition of **Principal** varied by [PR993032](#) ppc 18Feb10]

F.1.4 Principal means:

- (a) An employer; or
- (b) An outworker entity within the meaning of the *Fair Work Act 2009* (Cth).

[Definition of **Work** varied by [PR993032](#) ppc 18Feb10]

F.1.5 Work means work on or in relation to any garment, article or material in the textile, clothing and footwear industry, including for example design, preparation, manufacture, packing, processing and finishing work, and organisation, procurement, control, management or supervision of work.

F.1.6 Worker means:

- (a) an outworker; or

- (b) a person who personally performs work which is the subject of an arrangement.

F.2 General requirements for making arrangements

F.2.1 Registration

- (a) A principal must be registered by the board of reference under clause F.5.7 prior to making any arrangement.
- (b) A principal must not make any arrangement with another principal unless the other principal is registered by the board of reference under clause F.5.7.

F.2.2 Work records

- (a) Upon making an arrangement, a principal must make and retain a written record (a “work record”) which contains:
 - (i) The principal’s name, address, ABN/ACN and/or registered business number;
 - (ii) The principal’s board of reference registration number;
 - (iii) The name and address of the person to whom the arrangement applies;
 - (iv) The address(es) where work is to be performed;
 - (v) The time and date for commencement and completion of the work;
 - (vi) A description of the nature of the work required and the garments, articles or material to be worked on (including diagrams where available and details of the type of garment or article, seam type, fabric type, manner of construction and finishing);
 - (vii) The number of garments, articles or materials of each type;
 - (viii) The sewing time for the work required on each garment, article or material; and
 - (ix) The price to be paid for each garment, article or material.
- (b) A copy of a work record must be given to the person with whom the arrangement is made prior to the commencement of any work which is the subject of the arrangement.

F.2.3 Lists

- (a) A principal must make and retain a list (“List”) containing the name and address of each person with which it makes an arrangement and the date each arrangement is made.

[F.2.3(b) varied by [PR994546](#) from 01Jan10]

- (b) A principal must provide a copy of the List to the General Manager or their nominee and to the relevant State Branch of the Union within 7 days of the last working day of February, May, August and November of each year.

[F.2.3(c) varied by [PR994546](#) from 01Jan10]

- (c) The General Manager or their nominee may allow an organisation with a legitimate interest in the Textile, Clothing and Footwear Industry to peruse the List.

F.2.4 Terms of arrangements

[E.2.4 varied by [PR993032](#) ppc 18Feb10]

A principal must not make an arrangement unless:

- (a) The arrangement contains a term requiring the person with whom the arrangement is made to have a written agreement with any other person who performs any work which is the subject of the arrangements;
- (b) The written agreement must specify each of the matters set out in clause F.2.2(a); and
- (c) The written agreement must provide for wages and conditions no less favourable than those contained in clauses F.3 and F.4.

F.3 Additional requirements for making arrangements with workers

F.3.1 A principal must comply with this clause in addition to clause F.2 where the principal makes an arrangement:

- (a) with a worker; or
- (b) with a body corporate owned or managed by the worker or member of their family.

F.3.2 Written agreements

[E.3.2 varied by [PR993032](#) ppc 18Feb10]

Prior to the commencement of work which is the subject of an arrangement, a principal must make a signed written agreement (“Written Agreement”) with the worker which specifies:

- (a) whether the principal will provide the worker with work on a full-time or part-time basis; and
- (b) if part-time, the agreed number of hours of work per week in accordance with clause F.4.2(a).

[E.3.3 varied by [PR993032](#) ppc 18Feb10]

F.3.3 The proposed terms of the written agreement must be expressed clearly and simply in a language the worker understands and must be provided in writing to the worker in that language a reasonable time before it is signed.

- (a) Any proposed variation of the written agreement must also comply with clause F.3.2(b) and will take effect three days after an agreement to vary the written agreement (“Variation Agreement”) is signed.

- (b) A copy of the proposed written agreement, the signed written agreement and variation agreement, along with an English language version of each document if in a language other than English, must be retained by the principal (“Written Agreement Records”).

F.3.4 Additional information in work records

[E.3.4 varied by [PR993032](#) ppc 18Feb10]

A work record in respect of an arrangement under this clause must contain the following information in addition to that prescribed in F.2.2:

- (a) The time and date for the garments, articles or materials to be provided to and picked up from the worker to facilitate commencement and completion of work in accordance with F.2.2(a)(v);
- (b) Details of the time standard applied in accordance with clause F.4.4(a) in order to determine the appropriate sewing time for the purposes of clause F.2.2(a)(viii);
- (c) The number of working hours that will be necessary to complete the work, calculated by multiplying the number of garments at clause F.2.2(a)(vii) by the sewing time per garment, article or material at clause F.2.2(a)(viii); and
- (d) The number of hours and days within the ordinary working week that will be necessary to complete the work in order to determine the appropriate time and date of commencement and completion at clause F.2.2(a)(v), and
- (e) The total amount to be paid to the worker for the hours and days at clause F.3.4(c), applying the appropriate rates of pay set out at clause F.4.4(b).

F.3.5 A principal must provide the worker with a copy of this Schedule in the appropriate language for the worker.

F.3.6 A principal must provide the worker with the minimum conditions set out in clause F.4.

F.4 Minimum conditions for workers

F.4.1 National Employment Standards

A principal must apply the NES to the worker as though the worker is an employee, whether or not the principal is an employer or the worker is an employee.

F.4.2 Hours of work

- (a) A principal must provide the worker with work which is:
 - (i) full-time, 38 hours per week; or
 - (ii) regular part-time, with no less than 20 regular hours per week to be agreed between the principal and the worker; or

[E.4.2(a)(iii) varied by [PR993032](#) ppc 18Feb10]

- (iii) regular part-time, with no less than 15 regular hours per week to be agreed between the principal and the worker with the consent of the Union in accordance with Schedule F—Outwork and Related Provisions.
- (b) In each ordinary working week, a principal must not require the worker to complete more than 38 hours' work, or the agreed number of part-time hours, whichever is less.
- (c) Subject to clause F.4.7, in each ordinary working week where the worker is ready, willing and able to work, a principal must pay the worker for either 38 hours' work or the agreed number of part-time hours' work, regardless of whether the principal provided enough work for those hours of work to be performed.

F.4.3 Work on weekends and public holidays

- (a) A principal must not require the worker to work, or set the time and date for commencement and completion of work so that the worker is required to work, on a Saturday, Sunday or public holiday without obtaining the prior written agreement of the worker, specifying the date/s and number of hours to be worked on each date.
- (b) Unless otherwise specified in the written agreement, the worker will be deemed to have worked 7.6 hours on each date.

[E.4.3(c) varied by [PR993032](#) ppc 18Feb10]

- (c) Where, notwithstanding F.4.3(a), the time and date for commencement and completion of work would require the worker to work on a Saturday, Sunday or public holiday:
 - (i) the time and date for completion will be deemed to be extended by the time necessary to ensure work on a Saturday, Sunday or public holiday is not required; or
 - (ii) the worker may elect to perform the work and will be deemed to have completed 7.6 hours work on each Saturday, Sunday or public holiday on or between the time and date for commencement and completion of the work.

F.4.4 Time standards and payment

[E.4.4(a) varied by [PR993032](#) ppc 18Feb10]

- (a) In determining how long work will take to perform (“the Time Standard”) a principal must allow a fair and reasonable time, including:
 - (i) providing more time for the work to be performed than the time standard set for comparable work undertaken in a workshop or factory; and
 - (ii) providing reasonable additional time to perform ancillary tasks such as bundling and unbundling, sorting and packing.

(b) A principal must pay the worker at the following rates:

[E.4.4(b)(i) substituted by [PR993032](#) ppc 18Feb10]

- (i) For each minute of work in the ordinary working week, 1/2280 of the weekly rate for the appropriate classification set out at clause **Error! Reference source not found.** (“the ordinary minute rate”);
- (ii) For each minute of work in excess of 38 hours or the agreed weekly hours, whichever is less, 1.5 times the ordinary minute rate;
- (iii) For each minute of work performed or deemed to have been performed on a Saturday, Sunday or public holiday, 200% of the ordinary minute rate; and
- (iv) For each public holiday on which the worker does not work, 1/5 of the weekly rate for the appropriate classification set out at clause **Error! Reference source not found.**, calculated on a proportionate basis for a part-time arrangement.

[F.4.4(b)(v) substituted by [PR994546](#) from 01Jan10]

- (v) Any additional payment due pursuant to clause **Error! Reference source not found.** applies notwithstanding this clause.

F.4.5 Payment

- (a) A principal must pay the worker within two working days’ of the end of the ordinary working week at a time and by a method agreed between the principal and the worker.
- (b) At or prior to the time of payment, a principal must provide the worker with details in writing of the gross payment, any deduction made and the net payment.

F.4.6 A principal must provide the worker with all necessary materials, trimmings and sewing threads to perform the work required of the worker, and cause all relevant materials, products, garments or articles to be delivered and collected from the worker at no cost to the worker.

F.4.7 Stand-down

A principal may stand-down the worker where no work is available as a result of circumstances outside the control of a principal, subject to the following conditions.

- (a) The principal bears the onus of establishing that no work is available.
- (b) The stand-down is for a maximum period of two days in any four week period and ten days per year.
- (c) The principal must make and retain a written record of the stand-down (“stand-down record”) setting out the name and address of the worker, the commencement date and duration of the stand-down and the reason for the stand-down.

- (d) Within two working days of a stand-down, a copy of the stand-down record must be provided to the worker and the Union.

F.4.8 A principal must apply the remaining provisions of this award to the worker as though the worker is an employee, whether or not the principal is an employer or the worker is an employee, excluding the following clauses:

[E.4.8 varied by [PR993032](#) ppc 18Feb10]

- Dispute resolution (clauses **Error! Reference source not found.** and **Error! Reference source not found.**)
- Hours of work;
- Overtime;
- Payment of wages;
- Regular part-time employment;
- Award posted;
- Casual employment;
- Dining room allowance;
- Meal allowance;
- Midday meal break;
- Rest breaks;
- Rest room allowance; and
- Tool allowance.

F.4.9 A principal must not make one or more arrangements covered by this Schedule with more than 10 workers at any one time, unless the principal has the consent of the Union or the board of reference, which may exercise its discretion to allow the principal to do so.

[E.4.10 inserted by [PR993032](#) ppc 18Feb10]

F.4.10 Dispute Resolution

In the event of a dispute involving parties to which this schedule applies in relation to a matter arising under this Award, or the NES, in the first instance the parties will attempt to resolve the dispute through direct discussions. If the dispute cannot be resolved through direct discussions, a party to the dispute may refer the dispute to Fair Work Australia. The provisions of clauses **Error! Reference source not found.**–**Error! Reference source not found.** apply in respect of the dispute.

F.5 Registration and board of reference

[F.5.1 varied by [PR994546](#) from 01Jan10]

F.5.1 For the purposes of this part, the General Manager or their nominee must appoint a board of reference for each of the following places:

- Adelaide;
- Brisbane;
- Hobart;
- Melbourne;
- Perth; and
- Sydney,
or at such place as they may from time to time determine.

[F.5.2 varied by [PR994546](#) from 01Jan10]

F.5.2 The board must consist of two Union representatives and two principal representatives with the addition of the General Manager or such person as they may nominate as chairperson of the board. In the event of the representative members of the board being equally divided in opinion, the chairperson may cast their vote to give a majority decision.

F.5.3 Any board member may appoint a nominee to act on their behalf at any time.

[F.5.4 varied by [PR994546](#) from 01Jan10]

F.5.4 Three members, one of whom must be the General Manager or their nominee will constitute a quorum.

[F.5.5 varied by [PR994546](#) from 01Jan10]

F.5.5 A board of reference may sit at such times and places as the members may agree or the General Manager or their nominee may fix and may adjourn from time to time and place to place.

F.5.6 The functions of the board of reference are to deal with any matter as provided for in this part.

F.5.7 Powers of board of reference to register principals

- (a) On application, the board of reference may register a principal on conditions it determines for a period of 12 months.
- (b) The board of reference may revoke the registration of principal for failure to comply with any or all of such conditions.
- (c) Upon registration, the board of reference will give principal a registration number.

[F.5.7(d) varied by [PR994546](#) from 01Jan10]

- (d) The General Manager or their nominee will maintain a record of registered principals.
- (e) At the time of registration, and on each anniversary of registration, a principal must place a notice in the public notices column of a metropolitan daily newspaper circulating throughout any State in which work is to be performed stating:
 - (i) the principal's name, address and ABN/ACN;
 - (ii) that the principal is registered under this award;
 - (iii) the principal's registration number;
 - (iv) the location at which all relevant records, including but not limited to work records, lists, written agreement records and stand-down records, in the principal's possession or custody may be inspected by the Union.

[F.5.7(f) varied by [PR994546](#) from 01Jan10]

- (f) A principal may make an agreement in writing with the Union or apply to the board of reference to be exempted from the notice requirement. A copy of any written agreement made between a principal and the Union must be lodged with the General Manager or their nominee.

F.6 Observance of award

F.6.1 A principal must not, in any way, whether directly or indirectly, be a party to or concerned in conduct that:

[E.6.1(a) varied by [PR993032](#) ppc 18Feb10]

- (a) hinders, prevents or discourages the observance of this Schedule;
- (b) causes or encourages or is likely to cause or encourage, a breach or non-observance of this Part.

F.6.2 A principal must retain all work records, lists, written agreement records and/or stand down records required under this part for a period of six years after the relevant record was made.

F.6.3 Within two working days of a request being made, the principal's work records, Lists, written agreement records and/or stand down records must be provided by the principal to the Union for inspection and copying:

- (a) At a time and place agreed between the Union and the principal; or
- (b) In the absence of agreement, between 8.00 am and 5.00 pm on a working day at an alternative appropriate premises nominated by the principal within a 50 kilometre radius of the principal's premises (which may be the principal's premises); or

- (c) If the principal fails to nominate such a place, between 8.00 am and 5.00 pm on a working day at an appropriate place nominated by the Union within a 50 kilometre radius of the principal's premises (which may include the Union's premises but must not include the principal's premises).

[E.6.4 varied by [PR993032](#) ppc 18Feb10]

F.6.4 The Union will not divulge any information contained in a work record in compliance with F.2.2(a)(ix) concerning the price to be paid for each garment or article in any circumstances to any party save for in enforcement or dispute resolution proceedings in a Court or Tribunal.

F.7 Recovery of unpaid remuneration

F.7.1 Unpaid remuneration includes any amount payable to a worker, whether or not an arrangement applies to the worker, including but not limited to amounts in respect of:

- (a) commission;
- (b) leave or other entitlements; and
- (c) reimbursement or compensation for an expense incurred or loss sustained by the person,

which has not been paid to the worker.

F.7.2 Extended liability of principal

- (a) A principal who makes an arrangement will be liable for any unpaid remuneration payable to a worker engaged by a person with whom the arrangement is made ("the Person"), unless:
 - (i) the principal has obtained a written statement ("Written Statement") from the person that all unpaid remuneration payable to the worker has been paid; and
 - (ii) the principal does not have reason to believe that the written statement is false.

[E.7.2(b) varied by [PR993032](#) ppc 18Feb10]

- (b) A principal may withhold any payment due to the person until the person provides a written statement to the principal. Any penalty for late payment under the arrangement does not apply to a payment withheld under this clause.
- (c) Where the person is also a principal, the person must not provide a written statement knowing it to be false.
- (d) Clause F.7.2 does not apply where the person is bankrupt or under external administration and payments under the arrangement are payable to the administrators or trustee in bankruptcy.
- (e) Nothing in this subclause limits or excludes any other liability or right of recovery in respect of:

- (i) Unpaid remuneration; or
 - (ii) Money owed by a principal to the person.
- (f) A principal is not excluded from liability pursuant to this subclause by obtaining a written statement from a body corporate owned or managed by the worker

F.7.3 Extended liability of apparent principal

[E.7.3(a) varied by [PR993032](#) ppc 18Feb10]

- (a) A worker may make a claim (“the claim”) for any unpaid remuneration relating to the work against a principal who the worker believes they carried out the work for (“the apparent principal”).

[E.7.3(b) varied by [PR993032](#) ppc 18Feb10]

- (b) A claim may be made by serving a statutory declaration on the apparent principal within six months after the completion of the work specifying:
- (i) the name of the worker;
 - (ii) the address at which the worker may be contacted;
 - (iii) a description of the work done;
 - (iv) the date or dates on which the work was done; and
 - (v) the amount of unpaid remuneration claimed in respect of the work.

[E.7.3(c) varied by [PR993032](#) ppc 18Feb10]

- (c) An apparent principal served with a claim will be taken to be liable for the unpaid remuneration other than where:
- (i) the apparent principal serves the claim on another person that the apparent principal knows or reasonably believes is liable for the claim (“the liable party”) within 14 days: and
 - (ii) the apparent principal notifies the worker of the service; and
 - (iii) the liable party pays the unpaid remuneration to the worker within 14 days of the service; and
 - (iv) the liable party serves notice in writing on the apparent principal that payment has been made and the amount.

[E.7.3(d) varied by [PR993032](#) ppc 18Feb10]

- (d) An apparent principal may set off or deduct any unpaid remuneration paid to the worker from any amount the apparent principal owes to the liable party.
- (e) Nothing in this subclause limits or excludes any other liability or right of recovery in respect of:
- (i) unpaid remuneration; or

- (ii) money owed by an apparent principal to a liable party.
- (f) A principal or apparent principal will not be liable for any unpaid remuneration pursuant to this clause to the extent that the principal or apparent principal proves that the relevant work was not done or the amount of unpaid remuneration claimed is in excess of the amount to which the worker is entitled.
- (g) An apparent principal is not excluded from liability pursuant to this subclause by obtaining a written statement from any party, including (but not limited to) a body corporate owned or managed by the worker. A principal or apparent principal is not excluded from liability pursuant to this subclause by obtaining a written statement from, or serving a claim upon, a body corporate owned or managed by the worker.

Appendix to Schedule F—Information to be given to outworkers

[Appx to Sched F varied by [PR993032](#), [PR997898](#), [PR509048](#), [PR522879](#) ppc 01Jul12]

Preamble

[Preamble varied by [PR993032](#) ppc 18Feb10]

If you work at home or outside a workshop or factory making garments, or parts of garments or sewing sheets etc., you may be an outworker.

If you are an outworker, you are entitled to the same wages and conditions, in general, as workers in clothing factories.

The Textile, Clothing, Footwear and Associated Industries Award 2010 sets out legally enforceable rights and obligations. This applies to all outworkers including employees, independent contractors, and holders of business name registrations.

According to this law some of the entitlements outworkers must receive are set out below:

Hours of work

An outworker may only be employed to work full-time, which is 38 hours a week, or regular part-time, which must be at least 15 hours per week. The hours must be agreed to in advance by the outworker and the employer.

This means you are guaranteed payment for the agreed number of hours per week, even if you are not given any work, unless you are stood-down in accordance with the award.

You cannot be required to work on Saturdays, Sundays or public holidays. You may agree to work on those days if asked to do so by your employer. You will have to be paid overtime rates if you do work on these days.

As a full-time or regular part-time worker you can only be required to work seven hours and 36 minutes each day. If you are asked by your employer to work more than this number of hours, you must be paid overtime.

This means that even if you are paid by the piece you cannot receive less than the hourly award rate of pay.

Overtime

If you agree to work more than seven hours and 36 minutes in a day, Monday to Friday, you must be paid one and a half times the normal hourly rate for each hour over the seven hours and 36 minutes.

For every hour you agree to work on a Saturday, Sunday or public holiday, you must be paid double the normal hourly rate.

Wages

[Wages substituted by [PR997898](#) ppc 01Jul10; varied by [PR509048](#), [PR522879](#) ppc 01Jul12]

According to law, as at 1 July 2012, the usual weekly wage for 38 hours, Monday to Friday, is \$648.00.

The hourly rate is \$17.05. Remember, the law says you must not be paid less than the hourly rates according to the award.

Annual leave (holidays)

You are entitled to annual leave. You should get paid 20 working days' paid leave for every year you work full-time. You should be paid before you go on holidays, and this holiday pay should include an extra amount - a holiday leave loading - of 17.5% of your pay.

This amount of annual leave for regular part-time workers depends on the hours you work in a 12 month period. The Textile, Clothing and Footwear Union of Australia or Department of Industrial Relations or The Australian Industry Group or Chamber of Manufactures of New South Wales or Victorian Employers Chamber of Commerce and Industry or Textile, Clothing and Footwear Council of Australia will help you to work this out.

Payment for public holidays (such as Christmas or New Year's Day) which occur when you are on leave, should be added onto your holiday pay.

Public holidays

If you normally work on a day on which a public holiday falls you should receive a day's pay without working on that day. Some States have different public holidays but all have about 10 different public holidays a year.

The public holidays that apply across Australia are New Year's Day (1 January), Australia Day (26 January), Good Friday and Easter Monday in March or April, ANZAC Day (25 April), Christmas Day and Boxing Day (25 and 26 December). There are extra public holidays that apply on different days in different States.

Superannuation

By law, your employer has to make a superannuation contribution of up to 9% to an approved fund, for you. Normally, this would be the Australian Retirement Fund, which is approved by both union and employer organisations.

The Textile, Clothing and Footwear Union of Australia or Department of Industrial Relations or The Australian Industry Group or Chamber of Manufactures of New South Wales or Victorian Employers Chamber of Commerce and Industry or Textile, Clothing and Footwear Council of Australia will help you to work this out.

Workers Compensation

If you become ill or suffer injury as a result of the work you do you may be entitled to workers compensation, which helps you pay for any treatment you might need to get better, and for time off work.

The laws covering workers compensation are different in each State and it is important that you contact The Textile, Clothing and Footwear Union of Australia or Department of Industrial Relations or The Australian Industry Group or Chamber of Manufactures of New South Wales or Victorian Employers Chamber of Commerce and Industry or Textile, Clothing and Footwear Council of Australia for information and help to make a claim.

Materials

Your employer must provide all necessary materials, trimmings and sewing threads for the work you are doing.

Delivery and pick up

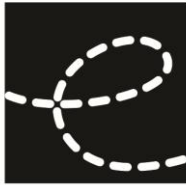
The employer must deliver and pick up the work free of charge to you.

Record of work

Every time you receive work you should keep a record.

This should show:

- employer's name, address and telephone number;
- the date you receive the work and the date the work was completed;
- the number of hours and days it took to do the work;
- the number of items, what the item is and how long it took to make each item; and
- the total amount of money paid for the completed work.



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

The Homeworkers Code of Practice

Part 2

~~(Manufacturers, Wholesalers, Warehouses, and Fashion Houses Agreement)~~

and

Application for Accreditation

Part 1

(Manufacturers)

For further information and 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](mailto:info@ethicalclothingaustralia.org.au)

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~~rebekka@ethicalclothingaustralia.org.au~~

HOMEWORKERS CODE OF PRACTICE
~~APPLICATION FOR ACCREDITATION~~

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-homeworkers receive appropriate award entitlements and legislative protection.

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

A company is complying with the Homeworkers Code of Practice when:

- ~~(a)~~ — ~~Homeworkers that are engaged are paid the appropriate loaded award skill level hourly rate~~
- ~~(b)~~ — ~~Homeworkers receive a minimum workload per fortnight equivalent to the number of products that can be sewn in 30 hours~~
- ~~(c)~~ — ~~The maximum workload homeworkers receive is equivalent to the number of products that can be sewn in 76 hours~~
- ~~(d)~~ — ~~Homeworkers are not required to work on Saturdays, Sundays or more than 7.6 hours in any one day~~
- ~~(e)~~ — ~~Homeworkers are covered by workers compensation~~
- ~~(f)~~ — ~~Superannuation contributions are made on behalf of Homeworkers~~
- ~~(g)~~ — ~~When there is no work available for a period of time the homeworker is provided with appropriate written notice of termination~~
- ~~(h)~~ — ~~Records of orders, retailers, homeworkers, contracts, products and delivery to manufacturers are maintained~~
- ~~(i)~~ — ~~Homeworkers are provided with the letter educating them about the Homeworkers Code of Practice and the TCFUA.~~

[insert Company Name]

A business is complying with the Code of Practice when its workers and its supplier's 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 these factors~~ is necessary to become accredited and maintain accreditation under the Code of Practice.

Documentation attached to this application:

- ~~(a)~~ Copy of the signed Code of Practice (Part 2 – signatories)
- ~~(b)~~ Completed fees form, to be provided annually
- ~~(j)(c)~~ Payment of Accreditation Application Fee and ongoing annual fees, payable to the *Homeworker Code Committee Inc.*
- ~~(k)~~ Copy of the signed agreement (Part 2 – signatories)
- ~~(d)~~ Ongoing co-operation 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 ~~3A, 4 and/or 1~~ 5 depending on manufacturing circumstances)
- ~~(m)(g)~~ Contractors list (Schedule ~~42~~, Attachment 1) or homeworkers-outworkers list (Schedule ~~54~~, Attachment 1)
- ~~(n)(h)~~ Completed Schedule/s ~~3~~ with each contractor listed in Schedule ~~42~~, Attachment 1

- ~~(o)~~(i) Example of a work record for each contractor used
- ~~(p)~~(j) Statutory declarations from all contractors (Schedule 3A, 4 and/or 65)
- ~~(q)~~(k) Copies of outworker wage records, Example of a contractors' work arrangements and work records and satisfactory evidence of superannuation and Workcover payments, outworker superannuation and outworker workers compensation
- ~~(r)~~ Two copies of the Accreditation Label Licence executed by your company (Schedule 12).

~~An Accredited Manufacturer is identified by an Accreditation label sewn into all garments produced in Australia by an accredited manufacturer. You will be provided with details of where to purchase the appropriate Accreditation label which will include your accreditation number.~~

~~Upon accreditation approval your company will be sent a copy of the Accreditation Label Licence executed by Homeworker Code Committee Inc., authorising your company to use the appropriate Accreditation label and to promote itself as an accredited manufacturer under the Code.~~

HOMEWORKERS CODE OF PRACTICE

PART 2

MANUFACTURERS, WHOLESALERS, WAREHOUSES & FASHION HOUSES AGREEMENT

CLAUSE 1 - AGREEMENT

between

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

~~The Council of Textile and Fashion Industries Ltd (TFIA), and~~

The Australian Industry Group (AiGroup), and

The New South Wales Business Chamber

CLAUSE 2 - PARTIES

The TCFUA

~~The Council of the TFIA~~

The AiGroup

The NSW Business Chamber

Individual companies who are signatories to this Agreement.

CLAUSE 3 - OBJECTIVES

The objectives of this Agreement include:

- To end exploitation of workers and hHomeworkers in the textile, clothing and footwear industry
- To enable workers and Homeworkers-homeworkers to clearly understand their employment entitlements
- To ensure workers and Homeworkers-homeworkers receive their appropriate award entitlements and legislative protection
- To establish a system of accreditation for Manufacturers who comply with this Agreement, and
- To educate workers, manufacturers, contractors, fashion labels and the 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 where by a Manufacturer may indicate that it complies with the terms of this Agreement.

~~4.2 **“Standard Product Specifications”** means the product specification sheets that display a description and sketch of each of the three possible levels of complexity of a product (or part thereof), the sewing time and the rate to be paid to the Homeworker for sewing each product category as per Schedule 7.~~

4.32 **“Accreditation Register”** means the register of accredited manufacturers held and maintained by the Code of Practice CommitteeEthical Clothing Australia.

4.3 **“Code of Practice”** or **“Agreement”** means the Homeworkers Code of Practice.

4.15 **“Committee”** means the management committee of Textile, Clothing and Footwear (workers and homeworker) 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.

~~4.4 **“Supplier/Fashion house/wholesaler”** means a party that agrees to manufacture or arrange to manufacture products and /or components thereof.~~

- 4.57 **“Manufacturer”** means a manufacturer-business that manufactures or arranges the manufacture of TCF products in Australia (including the value adding onto Australian made product) and may include a -
- 4.6 ~~“Manufacturer”~~ the term manufacturer is used throughout this document where the word ~~manufacturer~~ appears it refers to and is inclusive of supplier, fashion house & or wholesaler.
- 4.7 ~~“Contractor”~~ means a person engaged to produce or arrange the manufacture of products.
- 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 a residential premises or at other premises that would not conventionally be regarded as business premises. sews products in a private dwelling or in premises other than a registered factory.
- 4.9 **“Level of complexity”** is the categorisation of each ABS product group into simple medium or complex degree of difficulty in sewing the product.
- 4.109 **“Products”** means the whole, or part of:
any ~~male or female (including children’s)~~ garment; or
any article of wearing apparel; or
any article of footwear; or
any textile product. ~~It is the intention of the parties to expand the definition of product to encompass all items manufactured by parties to this Agreement.~~
- 4.1110 **“Rate per product”** is the rate calculated using the appropriate Award skill level 3 rate under in accordance with the Textile-Clothing Footwear and Associated Industries Award 2010(outworker provisions); This is determined by reference to the skill level classification, and the ‘Time Standards and payment’ outworker provisions in the Award-the GSD (or other similar agreed method of measurement) minute value for the relevant classification of product within the ABS product category.
- 4.1211 **“Relevant Award” or “TCF Award” or “award”** means the Textile Clothing Footwear & Associated Industries Award 2010 as at 1 January 2010, and as amended from time to time to provide increases in wages and conditions as approved-determined by Fair Work Australia Commission (or successor body), ~~or any State Award covering the textile, clothing and footwear industries that a business referred to in this Agreement is bound by.~~
- 4.13 ~~“Workers Compensation”~~ means ~~workers compensation as prescribed by the relevant state legislation.~~
- 4.1412 **“Relevant Superannuation Fund”** means in relation to a worker or homeworker-outworker ~~means~~ a superannuation fund into which superannuation contributions may are to be paid on behalf of ~~that the worker or homeworker-outworker~~ in accordance with the TCF Award and federal superannuation legislation compliance with the Superannuation Industry (Supervision) Act 1993 (Cth).
- 4.13 **“Standard Statutory Declaration”** means a statutory declaration as set out in Schedules 3A, 4, 5, 6, 10 and 11 of this Agreement. Completion of relevant standard statutory declarations is necessary for a manufacturer 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 **“TCFUA”** means the Textile, Clothing and Footwear Union of Australia.

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

4.17 “Workers Compensation” means workers compensation as prescribed by the relevant state legislation.

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

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

~~4.15 “Committee” means the management committee of Homeworker Code Committee Inc.~~

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 employers party to the Agreement, and has a ~~maximum~~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 ~~manufacturers~~applicant businesses and re-accreditation of accredited businesses
- Withdrawing a manufacturers accreditation
- Holding and maintaining the accreditation register of accredited manufacturers
- Licensing Accredited Manufacturers and Registered Manufacturers to use the Accreditation Marks
- Licensing Retailer Signatories 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, this 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, and~~
- ~~Developing and maintaining a standard product specifications (sewing time) manual (Schedule 9 refers to the process for development of this product specifications manual) through the establishment of an expert working party, which will report to the Committee.~~

CLAUSE 6 – ROLE OF THE TCFUA

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

- Undertaking compliance audits 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 6-8 - ACCREDITATION

The Committee shall confer accreditation on a manufacturer which establishes ~~by way of standard statutory declarations that it complies with all of the following criteria~~ 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 outworkers (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 homeworkers who are engaged on the sewing of its products are paid the appropriate rate per product calculated on the appropriate loaded award skill level hourly rate~~
- ~~• The homeworkers receive a minimum workload per fortnight which is the equivalent of the number of products that could be sewn in 30 hours, and a maximum workload per fortnight which is the equivalent of the number of products that could be sewn in 76 hours~~
- ~~• The homeworker cannot be required to work Saturday or Sunday or beyond 7.6 hours in any one day, unless the homeworker chooses to do so~~
- ~~• The homeworkers are covered by workers compensation~~
- ~~• The homeworkers receive appropriate superannuation contributions paid on their behalf into the relevant superannuation fund~~
- ~~• Where work is no longer available for a period, the homeworkers are given appropriate written notice of their termination~~
- ~~• The maintenance and provision of records in accordance with Schedule 1, and~~
- ~~• The provision of a standard letter on union membership in accordance with Schedule 7.~~

~~The parties agree that compliance with these criteria is consistent with full adherence to the relevant Award provisions and legislative obligations.~~

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, such as whether the business 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.

An Accredited Manufacturer shall be entitled to affix 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 a new 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 as it stops manufacturing in Australia; or the business ceases trading and/or becomes insolvent).

~~Any entity represented on the Committee has the right to raise concerns (including without limitation, contractual arrangements between retailers and manufacturers which do not enable the appropriate award rate to be paid in accordance with this Agreement) and request the Committee to review the accreditation of any Accredited Manufacturer at any time.~~

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 ~~either that the Accredited Manufacturer has complied with this Agreement, or that the Accredited Manufacturer's accreditation should not be cancelled.~~

~~The Committee may (but is not obliged to) cancel the accreditation of the Accredited Manufacturer twenty-eight (28) days after delivery of notice under the previous paragraph to the Accredited Manufacturer, if the Committee considers that the Accredited Manufacturer has failed to comply with this Agreement.~~

~~The Committee will consider an Accredited Manufacturer's entitlement to reaccreditation on an annual basis.~~

~~Reaccreditation will be automatic based on the provision of either updated standard Statutory Declarations as set out in Schedules 3A, 4, 5 and 6 of this agreement or, if the Accredited~~

~~Manufacturer's circumstances have not changed since the last time it was accredited or reaccredited, a Statutory Declaration as set out in Schedule 10 of this agreement, unless the Committee is satisfied that the manufacturer does not have a satisfactory compliance record.~~

~~A manufacturer's compliance record would be deemed "unsatisfactory" at the time of reaccreditation if the manufacturer:~~

- ~~• has failed to provide all relevant statutory declarations which comply with any or all of the criteria listed in Clause 6 of the Suppliers Agreement~~
- ~~• has provided false information in relation to the provision of statutory declarations which comply with any or all of the criteria in Clause 6 of the Suppliers Agreement~~
- ~~• has failed to comply with any terms of Schedule F (Outwork and Related Provisions) of the Textile, Clothing, Footwear and Associated Industries Award 2010, the National Employment Standards and all relevant State legislative obligations in relation to outworkers".~~

~~**Deaccreditation** of a manufacturer who ceases all their manufacture in Australia will be automatic based on the provision of a standard statutory declaration as set out in Schedule 11 of this agreement.~~

CLAUSE 97 - OBLIGATION ON 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 immediately of any changes to its manufacturing circumstances, including for example, the removal or addition of suppliers from their supply chain;
- Taking manufacturing offshore, 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 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 proving 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 of 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 or 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 legal compliance is 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 Outworkers.

Once legal compliance is 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 provide 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. The accredited manufacturer shall, on the request of the TCFUA, the accredited business must provide to the TCFUA within 7 days provide the TCFUA all details of the name and address of any homeworker which the accredited ~~manufacturer-business~~ is using in manufacturing the products.

a)b) Requirements to provide written agreements and work records

Each accredited ~~manufacturer-business~~ or and any of its supply chain who arranges for a homeworker to ~~manufacture products~~ must satisfy itself that the homeworker is receiving: perform work must first make and retain both a Written Agreement with the homeworker and Work Records 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 homeworkers

Each accredited ~~manufacturer-business~~ and each entity within its supply chain who arranges for a homeworker to ~~manufacture products~~ perform work must satisfy itself ensure that the homeworker is receiving the following conditions:

- The appropriate time standard rate for work performed by the homeworker ~~per product~~ based on the ~~appropriate loaded Award skill level~~ TCF Award hourly rate (minimum skill level 3);

- ~~At least the~~ minimum ~~workload number of hours~~ per fortnight ~~which is the equivalent of the number of products that could be sewn in (30 hours)~~ and a maximum workload per fortnight ~~which is the equivalent of the number of products that could be sewn in (76 hours)~~
- ~~The h~~Homeworker ~~cannot is not~~ be required to work Saturday or Sunday or ~~or public holidays, or~~ beyond 7.6 hours in any one day, unless they ~~agree to do so and the homeworker receives the appropriate rate of pay under the TCF Award;~~ ~~homeworker chooses to do so~~
- ~~A~~appropriate workers compensation protection ~~as per the relevant state or federal legislation;~~
- ~~Appropriate notice and redundancy entitlements as per the TCF Award;~~
- ~~A~~appropriate superannuation contributions ~~are being made on the homeworker's behalf in accordance with the TCF Award and federal legislation~~
- ~~appropriate written notice upon termination, and~~Appropriate pay slips containing specified information ~~as per the Fair Work legislation; and~~
- ~~The~~ standard letter ~~on union membership in accordance with~~ ~~as provided for in~~ Schedule ~~67.~~

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 that homeworker the amount due and deduct that amount from the payment otherwise due to the contractor, where such payment to the contractor is still outstanding.

e) Records

Each accredited ~~manufacturer business who which~~ arranges for a homeworker to ~~manufacture perform work on~~ products must satisfy itself that all required records are maintained and are capable of being provided ~~in accordance with Schedules 1 and 2 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 business is using in the manufacturing of products.

Where an accredited ~~manufacturer business~~ uses a contractor to make products the ~~manufacturer 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 ~~manufacturer accredited business~~ is using in manufacturing the products.

~~Where an accredited manufacturer uses a contractor to make products the accredited manufacturer shall ensure that their contract includes clauses setting out these obligations, as contained in Schedule 3. In addition take whatever steps may be necessary to inform the contractor that the contractor is obliged to afford the homeworkers whom the contractor uses the following:~~

- ~~Payment of the appropriate award skill level rate per product~~
- ~~A minimum workload per fortnight which is the equivalent of the number of products that could be sewn in 30 hours and a maximum workload per fortnight which is the equivalent of the number of products that could be sewn in 76 hours~~
- ~~The homeworker cannot be required to work Saturday or Sunday or beyond 7.6 hours in any one day, unless the homeworker chooses to do so~~
- ~~Workers compensation coverage~~
- ~~Superannuation contributions~~
- ~~Appropriate written notice upon termination~~

- ~~• The maintenance and provision of records in accordance with Schedule 2, and~~
- ~~• The standard letter on union membership in accordance with Schedule 7.~~

~~An accredited business shall, within 7 days of engaging a contractor to arrange for the performance of work on products, ensure that the contractor compiles a list of names and address of all homeworkers that the contractor proposes to engage to perform work upon these products. Upon receiving a request from the TCFUA the accredited business shall ensure that the list is provided to the TCFUA within 7 days.~~

~~The contractor shall be required to establish to the Manufacturer, through the provision of relevant signed standard statutory declarations, of this Agreement, that the contractor is fully complying with these criteria.~~

~~Where the manufacturer intends to use a contractor to make products, the manufacturer will ensure that the contractor has completed the relevant standard statutory declarations prior to being given the contract.~~

~~An accredited manufacturer 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 whom the contractor proposes to engage in the making of the products. Upon receiving a request from the TCFUA the accredited manufacturer shall ensure that the list is provided to the TCFUA within 7 days.~~

~~At the time of giving work to a contractor, an accredited manufacturer will inform the contractor of the level of complexity of the products to be sewn and the appropriate rate per product which the contractor must pay to the homemaker as per the standard product specification(s).~~

9.5 Breach of Agreement

Where the TCFUA gives ~~written notification~~notice to an accredited ~~manufacturer-business~~ that a contractor is in breach of this Agreement, the accredited ~~manufacturer-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 ~~manufacturer's-business's~~ report confirms a breach of this Agreement by a contractor, the accredited ~~manufacturer-business~~ shall cease further commercial dealings with that contractor unless and until the contractor has remedied its breach of the Agreement within 14 days.

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

CLAUSE 8-10 -- 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 trade marks, logos or other identification items (“**Accreditation Marks**”) it deems appropriate to promote compliance with the Award and this Agreement.

~~The Committee shall enter into a license agreement in the form of Schedule 12 of this Agreement with each Accredited Manufacturer, which authorises the Accredited Manufacturer to:~~

- ~~• Affix to its products the Accreditation labels specified in the licence agreement;~~
- ~~• Affix to its place of business, premises or any other thing the, Accreditation Marks specified in the licence agreement and~~
- ~~• Use the Accreditation Marks specified in the licence agreement to promote its compliance with the Award and acceptance of this Agreement.~~

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. Licence fees shall be in accordance with Schedule 8 (Fee Scale) of this Agreement.

CLAUSE 9 – RETAILER SIGNATORIES

~~A retailer that is a signatory to Part One of the Homeworker Code of Practice and whose stock includes products supplied by at least one Accredited Manufacturer, may apply to the Committee for a licence to use one or more of the Accreditation Marks to promote its support for the Homeworkers Code of Practice. Unless the Committee considers on reasonable grounds that the retailer has breached Part One of the Homeworker’s Code of Practice, it shall grant the retailer a licence in the form of Schedule 12. The retailer must~~

- ~~• provide to the Committee any evidence reasonably required by the Committee to determine the eligibility of the retailer for a licence; and~~
- ~~• advise the Committee promptly if its stock ceases to include products supplied by at least one Accredited Manufacturer~~

~~Licence fees shall be in accordance with Schedule 8 (Fee Scale) of this Agreement.~~

CLAUSE 10-12 - 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, TFIA, NSW Business Chamber & AIG
- Contributions from retailers and manufacturers, through payment for accreditation and licenses
- Financial assistance from State and Commonwealth Governments
- ~~• Contributions from retailers and manufacturers, through payment for access to the Standard Product Specification (sewing time) Manual.~~

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 basis:

- To the TCFUA for compliance activities;
- Towards education and publicity activities;
- Towards the development of product specification standards accreditation tools and resources;

- other Homeworker Code Committee Inc. costs
- ~~The parties will have further discussions as to the allocation of funds, if available funding falls below \$450,000~~
- ~~50% of any additional income, to a maximum of \$400,000, shall be directed to the TCFUA for compliance activities.~~

~~10.1 **Compliance:** The TCFUA shall have the responsibility for enforcing compliance with this Agreement. Compliance activities, consistent with this Agreement, shall include:~~

- ~~Identifying incidents of non-compliance to the Award and/or this Agreement~~
- ~~Securing compliance through the promotion of this Agreement~~
- ~~Ensuring the Award compliance by non-signatories to this Agreement~~
- ~~Ensuring compliance with this Agreement by signatories.~~

~~The TCFUA will report annually on compliance activities, funded under the Education, Publicity and Compliance Fund.~~

~~10.2 **Education and Publicity:** Education and Publicity activities supported by this Fund will be for the purposes of educating homeworkers, contractors, manufacturers, retailers and the community about the operation and purposes of this Agreement.~~

CLAUSE 11 - 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.
- b) The TCFUA may inspect any records required to be maintained under this Agreement.
- c) The TCFUA shall be given copies, if requested, of any records required to be kept under this Agreement.
- ~~e)d)~~ ECA retains all records required to be kept under this Agreement

CLAUSE 12 - AMENDMENT

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

SIGNATORIES

TCFUA

~~TFIA~~

AiGroup

NSW Business Chamber

Individual Companies

PART 2 – SIGNATORIES

APPENDIX – PART 2

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 ~~12~~ of the Code of Practice ~~include detail~~ the ~~reporting, contract~~, statutory declarations, contract between accredited businesses and contractors and letter to homeworkers as all requirements to be fulfilled by signatories to become accredited to the Code. The schedules are integral to the content and workings of Part ~~12~~ of the Code of Practice.

~~SCHEDULE 1 — RECORDS TO BE KEPT BY THE MANUFACTURER~~

~~An Accredited Manufacturer must keep the following records in connection with any order of products from a Retailer and provide them on written request to the TCFUA, within 7 days:~~

~~i) — Name of the Retailer~~

~~ii) — ACN number, if any, of the Retailer~~

~~iii) — Address of the Retailer~~

~~iv) — For homeworkers used by the Manufacturer for the making of products the following records:~~

~~Name~~

~~Address~~

~~Date of Birth~~

~~Starting date~~

~~Notice given~~

~~Termination date~~

~~Hours per fortnight~~

~~Total monies paid (gross, tax (where applicable) net)~~

~~Tax file number (where applicable)~~

~~Superannuation payments and fund name.~~

~~v) — Contracts, if any, made between the Manufacturer and any Contractors and in relation to each such Contractor~~

~~vi) — Name of the Contractor~~

~~vii) — Address where the work is to be performed and the address of the Contractor, if the work is to be performed elsewhere~~

~~viii) — Date of the Contractor's Contract~~

~~ix) — Date for delivery of the products provided to the homemaker and/or contractor and the date for the completion of the work under the Contract~~

~~x) — Product specification:~~

~~A description of the nature of the work to be performed (including construction, seam type, finishing and fabric type) for the work concerned~~

~~A description and sketch of the products to be made, including the level of complexity and sewing time~~

~~The price to be paid to the homemaker for each item of the garments to be made~~

~~xi) — Number and type of products to be made~~

~~xii) — Date for delivery to the Manufacturer.~~

~~SCHEDULE 2 — RECORDS TO BE KEPT BY THE CONTRACTOR~~

~~A Contractor must keep the following records in connection with any order of products from an Accredited Manufacturer and provide them on written request to the TCFUA within 7 days:~~

- ~~i) — name of the Accredited Manufacturer~~
 - ~~ii) — address of the Accredited Manufacturer~~
 - ~~iii) — the Contract between the Manufacturer and the Contractor~~
 - ~~iv) — the date of the Contract~~
 - ~~v) — For homeworkers used by the Contractor for the making of the products the following records:~~
 - ~~— Name~~
 - ~~— Address~~
 - ~~— Date of Birth~~
 - ~~— Starting date~~
 - ~~— Notice given~~
 - ~~— Termination date~~
 - ~~— Hours per fortnight~~
 - ~~— Total monies paid (gross, tax (where applicable) net)~~
 - ~~— Tax file number (where applicable)~~
 - ~~— Superannuation payments and fund name.~~
 - ~~vi) — Contracts, if any, made between the Contractors and any other Contractors and in relation to each such Contractor;~~
 - ~~vii) — the name of the Contractor;~~
 - ~~viii) — the address where the work is to be performed and the address of the Contractor, if the work is to be performed elsewhere;~~
 - ~~ix) — the date of the Contractor's Contract;~~
 - ~~x) — the date for the giving out of the work and the date for the completion of the work under the Contract~~
 - ~~xi) — the number and type of products to be made~~
 - ~~xii) — product specification~~
 - ~~— A description of the nature of the work to be performed (including construction, seam type, finishing and fabric type) for the work concerned~~
 - ~~— A description and sketch of the products to be made, including their level of complexity and sewing time~~
 - ~~— The rate per product to be paid to the homeworker for each item of the products to be made~~
 - ~~xiii) — the date for delivery to the Manufacturer~~
 - ~~xiv) — evidence of payments made to individual homeworkers~~
 - ~~xv) — evidence of appropriate superannuation contributions to the relevant superannuation fund~~
 - ~~xvi) — evidence of payment of appropriate workers compensation premiums~~
-

~~**SCHEDULE 3 — UNIFORM CLAUSES FOR INCLUSION IN CONTRACTS BETWEEN MANUFACTURERS AND CONTRACTORS**~~

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

~~It is a term of this Contract that any homeworkers used in the manufacture of products referred to in this Contract shall be covered by the provisions of the Agreement between the TCFUA, and designed to eliminate exploitation of homeworkers.~~

~~The Contractor must, in addition to his 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 Schedule 2 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 Homeworker has not been paid in accordance with this Contract, must pay that Homeworker 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 any applicable Federal or State Acts and the Award.~~

~~Name: Name:~~

~~Company:~~

~~Signature: Signature:~~

~~Date: Date:~~

SCHEDULE ~~3A~~ 1 STANDARD

~~STATUTORY~~ Statutory ~~DECLARATION~~ Declaration ~~FOR~~ For

**~~MANUFACTURERS~~ Manufacturers ~~WHO~~ Who ~~DO~~ Do
~~NOT~~ Give ~~GIVE~~ OUT Out ~~WORK~~ Work ~~TO~~ To
~~CONTRACTORS~~ Contractors ~~OR~~ Or
~~OUTWORKERS~~ 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 do not give any work outside my premises to contractors and or ~~outworkers~~homeworkers. This company exclusively engages employees based at our factory premises to ~~manufacture products~~perform work or arrange the ~~manufacture of products~~performance of work.

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

- I will complete the Statutory Declaration as set out in ~~Schedule 24~~ and/or ~~Schedule 6-4~~ “Homeworkers from the Code of Practice” and notify ~~the Homeworkers Code of Practice Committee~~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 ~~the Homeworkers Code of Practice Committee~~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. implement a uniform clause in our standard contracts as set out in Schedule 3 of the “Homeworkers Code of Practice”.
- I will make the Statutory Declaration, from this Code of Practice 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 ~~3A1, 2~~; or ~~Schedule 4 and/or Schedule 65~~) and co-sign the Schedule 3 Contract between Accredited Business and Contractor of the “Homeworkers Code of Practice.” and a copyCopies of these will be forwarded to the ~~“Code Committee”~~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 Homeworke

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 ~~person before whom the Declaration is made~~Witness]

.....
[Name of ~~person before whom the Declaration is made~~Witness]

.....
[Title of ~~person before whom the Declaration is made~~Witness]

SCHEDULE 24 STANDARD

**~~STATUTORY~~ Statutory ~~DECLARATION~~ Declaration ~~FOR~~ for
MANUFACTURERS Manufacturers ~~WHO~~ Who GIVE
Give WORK Work ~~TO~~ To ~~CONTRACTORS~~ 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 ~~manufacture products~~perform work or arrange the performance of work, a Work Agreement and Work Record and have co-signed manufacture of products by engaging homeworkers a uniform clause in our standard contracts as set out in the Schedule 3 of the “Homeworkers Code of Practice- Contract between Accredited Business and Contractor”

Each of the contractors who supply our company with goods has completed a relevant Statutory Declaration (Schedule 3A;1 or Schedule 4-2 and/or Schedule 6;5) of the ~~“Homeworkers~~ 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 3A1; or Schedule 4-2 and/or Schedule 65) of the ~~“Homeworkers~~ Code of

Practice” and a copy will be forwarded to ~~the “Code Committee”~~Ethical Clothing Australia and made available for inspection on written request by the TCFUA.

~~The names, addresses and dates of engagement of contracts with people I presently supply work to is listed at Attachment 1 to this Statutory Declaration.~~

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 ~~person before whom the Declaration is made~~Witness]

.....
[Name of ~~person before whom the Declaration is made~~Witness]

.....
[Title of ~~person before whom the Declaration is made~~Witness]

SCHEDULE 24 ATTACHMENT 1

(List all of the ~~companies~~contractors that your ~~company~~business gives work out to)

Name	Address	Date of Contract	Contact Person	Phone Number
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(If there is insufficient space to list all contractors please photocopy this sheet)

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 54 STANDARD

**~~STATUTORY~~ Statutory ~~DECLARATION~~ Declaration ~~FOR~~ For
MANUFACTURERS/CONTRACTORS Accredited
Business ~~WHO~~ Who ~~GIVE~~ Gives WORK Work
DIRECTLY Directly ~~TO~~ To
HOMEWORKERS 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 examined-understood the contents of the "Homeworkers- Code of Practice- Agreement" between the Textile Clothing and Footwear Union and my company-business dated

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

I have paid ~~to each of these~~ all homeworkers I employ (doing the work referred to above) their appropriate rate per product as defined at Clauses 4 and 7 of the "Homeworkers Code of Practice" as referred to above. legal wages and provided their legal entitlements according to the TCF Award or appropriate award.

I have provided to each of these homeworkers, (referred to above) the minimum ~~workload per fortnightly workload as~~ defined ~~at in~~ Clause ~~7-9~~ of the ~~“Homeworkers Code of Practice” as referred to above 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. Textile, Clothing, Footwear and Associated Industries Award 2010, or appropriate award.

I have kept (in regard to each of these homeworkers) records in accordance with Schedule 2 of The Textile, Clothing and Footwear Award (2010) the TCF Award. and the Schedule 2 of the “Homeworkers Code of Practice”: Work Records, Work Agreements, Wages records, Workers Compensation and Superannuation fund evidence., ~~and~~ I will provide these records to ~~other parties~~ the TCFUA in accordance with Schedule 2 Clause 9 of the ~~“Homeworkers~~ Code of Practice.”

I have provided to each of these homeworkers the standard letter (dealing with Union membership) contained in Schedule 6 of the “Homeworkers 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 Textile, Clothing, Footwear and Associated Industries TCF Award 2010, 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]

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 ~~person before whom the Declaration is made~~ Witness]

.....
[Name of ~~person before whom the Declaration is made~~Witness]

.....
[Title of ~~person before whom the Declaration is made~~Witness]

SCHEDULE 54 ATTACHMENT 1

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

Name	Address	Date of Contract	Contact Person	Phone Number
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(If there is insufficient space to list all makers please photocopy this sheet)

SCHEDULE 56 STANDARD

~~STATUTORY~~ Statutory ~~DECLARATION~~ Declaration ~~FOR~~ For
MANUFACTURERS/CONTRACTORS ~~Contractors~~ WHO
Who ~~RECEIVE~~ Receive ~~WORK~~ Work ~~FROM~~ From
ANOTHER ~~Another~~ MANUFACTURER/
CONTRACTOR ~~Business~~ AND ~~And~~ THEN ~~Then~~ SUPPLIES
Supplies ~~WORK~~ Work ~~TO~~ To
HOMEWORKERS ~~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 have received work from
(insert accredited businesses name)

~~These~~ Orders ~~to complete work to be supplied~~ will be given to homeworkers to complete.

I have read and examined the contents of the ~~“Homeworkers~~ Code of Practice” between the Textile Clothing and Footwear Union of Australia and
..... Pty Ltd, dated

I will hereafter pay to each of these homeworkers (doing the work referred to above) their
appropriate rate per product as defined at Clauses 4 and 7 ~~legal wages and entitlements according to~~
TCF Award, and the ~~of the “Homeworkers~~ Code of Practice” as referred to above.

I will hereafter provide to each of these homeworkers, (referred to above) the minimum fortnightly workload ~~per fortnight~~ defined at in Clause 7.9 of the “~~Homeworkers~~ Code of Practice” ~~as referred to above, 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 Act.

I will hereafter pay to the relevant superannuation fund superannuation contributions on behalf of each of these homeworkers with the requirements of the Textile, Clothing, Footwear and Associated Industries TCF Award 2010, or appropriate award, and federal superannuation legislation.

I will hereafter keep (in regard to each of these homeworkers) records in accordance with Schedule 2 the TCF Award, of the “Homeworkers and Clause 9 of the “Code of Practice”: Work Records, Work Agreements, Wages Records, Workers Compensation and Superannuation fund evidence.”, ~~and~~ I will provide these records to ~~other parties in accordance with Schedule 2 of the “Homeworkers Code of Practice”, the TCFUA when requested.~~

I will hereafter provide to each of these homeworkers the standard letter (dealing with Union membership) contained in *Schedule 7* of the “Homeworkers 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 Textile, Clothing, Footwear and Associated Industries Award 2010, 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]

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 person before whom the Declaration is made]

.....
[Name of person before whom the Declaration is made]

.....
[Title of person before whom the Declaration is made]

SCHEDULE 6—5 ATTACHMENT 1

(List all of the homeworkers that your business gives work out to)

Name	Address	Date of Contract	Contact Person	Phone Number
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(If there is insufficient space to list all makers please photocopy this sheet)

SCHEDULE 76 LETTER TO HOMEWORKER

Dear Homeworker

A landmark Agreement has been reached between the Textile Clothing and Footwear Union 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

~~SCHEDULE 8 LICENCING FEE~~

~~The fee to be paid by Accredited Manufacturers for licensing consistent with this agreement is:~~

~~A business that has been going less than 3 years – \$300~~

~~Sole Trader that does all of its 'cut, make and trim' manufacturing in house – \$300~~

~~Sole Trader that does value adding to finished products in house (e.g. laundry, dyeing, screenprinting) – \$300~~

~~Business that does all 'cut, make and trim' manufacturing in house (exclusively on premise) apart from value adding services (e.g. screenprinting) –~~

~~Fees are based on how many full time equivalent textile, clothing or footwear production staff a business employs~~

~~a) 4 or less = \$400~~

~~b) 5-15 = \$600~~

~~c) 16-40 = \$1,000~~

~~d) 41+ = \$2,000~~

~~Business that outsources part or all of its 'cut, make and trim' manufacturing –~~

~~Fees are based on the annual value of work out-sourced~~

~~a) Up to \$1,000,000 = \$2,000~~

~~b) 1,000,001 – \$5,000,000 = \$3,000~~

~~c) \$5,000,000 – \$9,999,999 = \$4,000~~

~~d) \$10,000,000 + = \$6,000~~

~~Discounts~~

~~10% discount if a business is accredited and has used the No Sweatshop Labels (now Ethical Clothing Australia) for the previous 12 months~~

~~20% discount if a business uses accredited suppliers~~

~~\$1,000 discount if the value of your out-sourced 'cut, make and trim' manufacturing is less than \$200,000 per year and your business employees 3 or less full time equivalent textile, clothing or footwear production staff~~

~~Please make cheque out to the Homeworkers Code Committee Inc and send it with your application to:~~

~~Homeworkers Code of Practice
P.O.Box 2087
Fitzroy VIC 3065~~

~~**SCHEDULE 10 — STANDARD STATUTORY DECLARATION FOR
MANUFACTURERS WHOSE CIRCUMSTANCES UNDER THEIR CURRENT
APPLICATION HAS NOT CHANGED**~~

~~**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]

~~The abovementioned company or business has previously applied for accreditation under the
“Homeworkers Code of Practice” (the previous application).~~

~~All of the information contained in the previous application remains true and correct at the date of
making this statutory declaration.~~

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

Declared at in the State of

on this day of in the year 20.....

Before me
..... [Signature of person before whom the Declaration is made]

.....
..... [Name of person before whom the Declaration is made]

.....
..... [Title of person before whom the Declaration is made]

**SCHEDULE 11 — STANDARD STATUTORY DECLARATION FOR
MANUFACTURERS WHO NO LONGER MANUFACTURE
IN AUSTRALIA**

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]

The abovementioned company or business has previously:

1. manufactured the whole or part of male and/or female garments and/or articles of wearing apparel (“products”) in Australia; or
 2. arranged by contracting for the manufacture of products in Australia,
- but no longer does any of those things.

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

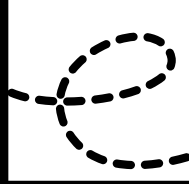
Declared at in the State of

on this day of in the year 20....

Before me
[Signature of person before whom the Declaration is made]

.....
[Name of person before whom the Declaration is made]

.....
[Title of person before whom the Declaration is made]



ethical
clothing
AUSTRALIA

Guide to the Textile, Clothing, Footwear and Associated Industries Award

helping you
meet your legal
obligations

Ethical Clothing Australia is funded by the Australian Government Department of Education, Employment and Workplace Relations through the Homeworkers Code of Practice Program.



Australian Government

**Department of Education, Employment
and Workplace Relations**

Ethical Clothing Australia Award Guide as at 1 July 2011
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DISCLAIMER

This guide is provided in the way of general advice. Every effort has been made to ensure that the representations made in the guide are accurate but you should familiarise yourself directly with the obligations imposed by the relevant legislation and Awards or seek independent advice. The guide is not a substitute for legal advice. You should not rely on the representations made in this guide with respect to the workplace rights of people to whom the *Fair Work Act 2009* applies. The writers and publishers of this guide do not expect you to rely on the representations made in this guide. The writers and publishers provide no warranty of accuracy, reliability or completeness, and accept no responsibility for errors in, or omissions from, or any loss or damage resulting from reliance on (in whole or part) the information and advice in this publication.

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A guide to your legal obligations

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It is designed to help you meet your legal obligations under the Award.	2
What is the Award?	PAGE
The 'Textile Clothing Footwear and Associate Industries Award 2010' is referred to as 'the Award' throughout this guide. The Award is a national framework designed to make sure workers (in-house and outworkers) receive fair wages and work in decent conditions.	5
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Introduction

Ethical Clothing Australia has developed this guide to help you better understand and comply with the national Textile, Clothing, Footwear and Associate Industries Award 2010 (the Award). Inside you'll find information about the Award, as well as a number of practical tools and templates to help your business meet its legal obligations.

Ethical Clothing Australia is a joint business-union initiative that works with the local textile, clothing and footwear industry to make sure Australian workers making their products receive fair wages and work in decent conditions. We do this through an accreditation and labelling system that provides consumers and buyers with a way to identify and support ethically made Australian textile, clothing and footwear products:

- The voluntary accreditation system is designed to help you navigate your various mandatory legal obligations in Australia. Accreditation advisors are on hand to step you through the accreditation process.
- The program partners include
 - the Council of Textiles and Fashion Industries of Australia (TFIA) that provides industry education services and offers advice about implementing and staying on top of various systems to help maintain transparency, and
 - the Textile Clothing and Footwear Union of Australia (TCFUA) that performs compliance checks of worksites to verify conditions, wages and information received. It also provides home-based workers with information and assistance in regards to realising their legal rights and entitlements.

The Ethical Clothing Australia accreditation system is a practical and affordable resource that helps you monitor your supply chains and operate within Australian law.

To find out more about Ethical Clothing Australia visit: www.ethicalclothingaustralia.org.au

ACKNOWLEDGEMENTS

Ethical Clothing Australia would like to thank the following organisations for their assistance in developing this guide

- The Council for Textile and Fashion Industries of Australia
- The NSW Business Chamber, *and*
- The Textile Clothing and Footwear Union Australia.

Why read this guide?

No matter how many people you employ, whether you engage any workers directly, or where you sit in the contracting chain, if you operate in the Textile, Clothing, Footwear and Associated Industries (TCF) you should read this guide.

There are important minimum standards that businesses in the TCF must meet which are set out in Industrial Awards and legislation. You need to know your legal obligations under these laws and comply with them. Not meeting the minimum standards set by an Award is a breach of the law and can result in serious penalties.

A new Federal Award - the Textile, Clothing, Footwear and Associate Industries Award 2010 (the Award) - became effective on 1 January 2010. This Award, with one exception* replaces four Federal Awards and a large number of former State Awards which operated in the TCF industry. At the same time a range of other workplace obligations, including the National Employment Standards (NES), came into effect as part of the Commonwealth Parliament's *Fair Work Act 2009* reforms.

Importantly, these laws affect the contracts your business enters into and the arrangements you make with other businesses. There are also legal obligations relating to workers, whether they are your in-house workers, 'outworkers' or 'homeworkers', or workers engaged by your suppliers or contractors.

The laws may apply to your business even though your business does not engage any homeworkers or outworkers. They also give rights to workers even when they are called 'contractors'.

In addition, some States have passed laws that provide additional rights for, and obligations to, outworkers. These laws vary from State to State. If your business operates in one of these States, it will need to comply with these laws as well. You should seek advice if you have any questions about the obligations relevant to you or your business.

This guide applies to employers in the private sector. Different rules may apply to State government and State public sector employers.

**State Awards in Western Australia continue to operate in relation to employers who are not constitutional corporations.*

What laws apply to you?

Almost all businesses in the textile, clothing and footwear industry are covered by the National Workplace Relations System. This includes the Textile, Clothing, Footwear and Associate Industries Award 2010* (the Award); the National Employment Standards (NES) under the *Fair Work Act 2009*; and any other relevant laws.

There are three factors that determine which laws apply to you:

1. whether your business is part of the textile, clothing and footwear industry (TCF)
2. whether your business is a 'constitutional corporation', *and*
3. where your business is located within Australia and when it started.

1. Check if your business is part of the TCF

CLOTHING	TEXTILE	FOOTWEAR
Your business is part of the clothing industry if you	Your business is part of the textile industry if you	Your business is part of the footwear industry if you
<ul style="list-style-type: none"> • wholly or partially design, prepare, manufacture, process, label, or finish any type of garment, apparel or articles, <i>or</i> • wholly or partially control, manage or supervise the design, preparation, manufacturing, processing or finishing of any type of garment, apparel or articles, including <ul style="list-style-type: none"> - aprons, napery, nappies, manchester, linen, handkerchiefs, mosquito nets, artificial flowers, cot covers, blankets, collars, cuffs, neckwear, earmuffs, rugs and mats, hats and headwear, umbrellas or parasols or the like. 	<ul style="list-style-type: none"> • commission dyeing, bleaching or finishing • produce, manufacture, sell or distribute any artificial silk, braids, carpets, cloth (including shade cloth, cotton, blinds, cotton wool, elastic webbing, fabrics, felt, wool and/or fibre), filament yarns, flax, hosiery, kraft paper yarns, knitted articles, labels, lace, man-made fibres, non-woven fabrics, arrow fabrics, pure silk, quilting, ribbons, technical textiles, synthetic fibres and yarns, tassels, textile waste and flock, trimmings, wadding, webbing tapes, woollen and worsted, and woven materials • produce, manufacture, sell or distribute personal and household hygiene products, medical dressings, or materials • provide embroidery, knitting or mercerising services, <i>or</i> • print textiles. 	<ul style="list-style-type: none"> • design or cut patterns for preparation and manufacturing • make or repair footwear, (including boots, shoes, sandals, surgical and fitted boots and slippers), or any component parts from any material (including cutting or preparing half soles, tip fillers or top pieces), <i>or</i> • are a bespoke bootmaker, repairer, or heel bar operative.
<p>IMPORTANT: Any allied manufacturing and fabricating industries, and bag and button making industries are included in the TCF industry.</p>		

***NOTE:** The 'Outworker Provisions' of the Award apply to businesses even when they do not engage outworkers. **SEE PAGE 42**

2. Is your business a 'constitutional corporation'?

If you are a Pty Ltd business and your main activity is buying and/or selling goods such as garments, articles of clothing or material, then you are a constitutional corporation. Most businesses in the TCF industry fall into this category.

- ▶ **If your business is a constitutional corporation and employs, or usually employs, one or more staff, then you MUST COMPLY with the Award and the National Employment Standards. Your business must also comply with any other relevant State or Territory based laws such as Workers Compensation.**

FOR DETAILS OF THE NATIONAL EMPLOYMENT STANDARDS, SEE PAGE 29

A small number of employers are not constitutional corporations – for example if you are an unincorporated sole trader or unincorporated partnership. Even so, you may still need to comply with the Award and the National Employment Standards.

TO FIND OUT WHAT LAWS APPLY IN THIS SITUATION, GO TO STEP 3

3. Where is your business located within Australia, and when did it start?

If your business is NOT a constitutional corporation, then the laws that apply to you depend on which State or Territory your business is based in, and whether your business started before or after 1 January 2010.

If you're based in Victoria, Northern Territory or ACT

- ▶ **You must comply with the Award and the National Employment Standards, as well as any other relevant State or Territory based laws such as Workers Compensation. This applies regardless of whether your business started before or after 1 January 2010.**

If you're based in New South Wales, Queensland, South Australia or Tasmania – and your business started after 1 January 2010

- ▶ **You must comply with the Award and the National Employment Standards, as well as any other relevant State or Territory based laws such as Workers Compensation.**

If you're based in New South Wales, Queensland, South Australia or Tasmania – and your business started before 1 January 2010

- ▶ **You must comply with your current State Award, as well as the National Employment Standards and any other relevant laws such as Workers compensation. These special transitional rules apply until 31 December 2010, when your business will then fall in line with the national Award.**

If you're based in Western Australia and your business only operates in that State

- ▶ **You are not covered by the national laws. This applies regardless of whether your business started before or after 1 January 2010. You must still comply with the relevant State laws and State Awards.**

The Award

The 'Textile Clothing Footwear and Associated Industries Award 2010' (the Award) came into effect on 1 January 2010. Along with the National Employment Standards (NES) it is designed to make sure workers across the entire industry receive fair pay and work in decent conditions.

Your key responsibilities under the Award

CONSULTATION

If your business makes a definite decision to introduce major changes (in production, program, organisation, structure or technology) that are likely to have significant effects on employees, you must notify them and their representatives, if any, and genuinely discuss the changes. You must also discuss and consider measures to avert or mitigate any adverse effects from these changes.

DISPUTE RESOLUTION

If disputes arise with your employees that cannot be resolved, they must be referred to Fair Work Australia. Your employees are also entitled to take leave to be trained in dispute resolution procedure.

TYPES OF EMPLOYMENT

The Award covers full-time employment, part-time employment, or casual employment of in-house employees. It restricts you to employing outworkers on a full-time or a part-time basis only – NOT on a casual basis. It restricts the hours of work and provides certain benefits for part-time and casual employees. It also sets out what loading should be paid to casual employees.

TERMINATION OF EMPLOYMENT AND REDUNDANCY

There are minimum requirements which your business must follow when terminating employment. The Award and the NES also set out minimum payments and other minimum entitlements for employees who are made redundant.

RATES OF PAY & ALLOWANCES

The Award sets out a classification system for your employees with the corresponding minimum rates of pay. It also covers the allowances your employees are entitled to, some of which only apply to particular parts of the TCF industries. For example, workers in the clothing industry may be entitled to a 'Head of Table allowance', which does not apply for the textile or footwear industries.

FOR THE CURRENT RATES OF PAY, SEE PAGE 27

HOURS OF WORK AND RELATED MATTERS

The Award sets out when your employees can work. It includes arrangements for working on rostered days off, and provisions regarding shiftwork. Breaks and overtime rates for your employees are also set out in the Award.

CONTINUED NEXT PAGE

LEAVE AND PUBLIC HOLIDAYS

Under the Award, you are required to pay leave loading of 17.5%, offer special leave provisions to shift workers, and other provisions regarding the taking of annual leave. The Award also requires you to pay those who work on public holidays at the rate of 250%, for a minimum of three hours.

SUPERANNUATION

Under the Award, you are required to make super contributions for your employees in accordance with the relevant Federal legislation, no later than 28 days after the end of each month. The Award also covers voluntary employee contributions. In cases where your employee has not chosen a superannuation fund, a default fund will be used.

TRANSITIONAL PROVISIONS

If you have been previously bound by a State-based Award, or other pre-modern Federal Award, the national Award sets out how its new payments are to be phased in'

NOTE: *the Transitional Arrangements in the modern Award deal with all 'Award based transitional instruments' including State Awards, NAPSA's and former Federal Awards.*

SEE PAGE 4

You can read a complete copy of the Award at www.fwa.gov.au

How to comply with the Award

If your business intends to enter into arrangements to have work done on its behalf, there are three things it must do to meet its legal requirements under the Award:

1. register with the Board of Reference and keep Lists of any arrangements it makes
2. make and keep up-to-date Work Records, *and*
3. make appropriate 'arrangements' with anyone that does your work.

1. Registration with the Board of Reference and keeping Lists

THE BOARD OF REFERENCE

Boards of Reference are established under the Award and usually chaired by someone from Fair Work Australia. There is a Board of Reference in each capital city (apart from Canberra in the ACT and Darwin in the NT).

WHY DO I NEED TO REGISTER?

Unless all of your garments or products are produced solely by your employees at your business premises, you must be registered with the Board of Reference. If you make any arrangements without being registered with the Board of Reference, you are breaking the law and may face penalties.

Under the Award, you can only

- make an arrangement with another principal if they are also registered with the Board of Reference. (*Unless that business performs all the work within their own factory premises – in that case, their business is not required to be registered*).
- engage up to 10 individual workers (other than in-house employees) at any one time. (*If your business makes arrangements with more than 10 workers, you must have consent from the TCFUA or the Board of Reference*).

REGISTRATION

You can get a copy of the Board of Reference application form by contacting Ethical Clothing Australia or your local TCFUA branch. Visit www.ethicalclothingaustralia.org.au

Upon registration, you will be given a registration number, which you will need to use for documents such as Work Records.

RENEWING YOUR REGISTRATION

You must renew your registration with the Board of Reference annually. You do this by completing and submitting a new Board of Reference application form each year. Unless there has been some concern about your compliance with the Award, or you have not provided sufficient information to support your application, your registration will normally be renewed for another 12 months.

CONTINUED NEXT PAGE

LISTS

To make sure that the contracting chain is as transparent as possible, your business is required to make and retain a List that contains

- the name and address of each principal or person with which you make an arrangement, *and*
- the date each arrangement is made. *(If it is an on-going arrangement write 'on-going')*

You must provide a copy of the List to

- the General Manager of Fair Work Australia, *and*
- the State Branch of the TCFUA in your state

within seven days of the last working day of each of February, May, August and November financial quarters.

This is part of your Board of Reference registration and compliance requirements.

2. Keep up-to-date Work Records

You must retain all of your businesses Work Records, Lists, written agreement records and/or stand down records for six years after the relevant record was made.

The TCFUA is entitled to inspect and copy these documents. If they do need to inspect them, you must provide any requested documents within **two working days** of the request being made.

FOR MORE DETAILS ABOUT THE INSPECTION AND COPYING OF WORK RECORDS, SEE CLAUSE F6 OF THE AWARD

FOR MORE ON HOW TO KEEP WORK RECORDS, SEE PAGE 10

3. Make appropriate 'arrangements' with anyone that does your work

Your business will more than likely make 'arrangements' for work to be done – at some point from a product's initial design through to its completion – by someone from outside your business.

If your business engages another business, or individuals outside of your business, to undertake work on your behalf, then you are making an external work 'arrangement'. This involves any kind of work on, or in relation to any of your products, that is carried out by someone other than an 'in-house' employee working at your business premises.

WHAT ARE YOUR RESPONSIBILITIES REGARDING ARRANGEMENTS?

When you arrange for work to be done externally, your business is responsible for the working arrangements of whoever does that work – even if the worker who ultimately does the job is not the person you made the original arrangements with.

- ▶ **The moment your business makes an arrangement with someone to have work carried out for you, the Award applies to your business. If this happens, you must enter into an appropriate arrangement with the provider, as stipulated by this guide.**
- ▶ **It is also your responsibility to make sure that everyone in the supply chain is covered by an appropriate work arrangement. Even if you are not the 'head of the chain' you are still responsible for any arrangements that occur after you pass on the work.**

SEE HOW TO MAKE EXTERNAL WORK ARRANGEMENTS, ON PAGE 12

EMPLOYEES WORKING AT YOUR BUSINESS PREMISES

If all of your production is completed solely by your employees working at your business premises, the outworker provisions of the national laws will not apply to you. If your business directly employs people, you must meet your obligations to them under the Award, the NES and any State or Territory based laws.

FOR MORE ON AWARD WAGES AND ENTITLEMENTS, SEE PAGE 27

FOR MORE ON THE NES, SEE PAGE 29

FOR MORE ON STATE AND TERRITORY LAWS, SEE PAGE 30

How to make and keep Work Records

Work Records

Each time you make an external work arrangement, your business must create and retain a document called a Work Record (often called a Garment Specification Sheet). You must give a copy of this Work Record to the person with whom you're making the arrangement before the work is commenced. Ideally, copies of Work Records should accompany the relevant garments, articles or material all the way through the contracting chain, down to the worker who ultimately carries it out.

YOUR WORK RECORD MUST INCLUDE

- Your business' name, address, ABN/ACN and/or registered business number;
- Your business' Board of Reference registration number;
- The name and address of the person to whom the arrangement applies;
- The address(es) where the work is to be performed;
- The time and date for commencement and completion of the work;
- A description of the work required and the garments, articles or material to be worked on (including diagrams where available and details of the type of garment or article, seam type, fabric type, manner of construction and finishing);
- The number of garments, articles or materials of each type;
- The sewing time for the work required on each garment, article or material, based on a fair assessment of how long the work will take using a method that you are able to demonstrate and verify. For example – using a stop watch to time the sample machinist; *SEE PAGE 26*
- The price to be paid for each garment, article or material.

WHEN MAKING AN ARRANGEMENT WITH A WORKER, IT MUST ALSO CONTAIN

- The time and date that the garments, articles or materials will be provided to the worker prior to commencement of the work, and picked up from them after completion;
- Details of the Time Standard you applied in order to determine the appropriate sewing time per garment; *SEE PAGE 26*
- The number of working hours needed to complete the work, calculated by multiplying the number of garments by the sewing time per garment, article or material – *these measures help to make sure the Work Records contain enough information to calculate that the worker is being paid an hourly rate comparable to that of an in-house employee;*
- The total amount to be paid to the worker for their hours and days.

- ▶ You must create a new Work Record each time you make an arrangement with someone to have work performed for you. You must give a copy of this Work Record to the person prior to the commencement of any work that is part of the arrangement.

FOR THE FORMULA TO CALCULATE THIS PAY AMOUNT, SEE PAGE 27

FOR COPIES OF A WORK RECORD (GARMENT SPECIFICATION SHEET) TEMPLATE, SEE PAGES 37-38

ADAPT YOUR OWN GARMENT SPECIFICATION SHEETS

Many businesses have their own garment specification sheets that they give to people or other businesses that are doing work for them. You may like to consider adapting yours to include all of the information requirements for Work Records as well.

RECORD VALUE AND VOLUME DATA

A good method of collecting and maintaining Work Records for internal business records is to keep an Excel spreadsheet as shown below. This, in addition to the Garment Specification Sheet, to assist you in recording information to cover your legal obligations under the Award.

	A	B	C	D	E	F	G	H
1								
2	Studio Adam - production Feb 2010							
3								
4	Maker	Style	Date of Issue	Date of Return	Number of Units	\$ / Unit	Sewing Time / Unit	
5								
6	ABC Fashions	A4228	2-Feb	1-Apr	78	\$ 28.80	55	
7	ABC Fashions	D23498	2-Feb	1-Apr	46	\$ 31.20	60	
8	ABC Fashions	F23074	2-Feb	7-Apr	53	\$ 29.12	56	
9	ABC Fashions	G39288	4-Feb	7-Apr	23	\$ 24.44	47	
10	ABC Fashions	C12678	8-Feb	7-Apr	57	\$ 18.20	35	
11	ABC Fashions	A1296	9-Feb	9-Apr	86	\$ 23.92	46	
12	ABC Fashions	C12978	23-Feb	9-Apr	44	\$ 29.12	56	
13								
14	Rate paid at \$0.52 per minute							
15								
16								
17								

Providing the information in the format above allows the appropriate authorities easy access and inspection of your records if necessary.

THIS SPREADSHEET IS AVAILABLE AT WWW.ETHICALCLOTHINGAUSTRALIA.ORG.AU

How to make external work arrangements

Once your business is registered with the Board of Reference, you can make external work arrangements. These can be with another principal business, or with a worker – and there are different obligations for each. The first step is to define who you are making an arrangement with.

1. Define who you are you making an arrangement with

PRINCIPALS

If you are making an arrangement with a

- business or person that may enter into arrangements to have work done outside its premises
- business that is incorporated (i.e. it has 'Pty Ltd' or 'Ltd' after its name)
- business or person that employs people in the TCF industries
- business operating in the Australian Capital Territory or the Northern Territory, or
- government or government authority

then you are most likely making an arrangement with another principal business. Under the Award they are called a **principal**.

- ▶ **When you make an arrangement with a principal, you must comply with the general requirements for making arrangements under the Award.**

GO TO STEP 2 FOR THESE REQUIREMENTS

WORKERS

You are making an arrangement with a **worker** if the person

- performs work at private residential premises
- performs work at premises not conventionally regarded as being business premises
- personally performs the work that is the subject of the arrangement;
- is employed by you, but does not carry out their work on your business premises
- has an ABN or calls themselves a 'contractor' or 'independent contractor', and does the work themselves; or
- is trading as an incorporated entity such as a Pty Ltd business, or an incorporated association, and the business is owned by them or a member of their family, and they or other family members do the work themselves.

- ▶ **When you make an arrangement with a worker, you must comply with the requirements for making arrangements with workers under the Award. These obligations also include the general requirements for making arrangements with principals.**

GO TO STEP 3 FOR THESE REQUIREMENTS

NOTE: *Employing a person at your business premises does not count as entering into an arrangement with a worker. Such 'in-house' employees are covered by other provisions under the Award. SEE PAGE 9*

2. How to make arrangements with another principal business

When you make an arrangement with another principal business, it is always possible that they may in turn have your work performed by someone else, such as an outworker or another business or contractor. This is why your arrangement must include a requirement for the other business to

- have a written agreement with any other person who performs any work which is the subject of the arrangement
- make sure that the written agreement contains all of the matters set out in the relevant Work Records, *and*
- make sure the written agreement provides for wages and conditions no less favourable than those provided to workers under the Award.

When making arrangements with another principal business, you must make sure that

- Your business is registered with the Board of Reference.
SEE PAGE 7
- The business with whom you are making an arrangement is also registered with the Board of Reference if they also enter into an arrangement to have the work performed on their behalf.
- Your arrangement with the other business contains the required minimum entitlements as specified by the NES.
SEE PAGE 29
- You have made a Work Record (often called a Garment Specification Sheet)
SEE PAGES 10-11 AND PAGES 37-38
- You have given a copy of this Work Record to the business with whom you are making an arrangement.
- You have added details of this arrangement to a running List of arrangements your business enters into.
SEE PAGE 8
- You are able to provide copies of this List as part of the Board of Reference registration form and compliance requirements.

FOR THE 'MAKING ARRANGEMENTS WITH A PRINCIPAL CHECKLIST', SEE PAGE 39

FOR EXAMPLES OF WORK ARRANGEMENTS, SEE PAGE 23

USE A STANDARD CONTRACT TO KEEP YOUR ARRANGEMENTS COMPLIANT

A straightforward way of making sure that your arrangements comply with the Award is to have a document template that is used each time you make an arrangement.

FOR WORK ARRANGEMENT TEMPLATES, SEE PAGES 34-36

CONTINUED NEXT PAGE

3. How to make arrangements with a worker

When you make arrangements with a worker, there are a number of requirements that you must comply with.

These requirements include

- having a written agreement with *any* other person who performs *any* work which is the subject of the arrangement
- making sure that the written agreement contains all of the matters set out in the relevant Work Records
- making sure that the written agreement provides for wages and conditions no less favourable than those provided to workers under the Award
- having a written agreement with the worker specifying the standard terms of employment as specified under the Award and the National Employment System
FOR ADDITIONAL REQUIREMENTS FOR MAKING ARRANGEMENTS WITH WORKERS, SEE PAGE 16
- providing workers with a copy of Schedule F, including Appendix to Schedule F (Information Statement for Outworkers).

FOR A COPY, SEE PAGE 50

When making an arrangement with a worker, you must make sure that

- Your business is registered with the Board of Reference.
SEE PAGE 7
- You have made a Work Record (often called a Garment Specification Sheet).
SEE PAGES 10-11 AND PAGES 37-38
- You have given a copy of this Work Record to the worker with whom you are making an arrangement.
- Your arrangement with the worker contains the required minimum entitlements as specified by the NES.
SEE PAGE 29
- You have added details of this arrangement to a running List of arrangements your business enters into.
SEE PAGE 8
- You are able to provide copies of this List when required.
- You have made a signed written agreement detailing the hours of work in accordance with the Award.
FOR DETAILS ON HOW TO CREATE ACCEPTABLE WRITTEN AGREEMENTS, SEE PAGE 16
- Your Work Records contain the required additional information for arrangements with workers.
SEE PAGE 16
- You have used the proper Time Standard to calculate the sewing time.
SEE PAGE 26

CONTINUED NEXT PAGE

- You have provided the worker with a copy of Schedule F, including Appendix to Schedule F (Information Statement for Outworkers).
FOR A COPY, SEE PAGE 50
- You are providing the correct minimum conditions in accordance with the Award.
SEE PAGE 18
- You are paying the worker on a weekly basis.
- You are providing the worker with all necessary materials, including trimmings and threads.
- You are making sure that all materials, products, garments or articles are delivered to and collected from the worker at no cost to them.

FOR THE 'MAKING ARRANGEMENTS WITH A WORKER CHECKLIST', SEE PAGE 39

FOR EXAMPLES OF WORK ARRANGEMENTS, SEE PAGE 23

Additional requirements for making arrangements with workers

In addition to those already discussed, there are three important practical requirements that you must fulfill when making arrangements with workers. It is your responsibility to:

1. make a written agreement with them
2. provide them with the minimum employment conditions as specified under the Award and any other relevant law, *and*
3. provide them with a copy of Schedule F, including Appendix to Schedule F (Information Statement for Outworkers).

1. You must make a written agreement

Before any work arrangement commences, your business must make a signed written agreement with the worker specifying the type of employment, i.e. whether you are providing them with work on a full-time or part-time basis. **It is illegal under the Award to employ an outworker on a casual basis.** You must also state the hours of work – and if you are providing work on a part-time basis you must state the agreed number of hours per week. Your written agreement must also state the agreed payment.

THE TYPE OF EMPLOYMENT

You must first propose the terms of the written agreement to the worker.

This proposed written agreement must be

- expressed clearly and simply
- in a language that the worker would use and understand (you may need to have the proposed written agreement translated), *and*
- provided to the worker for a reasonable amount of time for them to review it before it is due to be signed.

You and the worker may decide to vary the agreement at a later stage (for example, to increase or decrease the number of hours). Any proposed variation must also be in writing and be signed. Any variation will start 3 days after it is signed.

You must keep copies of

- the proposed written agreement
- the signed written agreement
- any variation agreement, *and*
- an English-language version of any document that is in a language other than English.

THE HOURS OF WORK

The Award permits engagement on either a full-time or part-time basis.

It does not permit a worker to be engaged on a casual basis.

Your business can engage a worker to work

- full-time, @ 38 hours per week
- regular part-time, with no less than 20 regular hours per week to be agreed between your business and the worker, *or*
- regular part-time, with no less than 15 regular hours per week to be agreed between the principal and the worker with the consent of the TCFUA.

There is a maximum number of hours you can engage a worker. In each ordinary working week, you must not require the worker to complete more than 38 hours work, or the agreed number of part-time hours, whichever is less.

THE AGREED PAYMENT

Each worker is entitled to a minimum payment. Under the Award, you are permitted to pay a worker on piece rates. However, you must pay them for either 38 hours work each week, or the agreed number of part-time hours, regardless of whether you provide enough work for those hours to be used (this only applies where the worker is ready, willing and able to work).

You cannot require a person to work on a Saturday, Sunday or public holiday (or set times and dates for the commencement and completion of work which requires them to work on a Saturday Sunday or public holiday) without obtaining their prior written agreement. This written agreement must specify the date(s), and number of hours to be worked on each date(s).

If the written agreement does not specify how many hours the person is to work on a Saturday, Sunday or a public holiday, the Award deems the worker to have worked a full day (7.6 hours) on each date.

If the times and dates for the commencement and completion of work would require the person to work on a Saturday, Sunday or public holiday, then you have two options:

1. you can extend the time and date for completion to ensure that they do not have to work on that Saturday, Sunday or public holiday, *or*
2. the worker can choose to perform the work - in which case they will be deemed to have worked a full day (7.6 hours) on each of those days.

You are also required to make additional payments where work is performed on one of these days. (Refer to page 27)

There are other requirements relating to the maximum number of hours a worker should work, as well as to a worker's rights to request flexible working arrangements. These are explained on the next two pages.

FOR WRITTEN AGREEMENT TEMPLATES, SEE PAGES 34-36

2. You must provide the minimum conditions for workers

As a principal, it is your responsibility to provide the worker with a number of minimum conditions. These are set out below.

NATIONAL EMPLOYMENT STANDARDS

In addition to the Award, the National Employment Standards (NES) requires you to treat all workers as employees and ensure that they receive the full benefits of the 10 NES entitlements.

A SUMMARY OF THESE ENTITLEMENTS IS ON PAGE 29

For full details, visit www.fwa.gov.au

HOURS OF WORK, AND WORK ON WEEKENDS AND PUBLIC HOLIDAYS

THE MINIMUM REQUIREMENTS FOR HOURS AND DAYS OF WORK ARE EXPLAINED ON PAGE 17

TIME STANDARDS

THE MINIMUM REQUIREMENTS FOR TIME STANDARDS ARE EXPLAINED ON PAGE 26

PAYMENT FOR WORK DONE

An aim of the Award is to make sure that an outworker receives a rate comparable to that of an in-house employee. The Work Record must show the outworker's rate of pay and the total amount to be paid.

TO CALCULATE THE CORRECT RATE OF PAY, SEE PAGE 27

ADDITIONAL OBLIGATIONS AND PAYMENTS TO BE MADE

The Award aims to ensure that a worker is engaged on terms and conditions no less favourable than those applying to in-house employees. As a result, some significant obligations continue to apply when your business makes arrangements with workers directly, such as the requirement to pay annual leave and leave loading, other kinds of leave such as personal/carers leave and compassionate leave, and the obligation to pay superannuation.

PROVISIONS IN THE AWARD THAT APPLY TO WORKERS

While there are some provisions that don't apply to outside workers (these are listed at the bottom of the section) in some significant cases the Award requires you to treat the worker as an employee. Below are the significant provisions of the Award that apply to workers as well as employees:

Clause 18 – Termination of Employment

If you terminate the engagement of an outworker, you may be required to give them a certain period of notice or make a payment in lieu of notice.

Clause 19 – Redundancy

If you make a worker redundant, you may have to pay them severance payment.

Clause 22 – Higher Duties

If you require a worker to perform work that attracts a higher rate than that provided for in the worker's ordinary duties, and this work exceeds a total of two hours on any day, you must pay them for all the work done on that day at the *higher daily rate*.

Clause 24.2 – Accident Pay

In some States, a worker may be entitled to accident pay.

Clause 24.3 – District Allowances

In the Northern Territory and Western Australia, a worker may be entitled to a district allowance.

Clause 24.4 – Protective Gloves or Cream

If you require a worker to use protective gloves or a protective cream to handle chemicals, solvents, solutions or dies, and do not provide the worker with protective gloves or cream, you must reimburse the worker for any costs they incur to buy them.

Clause 24.6 – First Aid Attendance Allowance

Where you appoint the worker to be a first aid attendant, you must pay them the appropriate allowance.

Clause 24.8 – Hospital Allowance

If a worker suffers an injury arising out of and in the course of their employment, and this injury does not give rise to an entitlement to Workers Compensation, but does necessitate their attendance during working hours at a doctor or hospital, then you must reimburse them for all expenses reasonably incurred in connection with that attendance.

Clause 24.9 – Uniform Allowance

If you require the worker to wear a uniform, either the uniform must be provided and claimed without charge or you must pay a relevant allowance.

Clause 24.11 – Protective Clothing Allowance

Where you require the worker to wear protective clothing you must reimburse the cost of the worker purchasing it, or supply the worker with the clothing.

Clauses 26 and 27 – Textile Industry and Felt and Wadding Industry Allowances

Workers who have to do particular kinds of work in the textile, felt and wadding industries are entitled to particular allowances.

Clause 41 – Annual Leave

In addition to the requirements in the NES, the Award provides obligations to outworkers with respect to annual leave.

Clause 42 – Personal/Carers Leave and Compassionate Leave

The requirements of the NES apply to outworkers.

Clause 44 – Superannuation

The provisions of the Award and relevant legislation apply.

Special provisions also apply to outworkers under Schedule F of the Award for:

- Hours of work
- Overtime
- Payment of wages, *and*
- Regular part-time employment.

CONTINUED NEXT PAGE

PROVISIONS IN THE AWARD THAT DO NOT APPLY TO WORKERS

Because of the special provisions applying to workers who are not working at your business premises, some of the Award's obligations, allowances and payments are NOT applicable to them:

- Award posted provisions
- Casual employment
- Dining room allowance
- Meal allowance
- Mid day meal break
- Rest room allowance, *and*
- Tool allowance.

Specific provisions (under Schedule F) relating to the engagement of workers include the following:

- Hours of Work
- Overtime
- Payment of Wages, *and*
- Regular part time employment.

WHEN AND HOW A PAYMENT SHOULD BE MADE TO A WORKER

Workers must be paid on a weekly basis. You must pay the worker within two working days of the end of the ordinary working week and by a method agreed between you and the worker. At or prior to the time of payment, you must provide the worker with details in writing of the gross payment, any deduction made and the next payment.

PROVISIONS OF MATERIALS

You are required to provide the worker with all necessary materials, trimmings and sewing threads to perform the work required. You must also ensure that all relevant materials, products, garments or articles are delivered to and collected from the worker at no cost to them.

PAYMENT BY RESULTS

Under the Award, you may also include a 'payment by results' system as part of payment to the worker. In such a system, employees are paid according to a formula set by the Award. In general terms, this formula requires you to guarantee the payment of at least the minimum Award rate of pay plus at the least a 20% bonus for articles produced within the set time standard. There are significant requirements imposed by the Award under such a scheme, and if you are considering using it with respect to outworkers, you should first seek legal advice.

STAND DOWN

Schedule F of the Award contains very limited provisions regarding stand down of outworkers.

COMPLIANCE WITH THE AWARD

In addition to making sure that your own business complies with the Award, you must also not in any way, whether directly or indirectly, be involved in any conduct that

- hinders, prevents or discourages the observance of the outworker provisions of the Award
- causes or encourages or is likely to cause or encourage, a breach or non-observance of the outworker provisions of the Award.

FOR EXAMPLES OF WORK ARRANGEMENTS, SEE PAGE 23

YOUR BUSINESS' OBLIGATION WHERE A WORKER DOES NOT RECEIVE THEIR REMUNERATION

Where your business as a principal makes an arrangement directly with a worker, the principal will be liable for any unpaid remuneration.

The Award also deals with two other situations where your business may be liable for a worker's unpaid remuneration, even where you have not engaged the worker directly.

Extended liability of principal

Where your business enters into an arrangement with another person to have work performed for it, and that person in turn engages another worker, your business is liable for any unpaid remuneration owed to the worker they engage.

Unpaid remuneration includes any

- commission
- leave or other entitlements, or
- reimbursement or compensation for any expense incurred or loss sustained by them.

However, your business will not be liable for any unpaid remuneration if

- your business has obtained a written statement from the person that all unpaid remuneration payable to the worker has been paid, *and*
- your business does not have reason to believe that the written statement is false.

You must be able to support and justify your belief based on knowledge and past experience.

You are entitled to withhold any payment owed to the person you made the arrangement with until they provide you with the written statement. Any penalty for late payment under the arrangement does not apply in this situation. If the person whom you have made an arrangement with is a principal in their own right, then they are prohibited from providing you with a written statement knowing it to be false.

NOTE: *This extended liability does not apply where the person with whom a principal contracts is bankrupt or is under external administration, and payments under the arrangement are payable to the administrators or trustee in bankruptcy.*

Extended liability of the 'apparent principal'

In most cases, a worker will have worked on a garment, article or material without being clear who the actual principal is that commissioned the work. For example, there may be labels or business names on a garment or invoice that are different to the name of the principal who engaged the worker.

CONTINUED NEXT PAGE

In this case, workers can claim for any unpaid remuneration against the principal who the worker believes they carried out the work for – under the Award they are called the ‘apparent principal’.

A worker can claim against an apparent principal within six months of completion of the work by providing a statutory declaration in accordance with the Award. The declaration will include a description of the work, when the work was done and the amount of unpaid remuneration being claimed.

If a principal is served with a claim they will be taken to be liable for the unpaid remuneration unless they make a claim against another person that they know or reasonably believes is liable within 14 days; *and*

- the apparent principal notifies the worker of the subsequent claim they have made
- the liable party pays the unpaid remuneration to the worker within 14 days, *and*
- the liable party notifies in writing the apparent principal that payment has been made.

NOTE: *An apparent principal is not excluded from liability by obtaining a written statement from any party.*

However, if the work in question was not done by the worker, there is no liability. Also, if the claimed amount is above the actual amount of unpaid remuneration, there is no liability to the amount of the excess.

3. You must provide a copy of the Information Statement for Outworkers

When you make an arrangement with a worker, you must provide them with a copy of Schedule F, including Appendix to Schedule F (Information Statement for Outworkers). This appendix describes the rights and obligations you have, as an employer, to outworkers.

You must provide a copy of this schedule in the appropriate language for the worker.

FOR A COPY OF THE INFORMATION STATEMENT FOR OUTWORKERS, SEE PAGE 50

FOR THE ‘MAKING ARRANGEMENTS WITH A WORKER CHECKLIST’, SEE PAGE 39

Example work arrangements

Work arrangements in this industry range from simple agreements between two principals, or a principal and a worker, to complex combinations of arrangements – both direct and indirect. Under the Award, there are strict rules controlling which work arrangements you can legally enter into, what your responsibilities are, and how you must document those arrangements.

your responsibility to others working on your behalf

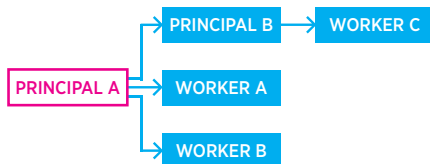
Generally, if you outsource any work, it is your responsibility to make sure anyone in the supply chain that you initiate is paid the appropriate amount and receives the appropriate working conditions as specified under the Award. Even if your business has not made an arrangement with someone directly, it can still be held responsible if they are not paid the correct Award wages and entitlements.

In all of the following supply chain examples the principal highlighted in *pink* is responsible for those that follow in *blue*.

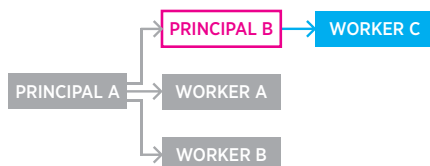
Below are two examples that show the two main points about supply chains you need to understand:

1. Under the Award, businesses that give work out are called ‘principals’, and anyone doing the work is called a ‘worker’.
NOTE: ‘Workers’ include in-house workers and outworkers (sometimes called a ‘homeworker’)
2. Under the Award, businesses that give work out can be held responsible for making sure that those that follow in the supply chain receive the appropriate wages and entitlements under the Award. (i.e. Principal A must pay Principal B an amount that enables them to pay the correct wages and entitlements to any workers they use).

EXAMPLE 1



EXAMPLE 2



EXAMPLES CONTINUED NEXT PAGE

single arrangements

The most common arrangements are those between your business and another principal business, or between your business and a worker.

NOTE: *By keeping your supply chains shorter, your business is more likely to keep its making costs down and comply with the Award.*

SINGLE ARRANGEMENT BETWEEN 2 PRINCIPALS (YOU AND ANOTHER PRINCIPAL)

EXAMPLE: White Tee Shirts Pty Ltd needs to get 200 shirts screenprinted, so it makes an arrangement with Tommy Tees Pty Ltd. Tommy Tees agrees to do the work on their own factory premises.



SINGLE ARRANGEMENT BETWEEN A PRINCIPAL AND A WORKER (YOU AND A WORKER)

EXAMPLE 1: ETTY BETTY KIDS Pty Ltd designs and makes clothes for children. In its new summer range a number of flower-shaped badges are featured on the clothes. So, ETTY BETTY KIDS makes an arrangement directly with a worker, 'Jen', to get the badges sewn onto 10 frocks, 15 hoodies and 30 tees.



EXAMPLE 2: Paul, a dressmaker, enters into an arrangement with Molly's Fashions to produce and finish 20 dresses in 3 days. Molly's Fashions is run by the Rose family and is a registered company with an ABN.

NOTE: *Mrs Rose does the work at home, sometimes with the help of her husband Mr Rose. Because they do the work from their home (i.e. non-business premises) Mr and Mrs Rose are legally classified as 'outworkers'.*



multiple arrangements

When your business needs a range of services to meet production needs or more capacity, you may enter into multiple arrangements with other principals and/or workers. The principals may in turn make their own arrangements with other principals or other workers to get the work completed.

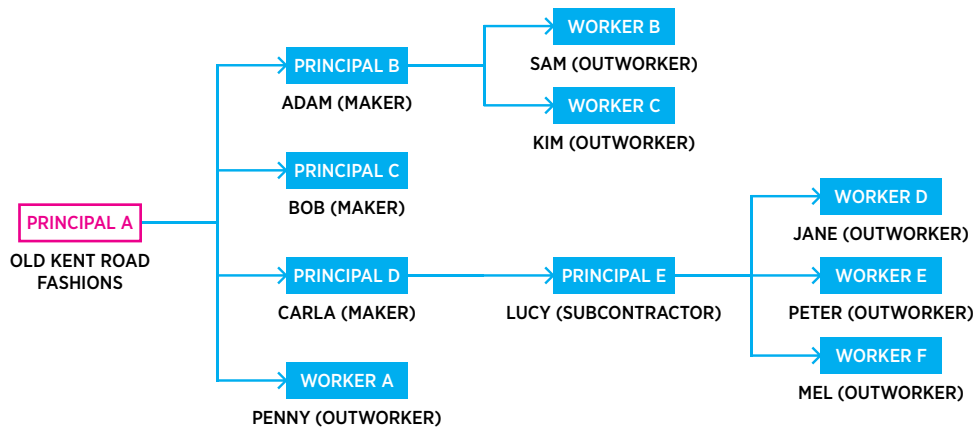
NOTE: *you can still be held responsible for the correct Award wages and entitlements.*

MULTIPLE ARRANGEMENTS BETWEEN YOU AND OTHER PRINCIPALS AND WORKERS

EXAMPLE: The diagram on the following page shows the owner of Old Kent Road Fashions making arrangements with makers Adam, Bob and Carla, and an outworker Penny.

The owner of Old Kent Road Fashions is responsible for paying enough to the makers Adam, Bob and Carla to allow them to pay their in-house employees and outworkers the correct Award wages and entitlements. The owner of Old Kent Road Fashions is also responsible for paying the correct Award wage and entitlements to Penny the outworker.

THIS IS IMPORTANT: *Under the Outworker Provisions in the Award your business is responsible even if you don't directly engage outworkers.*



Example of extended liability of the apparent principal

The owner of Old Kent Road Fashions can be held responsible if the correct Award wages and entitlements are not provided to all workers in the supply chain. This law also applies to any factory workers. For example:

- Jane is an outworker that Lucy (the subcontractor) has made an arrangement with.
- Jane knows she is making garments for Old Kent Road Fashions because of the label she sews into the garment.
- Jane keeps records of the work she does and knows she is not receiving Award wages and all her entitlements.
- Within 6 months of completing the work Jane notifies the owner of Old Kent Road Fashions of her underpayment.
- Under the Award the owner of Old Kent Road Fashions can withhold payment from Carla the maker until Jane receives her correct pay and entitlements. Carla the maker may also withhold payment to Lucy the subcontractor until correct payment is made to Jane. Alternatively, Old Kent Road Fashions, Carla and Lucy can enter into an agreement to share the underpayment amount.
- If the above options are not utilised then Old Kent Road Fashions will be held responsible for the correct Award wages and other entitlements.

SEE SCHEDULE F.7.3 OF THE AWARD

FOR MORE DETAILS ABOUT THE 'APPARENT PRINCIPAL', SEE PAGE 21

How to calculate the sewing time

As an employer, your Work Record (often called a Garment Specification Sheet) must show a fair and reasonable sewing time required for each item. If the Work Record is for an arrangement with a worker then it must show the 'Time Standard' that you applied to determine the appropriate sewing time for the work you commissioned.

The Time Standard is the logic you used in your assessment of what is a fair and reasonable time to perform the work.

Upon request from the TCFUA and other relevant authorities you must be able to demonstrate how your assessment was calculated. For example – using a stopwatch to time a sample machinist. You must be able to demonstrate the method you used.

Your calculation must take into account

- the longer time needed for the work to be performed off your premises than the Time Standard set for comparable work undertaken in a workshop or factory, *and*
- reasonable additional time to perform ancillary tasks such as bundling and unbundling, sorting and packing.

EXAMPLE

Sewing time for the construction of the garment in a factory environment

+

Additional time if work is to be done by an outworker

+

Time for ancillary tasks

=

Time Standard

FOR A WORK RECORD (GARMENT SPECIFICATION SHEET) TEMPLATE, SEE PAGES 37-38

How to calculate a worker's minimum pay rate

STEP 1

Determine appropriate classification/skill level for the worker

- There are 5 skill levels under the Award. Each are based on the level of skills of the employee and the nature and complexity of work they perform.

THESE ARE SET OUT IN CLAUSE 20 AND SCHEDULE B AND SCHEDULE G (DEFINITIONS) OF THE AWARD.

- Although it may vary depending on the nature and complexity of the work, anyone responsible for the construction of a finished garment will usually be classified at a minimum of a skill level 3.
- Each skill level has a different weekly rate of pay. Once you have determined the skill level of a worker and the weekly rate that it attracts, you can calculate the ordinary minute rate by dividing the weekly rate by 2,280. (i.e. the ordinary minute rate is 1/2,280 of the weekly rate).

The table below sets out the minute rates for the Award classifications at the time of writing this guide.

Skill level	Weekly rate	Minute rate (= weekly rate/2280)
1	\$606.40	27 cents
2	\$629.70	28 cents
3	\$651.30	29 cents
4	\$686.20	30 cents
5	\$729.30	32 cents

NOTE: *The weekly rates above apply from the first full pay period on, or after 1 July 2011. The weekly rates may increase each year. Always check the current version of the Award for the most up-to-date rates. The TCFUA can also help you gauge what the skill level is for various kinds of work.*

Once the minute rate is calculated, you can proceed to calculate the total amount to be paid.

STEP 2

Calculate how many minutes were taken to perform the work

This should be reflected in the Time Standard (see page 26) you have set and recorded in your Work Record (see page 10). You should be able to use the Work Record to determine the time taken to perform the work.

You will also need to know when the work was carried out, in the event that any work was performed on a Saturday, Sunday or public holiday. This is only permitted with the express agreement of the worker and attracts payment at a higher rate of pay.

In addition, if the person works beyond the agreed number of weekly hours, the hours worked in excess of that amount also attract a higher rate of pay.

CONTINUED NEXT PAGE

STEP 3

Factor in any work to be undertaken on a public holiday

If there is a public holiday during the time you have engaged a worker, and they perform no work on that day, you must pay them the equivalent of one day's pay (1/5 of the weekly rate). If you have engaged the worker part-time, you must calculate the payment on a pro-rata basis.

STEP 4

Calculate the total amount to be paid

Use the table below to first calculate the total ordinary amount of pay accrued during ordinary working weeks, then add the amount of overtime, then any time worked on weekends or public holidays. Finally, add any public holidays that fell within the period but when no work was done. The combined total is the amount you must pay your worker.

Time	Formula for calculating payment	
Work during the ordinary working week (i.e. agreed weekly hours)	The appropriate minute rate x number of minutes worked	\$ ordinary amount
Work in excess of the agreed weekly hours	1.5 x the appropriate minute rate x number of minutes worked	+ \$ overtime amount
Work on Saturday, Sunday or public holiday (or deemed to have worked on one of these days)	2.0 x the appropriate minute rate x number of minutes worked	+ work on weekend/public holiday amount
Public holiday where no work was performed	The worker's usual daily rate	+ public holiday payment
		= TOTAL PAYMENT

NOTE: The rates normally change each year. These wage calculations do not include the costs of entitlements that you are required to pay under the Award and NES. The example below does include these.

SEE NEXT PAGE

The make price must be enough to make sure that any workers employed directly by the principal, as well as any employed by the maker/contractor, receive their correct wages and conditions under the Award.

NOTE: The cost of contractor overheads is not an Award obligation. Nonetheless, these overheads should be considered by a Principal to determine the 'make price' for a particular garment or product.

THE MAKE PRICE CALCULATION

Workers at Skill Level 3 must be paid a minimum of \$0.38 per minute to make sure you are covering their Award wage and entitlements. In addition, a principal giving work to a maker/contractor should also cover overhead costs and a profit for the maker/contractor in the make price. These amounts will vary depending on a number of factors particular to the principal's business, (e.g. the location of the business; business rental/utilities costs; city/regional costs differences; scale of operations and volume of garments/products being produced). The make price is the sewing time x the additional cost per minute*:

Cost of employing someone at Award Skill Level 3	(0.38 cents per minute)
+ Cost of contractor overheads	(0.XX cents per minute)
= Cost per minute (i.e. the 'make price')	(0.XX cents per minute)

*FOR DETAILS ON HOW TO CALCULATE THE SEWING TIME, SEE PAGE 26

National Employment Standards (NES)

The new National Employment Standards set out the key work-related entitlements for your employees, under the *Fair Work Act 2009*. There are 10 minimum standards for employment which you need to comply with, and they apply from 1 January 2010. These conditions are in addition to your obligations under the Award.

What are the 10 NES entitlements?

The NES are set out in the *Fair Work Act 2009* and comprise 10 minimum standards of employment. Each standard is covered in detail in separate fact sheets, but in summary, the NES involve the following minimum entitlements:

- 1. Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.
- 2. Requests for flexible working arrangements** – this allows parents or carers of a child under school age, or of a child under 18 with a disability, to request a change in working arrangements to assist with the care of the child.
- 3. Parental leave and related entitlements** – up to 12 months unpaid leave per employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption- related leave.
- 4. Annual leave** – four weeks paid leave per year, plus an additional week for certain shift workers.
- 5. Personal/carer's leave and compassionate leave** – 10 days paid personal/carer's leave per year, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.
- 6. Community service leave** – this allows for unpaid leave for voluntary emergency activities, and leave for jury service with an entitlement to be paid for up to 10 days jury service.
- 7. Long service leave** – a transitional entitlement for employees as outlined in an applicable pre-modernised Award, pending the development of a uniform national long service leave standard.
- 8. Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.
- 9. Notice of termination and redundancy pay** – up to five weeks notice of termination and up to 16 weeks severance pay on redundancy, both based on length of service.
- 10. Provision of a Fair Work Information Statement** – this must be provided by employers to all new employees. It contains information about the NES, modern Awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, union rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

This summary of the NES is taken from the Fair Work Ombudsman's website.

Visit www.fairwork.gov.au

Other laws you need to be aware of

In addition to the Award and the National Employment Standards, there are State-based laws and Federal legislation that you may need to comply with, including: Outworker, Workers Compensation, Occupational Health and Safety, and Equal Opportunity and Anti-discrimination laws.

Contact your branch of the TCFUA, relevant employer association, or State government department/agency to check your specific obligations.

STATE-BASED OUTWORKER LEGISLATION

If you arrange for work to be performed outside your business or commercial premises, you must still comply with any State-based legislation covering outworkers, even if your business is also under the national Award. *There are outworker laws that apply on a State-by-State basis. These laws may apply to your business even if it does not directly engage any external workers.*

WORKERS COMPENSATION

In some states, outworkers and homeworkers are also covered by Workers Compensation legislation. *In Australia, laws relating to workplace compensation are made on a State-by-State basis rather than being covered by any Federal law.*

OCCUPATIONAL HEALTH AND SAFETY (OHS)

In some states, outworkers and homeworkers are also covered by OHS legislation. *Like Workers Compensation, OHS laws are currently made by the States and Territories, rather than the Federal government.*

NOTE: *Various governments around the country have signaled their intention to move to nationally consistent OHS laws by 2011.*

Visit www.safeworkaustralia.gov.au

EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION LAWS

There are laws at both the State and Federal levels that prohibit discrimination, harassment and other forms of adverse treatment. These laws apply to both current and prospective employees.

For information regarding State or Territory based legislation, contact

ACT ACT Human Rights Commission: www.hrc.act.gov.au

NSW Anti-Discrimination Board of New South Wales: www.lawlink.nsw.gov.au/adb

NT Northern Territory Anti-Discrimination Commission: www.nt.gov.au/adc

QLD Anti-Discrimination Commission of Queensland: www.adcq.qld.gov.au

SA South Australia Equal Opportunity Commission: www.eoc.sa.gov.au

TAS Office of the Anti-Discrimination Commission (Tasmania): www.antidiscrimination.tas.gov.au

VIC Victorian Equal Opportunity and Human Rights Commission: www.humanrightscommission.vic.gov.au

WA Equal Opportunity Commission Western Australia: www.equalopportunity.wa.gov.au

What happens if I do not meet my obligations?

The Award recognises there may be several steps in the 'supply chain' before an item reaches a worker. As a principal the Award sets out your obligations clearly so that every work arrangement you make, and each step involved in the making of any product, is transparent.

To make sure that workers at each level of a supply chain are receiving their Award wages and entitlements, it is your business' responsibility to comply fully with its legal obligations and take steps to make sure that **anyone else in the supply chain after you** also meets theirs. If one link in the chain is broken it is difficult to determine whether a worker is receiving Award wages or their correct entitlements.

FOR EXAMPLES OF TYPICAL SUPPLY CHAINS AND ARRANGEMENTS, SEE PAGES 23-25

Generally, businesses may be fined up to **\$33,000** for each breach of the Award. However, the courts have imposed significant fines – as high as **\$110,000** – on businesses found to have committed multiple breaches of the Award, even where those businesses haven't directly engaged any external workers.



Tools, templates and background information

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Arrangement with another principal to have work carried out (Agreement with a contractor/maker)

1.

Principal details

Business name

ABN or ACN

Board of Reference number

Business address

2.

The other principal's details (e.g. contractor/maker)

Business name

ABN or ACN

Board of Reference number (not needed if this principal performs ALL work on their own business premises)

Address where the work will be performed

3.

Agreement to supply a copy of the Work Record/ Garment Specification Sheet to the other principal (to meet your legal requirements under the Award)

I agree to providing the principal with a copy of the Work Record/Garment Specification Sheet

Is the work part of an ongoing arrangement?

Yes No

4.

Are you as the other principal (contractor/maker) making an agreement with anyone else to get the work completed?

No, go to Step 6

Yes, you must agree to the clause at Step 5, go to Step 5

5.

Other principal's (contractor/maker) written agreement regarding work by a third party

The other principal (contractor/maker) agrees to have a written agreement with the third party who will be performing the work that is the subject of this arrangement, specifying

- the other principal's business name, address, ABN/ACN and/or registered business number
- the other principal's Board of Reference registration number
- the name and address of the third party to whom the arrangement applies
- the address(es) where work will be performed
- the factory registration of premises that are used by the clothing industry (NSW requirement only)
- the date and time for commencement and completion of the work
- a description of the articles, garments or material to be worked on including diagrams and details of each type, the seam and fabric type and manner of construction and finishing (Garment Specification Sheet)
- the number of each garment or article
- **the sewing time for the work required on each**
- the price to be paid for each
- that the third party will receive wages and conditions no less favourable than those provided under the Award.

The written agreement must be entered into prior to any work being performed by the third party.

The other principal agrees to comply with all of the requirements of the Award in relation to this arrangement.

6.

We hereby agree to entering into an arrangement to have work carried out, as specified above. Any agreement will provide the minimum conditions for workers and meet our obligations under the Award.

Principal's signature

Full name

Position

Signature

Date

Other principal's (contractor/maker) signature

Full name

Position

Signature

Date

Arrangement with a worker to have work carried out (Agreement with a worker)

1.

Principal details

Business name

ABN or ACN

Board of Reference number

Business address

2.

The worker's details

Full name

Address where the work will be performed

3.

The work is being provided on the following basis,
as specified under the Award

Full time - 38 hours per week

Part time - 20-37 hours per week

Part time - less than 20 hours per week*

* If you want to employ a worker for less than 20 hours per week
you need written approval from the TCFUA.

Yes, the principal has written approval from the TCFUA, and
has attached a copy of this document to this Arrangement

The total number of hours per week with written approval
to employ the worker for

4.

Agreement to supply the worker with copies of the
Work Record/Garment Specification Sheet, Fair Work
Statement, and Information Statement for Outworkers
prior to the commencement of any work (to meet your
legal requirements under the Award).

The Principal will provide the worker with a copy of the

Work Record/Garment Specification Sheet (on each occasion)

Fair Work Statement*

Schedule F, including Information Statement for Outworkers*

*If these statements are NOT in English, enter the language below

5.

Mandatory details of this arrangement

MINIMUM CONDITIONS FOR WORKERS

The Information Statement for Outworkers explains some
of the minimum conditions workers are entitled to under
the Award. Workers are also entitled to the benefits
provided under the National Employment Standards.

AGREEMENT TO PROVIDE MINIMUM CONDITIONS

Minimum conditions of this written agreement are

- maximum weekly hours of work
- requests for flexible working arrangements
- parental leave and related entitlements
- annual leave
- personal/carer's leave and compassionate leave
- community service leave
- long service leave
- public holidays
- notice of termination and redundancy pay, *and*
- provision of the Fair Work Statement covering
 - hours of work
 - work on weekends and public holidays
 - how long it should take you to perform the work
 - how we will pay you
 - what happens if no work is available, *and*
 - a number of other provisions of the Award that factory
or in-house workers are entitled to.

Visit www.fairwork.gov.au

This written agreement will be provided to the worker in
a language the worker has confirmed they understand.

Any proposed variation to this agreement will also be
in writing and will take effect three days after it is signed.

CONTINUED NEXT COLUMN

7.

Provision of reasonable time for the worker to review the written agreement

Under the Award, workers are entitled to receive a copy of the proposed agreement within a reasonable period of time to review it before it needs to be signed.

A copy of this agreement, including additional requirements that must be included in any written agreement with a worker, was provided to the worker on

Date / /

which we agree is a reasonable period of time, before it was signed.

8.

Terms of arrangements

A principal must not make an arrangement unless:

- the arrangement contains a term requiring the person with whom the arrangement is made to have a written agreement with any other person who performs any work which is the subject of the arrangement
- the written agreement must specify each of the matters set out in clause F.2.2(a); *and*
- the written agreement must provide for wages and conditions no less favourable than those contained in clauses F.3 and F.4

The written agreement must be entered into prior to any work being performed by the third party.

The worker agrees to comply with all of the requirements of the Award in relation to this arrangement.

RECORD KEEPING

As part of the Principal's obligations under the Award, they must retain a signed copy of the proposed written agreement, and any variation. If documents are provided in a language other than English they must also retain an English language version of each.

9.

Agreement

We hereby agree to entering into an arrangement to have work carried out, as specified above. This arrangement will provide the minimum conditions for workers and meet the obligations under the Award.

Principal's signature

Full name

Position

Signature

Date

Worker's signature

Full name

Signature

Date

Garment Specification Sheet for a maker (principal)

Your details		Maker's details		Cutting date		Issue date		Completion date	
Business name		Business name							
ABN		ABN							
ACN		ACN							
Board of Reference Number		Board of Reference Number (if required*)							
Business address		Address (where work will be done)							
Phone		Phone							
Email		Email							
Garment Specifications		Fabric		Notes		Sizes			
Garment outline and description including seam type, construction and finishing details		Sewing instructions							
Sewing time		Your signature		Date		Other principal's (maker's) signature		Date	
Price per garment \$		Sign		Name		Sign		Name	
Total no. of garments									
Total including GST \$									

*The maker must be registered unless they do all the work in their own factory

Garment Specification Sheet for a worker

Your details		Worker's details		Cutting date	Issue date	Completion date
Business name ABN ACN Board of Reference Number Business address Phone Email	Worker's name ABN ACN Address (where work will be done) Phone Email					
		Specials				
		Construct and finish		Brand label		
		Finish only		Zippers		
		Main		Embroidery		
		Lining		Buttons		
		Size label		Pockets		
		Care label		Trims		
Garment Specifications		Fabric	Notes	Sizes		
Garment outline and description including seam type, construction and finishing details						
		Sewing instructions				
Time standard		Calculate the worker's payment				
Factory sewing time + Worker additional time + Ancillary tasks = Sewing time	min	Total time Award skill level rate Total payment *	hours \$ \$			
		Your signature		Sign	Name	Date
		Worker's signature		Sign	Name	Date

*These wage calculations do not include the costs of entitlements that you are required to pay under the Award and NES.

Checklists for making an arrangement

CHECKLIST FOR MAKING AN ARRANGEMENT WITH ANOTHER PRINCIPAL

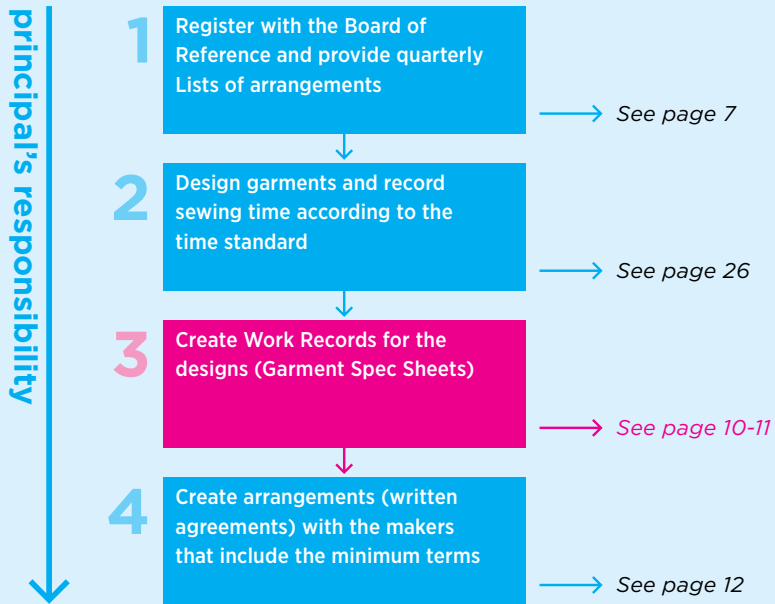
- Your business is registered with the Board of Reference
- You have added details of this arrangement to a running List of arrangements your business enters into using the table in the Board of Reference forms
- You are able to provide copies of this List to the Board of Reference on a quarterly basis
- The business with whom you are making an arrangement is also registered with the Board of Reference (if applicable)
- You have made a Work Record (Garment Specification Sheet, including a sewing time) as specified in this guide
- You have given a copy of this Work Record to the business with whom you are making an arrangement
- Your arrangement with the other business contains the required minimum terms

CHECKLIST FOR MAKING AN ARRANGEMENT WITH A WORKER

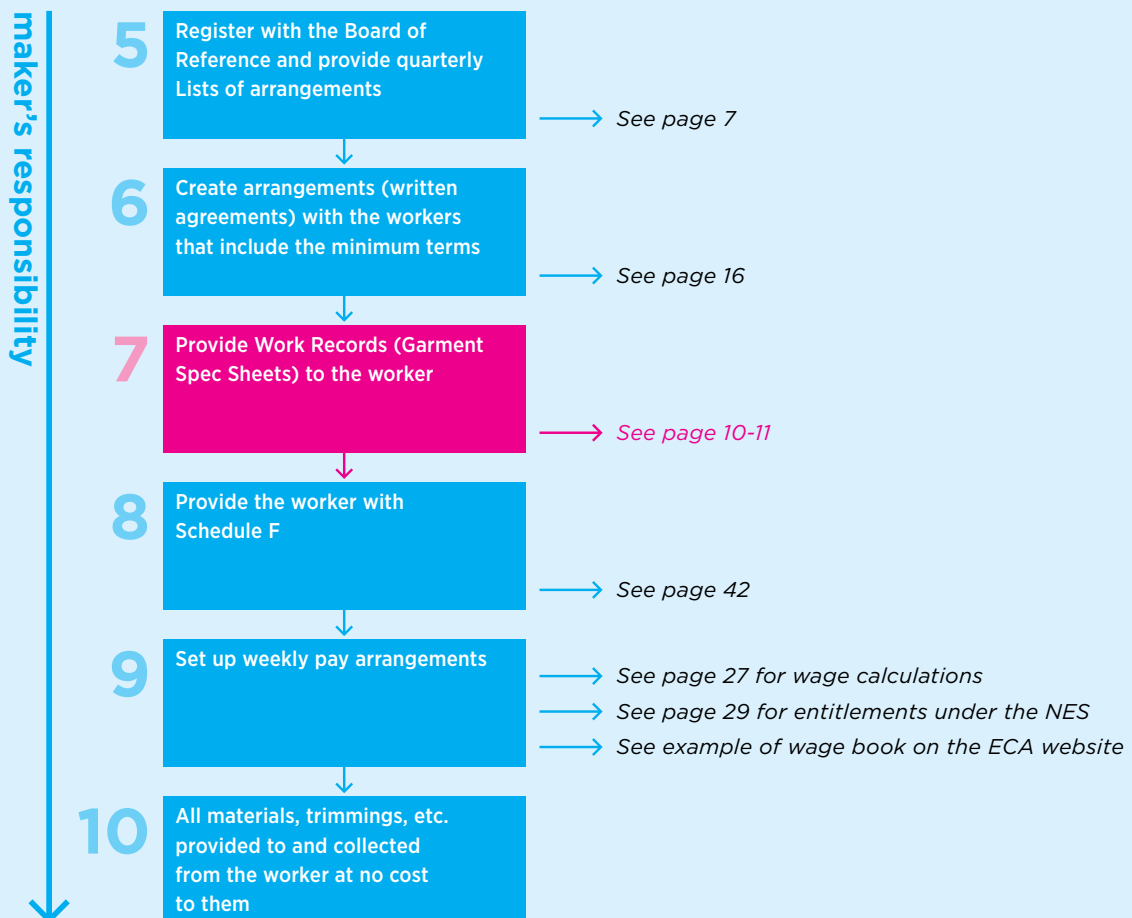
- Your business is registered with the Board of Reference
- You have added details of this arrangement to a running List of arrangements your business enters into using the table in the Board of Reference forms
- You have made a Work Record (Garment Specification Sheet, including a sewing time) as specified in this guide
- You have made a signed written agreement detailing the hours of work in accordance with the Award
- Your Work Records contain the required additional information for arrangements with workers
- You have used the proper Time Standard to calculate the sewing time
- You have provided a copy of the Outworkers Schedule F to the worker
- You are providing the correct minimum conditions in accordance with the Award
- You are paying the worker on a weekly basis
- You are making sure that all materials, trimmings, threads, products, garments or articles are delivered to and collected from the worker at no cost to them

HOW TO MAKE ARRANGEMENTS THAT COMPLY WITH THE AWARD

Below is the workflow from the principal initiating the work to the maker (another principal) then down to the worker.



Below is the workflow from principal (maker/contractor) down to the worker



Outworker Provisions

Clause 17 from the Award

17. Outwork and related provisions

- 17.1 Arrangements (including for the engagement of outworkers) must be made by Principals in accordance with Schedule F – Outwork and Related Provisions.
- 17.2 Nothing in this Award will operate (or is intended to operate) to cover the field (or otherwise displace or reduce the scope of jurisdiction) occupied (or exercised immediately prior to the time of the making of this Award) by State legislative regulation of any party which enters into any arrangement for the performance of work outside the business or commercial premises of the party (including arrangements for the performance of work for the party by outworkers).
- 17.3 In particular nothing in this Award will operate (or is intended to operate) to reduce the scope of application (immediately prior to the time of making this Award) of the following State legislative instruments and provisions:
- (a) *Industrial Relations Act 1996* (NSW) (as amended): sections 129A-129J inclusive (and other provisions of this or any other legislation which are necessary or incidental to the operation of these provisions);
 - (b) *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW);
 - (c) NSW Ethical Clothing Trades Extended Responsibility Scheme 2005;
 - (d) *Fair Work Act 1994* (SA) (as amended); sections 99A-99J inclusive (and other provisions of this or any other legislation which are necessary or incidental to the operation of these provisions);
 - (e) Fair Work (Clothing Outworker Code of Practice) Regulations 2007 (SA);
 - (f) *Industrial Relations Act 1999* (Qld) (as amended); sections 8C and 400A-400I inclusive (and other provisions of this or any other legislation which are necessary or incidental to the operation of these provisions);
 - (g) *Industrial Relations Act 1984* (Tas) (as amended); section 3 inclusive (and any other provisions of this or any other legislation which are necessary or incidental to the operation of these provisions);
 - (h) *Outworker (Improved Protection) Act 2003* (Vic) (as amended) and any other provisions of this or any other legislation which are necessary or incidental to the operation of this provision; *and/or*
 - (i) *Outworker (Improved Protection) Amendment Act 2005* (Vic) (as amended) and other provisions of this or any other legislation which are necessary or incidental to the operation of this provision.

Outwork and Related Provisions

Schedule F, from the Award

F.1 Definitions

F.1.1 Arrangement means any arrangement made by a principal with any legal or natural person to have work carried out for the principal, whether or not the person carries out the work, but does not include employment of an employee who is not an outworker to carry out the work.

The obligations in this part apply whether or not a principal has obtained the work which is the subject of the arrangement pursuant to any other arrangement or from any other person.

F.1.2 Ordinary working week means the hours and days occurring between midnight on Sunday night and midnight on Friday night in any week.

F.1.3 Outworker has the same meaning as that contained in section 12 of the *Fair Work Act 2009* (Cth).

F.1.4 Principal means:

- (a) An employer; or
- (b) An outworker entity within the meaning of the *Fair Work Act 2009* (Cth).

F.1.5 Work means work on or in relation to any garment, article or material in the textile, clothing and footwear industry, including for example design, preparation, manufacture, packing, processing and finishing work, and organisation, procurement, control, management or supervision of work.

F.1.6 Worker means:

- (a) an outworker; or
- (b) a person who personally performs work which is the subject of an arrangement.

F.2 General requirements for making arrangements

F.2.1 Registration

- (a) A principal must be registered by the board of reference under clause F.5.7 prior to making any arrangement.
- (b) A principal must not make any arrangement with another principal unless the other principal is registered by the board of reference under clause F.5.7.

F.2.2 Work records

- (a) Upon making an arrangement, a principal must make and retain a written record (a 'Work Record') which contains:
 - (i) *The principal's name, address, ABN/ACN and/or registered business number;*
 - (ii) *The principal's board of reference registration number;*
 - (iii) *The name and address of the person to whom the arrangement applies;*
 - (iv) *The address(es) where work is to be performed;*

- (v) *The time and date for commencement and completion of the work;*
 - (vi) *A description of the nature of the work required and the garments, articles or material to be worked on (including diagrams where available and details of the type of garment or article, seam type, fabric type, manner of construction and finishing);*
 - (vii) *The number of garments, articles or materials of each type;*
 - (viii) *The sewing time for the work required on each garment, article or material; and*
 - (ix) *The price to be paid for each garment, article or material.*
- (b) A copy of a work record must be given to the person with whom the arrangement is made prior to the commencement of any work which is the subject of the arrangement.

F.2.3 Lists

- (a) A principal must make and retain a list ('List') containing the name and address of each person with which it makes an arrangement and the date each arrangement is made.
- (b) A principal must provide a copy of the List to the General Manager or their nominee and to the relevant State Branch of the Union within 7 days of the last working day of February, May, August and November of each year.
- (c) The General Manager or their nominee may allow an organisation with a legitimate interest in the Textile, Clothing and Footwear Industry to peruse the List.

F.2.4 Terms of arrangements

A principal must not make an arrangement unless:

- (a) The arrangement contains a term requiring the person with whom the arrangement is made to have a written agreement with any other person who performs any work which is the subject of the arrangements;
- (b) The written agreement must specify each of the matters set out in clause F.2.2(a); *and*
- (c) The written agreement must provide for wages and conditions no less favourable than those contained in clauses F.3 and F.4.

F.3 Additional requirements for making arrangements with workers

F.3.1 A principal must comply with this clause in addition to clause F.2 where the principal makes an arrangement:

- (a) with a worker; or
- (b) with a body corporate owned or managed by the worker or member of their family.

F.3.2 Written agreements

Prior to the commencement of work which is the subject of an arrangement, a principal must make a signed written agreement ('Written Agreement') with the worker which specifies:

- (a) whether the principal will provide the worker with work on a full-time or part-time basis; *and*
- (b) if part-time, the agreed number of hours of work per week in accordance with clause F.4.2(a).

- F.3.3** The proposed terms of the written agreement must be expressed clearly and simply in a language the worker understands and must be provided in writing to the worker in that language a reasonable time before it is signed.
- (a) Any proposed variation of the written agreement must also comply with clause F.3.2(b) and will take effect three days after an agreement to vary the written agreement ('Variation Agreement') is signed.
- (b) A copy of the proposed written agreement, the signed written agreement and variation agreement, along with an English language version of each document if in a language other than English, must be retained by the principal ('Written Agreement Records').

F.3.4 Additional information in work records

A work record in respect of an arrangement under this clause must contain the following information in addition to that prescribed in F.2.2:

- (a) The time and date for the garments, articles or materials to be provided to and picked up from the worker to facilitate commencement and completion of work in accordance with F.2.2(a)(v);
- (b) Details of the time standard applied in accordance with clause F.4.4(a) in order to determine the appropriate sewing time for the purposes of clause F.2.2(a)(viii);
- (c) The number of working hours that will be necessary to complete the work, calculated by multiplying the number of garments at clause F.2.2(a)(vii) by the sewing time per garment, article or material at clause F.2.2(a)(viii); and
- (d) The number of hours and days within the ordinary working week that will be necessary to complete the work in order to determine the appropriate time and date of commencement and completion at clause F.2.2(a)(v), and
- (e) The total amount to be paid to the worker for the hours and days at clause F.3.4(c), applying the appropriate rates of pay set out at clause F.4.4(b).

F.3.5 A principal must provide the worker with a copy of this Schedule in the appropriate language for the worker.

F.3.6 A principal must provide the worker with the minimum conditions set out in clause F.4.

F.4 Minimum conditions for workers

F.4.1 National Employment Standards

A principal must apply the NES to the worker as though the worker is an employee, whether or not the principal is an employer or the worker is an employee.

F.4.2 Hours of work

- (a) A principal must provide the worker with work which is:
- (i) *full-time, 38 hours per week; or*
- (ii) *regular part-time, with no less than 20 regular hours per week to be agreed between the principal and the worker; or*
- (iii) *regular part-time, with no less than 15 regular hours per week to be agreed between the principal and the worker with the consent of the Union in accordance with Schedule F - Outwork and Related Provisions.*
- (b) In each ordinary working week, a principal must not require the worker to complete more than 38 hours work, or the agreed number of part-time hours, whichever is less.

- (c) Subject to clause F.4.7, in each ordinary working week where the worker is ready, willing and able to work, a principal must pay the worker for either 38 hours work or the agreed number of part-time hours work, regardless of whether the principal provided enough work for those hours of work to be performed.

F.4.3 Work on weekends and public holidays

- (a) A principal must not require the worker to work, or set the time and date for commencement and completion of work so that the worker is required to work, on a Saturday, Sunday or public holiday without obtaining the prior written agreement of the worker, specifying the date/s and number of hours to be worked on each date.
- (b) Unless otherwise specified in the written agreement, the worker will be deemed to have worked 7.6 hours on each date.
- (c) Where, notwithstanding F.4.3(a), the time and date for commencement and completion of work would require the worker to work on a Saturday, Sunday or public holiday:
 - (i) The time and date for completion will be deemed to be extended by the time necessary to ensure work on a Saturday, Sunday or public holiday is not required; *or*
 - (ii) the worker may elect to perform the work and will be deemed to have completed 7.6 hours work on each Saturday, Sunday or public holiday on or between the time and date for commencement and completion of the work.

F.4.4 Time standards and payment

- (a) In determining how long work will take to perform ('the Time Standard') a principal must allow a fair and reasonable time, including;
 - (i) providing more time for the work to be performed than the time standard set for comparable work undertaken in a workshop or factory; *and*
 - (ii) providing reasonable additional time to perform ancillary tasks such as bundling and unbundling, sorting and packing.
- (b) A principal must pay the worker at the following rates:
 - (i) For each minute of work in the ordinary working week, 1/2280 of the weekly rate for the appropriate classification set out at clause 20 ('the ordinary minute rate')XX;
 - (ii) For each minute of work in excess of 38 hours or the agreed weekly hours, whichever is less, 1.5 times the ordinary minute rate;
 - (iii) For each minute of work performed or deemed to have been performed on a Saturday, Sunday or public holiday, 200% of the ordinary minute rate; and
 - (iv) For each public holiday on which the worker does not work, 1/5 of the weekly rate for the appropriate classification set out at clause 20, calculated on a proportionate basis for a part-time arrangement.
 - (v) Any additional payment due pursuant to clause 23.2 applies notwithstanding this clause.

F.4.5 Payment

- (a) A principal must pay the worker within two working days' of the end of the ordinary working week at a time and by a method agreed between the principal and the worker.
- (b) At or prior to the time of payment, a principal must provide the worker with details in writing of the gross payment, any deduction made and the net payment.

F.4.6 A principal must provide the worker with all necessary materials, trimmings and sewing threads to perform the work required of the worker, and cause all relevant materials, products, garments or articles to be delivered and collected from the worker at no cost to the worker.

F.4.7 Stand-down

A principal may stand-down the worker where no work is available as a result of circumstances outside the control of a principal, subject to the following conditions.

- (a) The principal bears the onus of establishing that no work is available.
- (b) The stand-down is for a maximum period of two days in any four week period and ten days per year.
- (c) The principal must make and retain a written record of the stand-down ('stand-down record') setting out the name and address of the worker, the commencement date and duration of the stand-down and the reason for the stand-down.
- (d) Within two working days of a stand-down, a copy of the stand-down record must be provided to the worker and the Union.

F.4.8 A principal must apply the remaining provisions of this award to the worker as though the worker is an employee, whether or not the principal is an employer or the worker is an employee, excluding the following clauses:

- Dispute resolution (clauses 10.1 and 10.2)
- Hours of work;
- Overtime;
- Payment of wages;
- Regular part-time employment;
- Award posted;
- Casual employment;
- Dining room allowance;
- Meal allowance;
- Midday meal break;
- Rest breaks;
- Rest room allowance; *and*
- Tool allowance.

F.4.9 A principal must not make one or more arrangements covered by this Schedule with more than 10 workers at any one time, unless the principal has the consent of the Union or the board of reference, which may exercise its discretion to allow the principal to do so.

F.4.10 Dispute Resolution

In the event of a dispute involving parties to which this schedule applies in relation to a matter arising under this Award, or the NES, in the first instance the parties will attempt to resolve the dispute through direct discussions. If the dispute cannot be resolved through direct discussions, a party to the dispute may refer the dispute to Fair Work Australia. The provisions of clauses 10.3-10.5 apply in respect of the dispute.

F.5 Registration and Board of Reference

F.5.1 For the purposes of this part, the General Manager or their nominee must appoint a board of reference for each of the following places:

- Adelaide;
- Brisbane;
- Hobart;
- Melbourne;
- Perth; *and*
- Sydney, *or*

at such place as they may from time to time determine.

F.5.2 The board must consist of two Union representatives and two principal representatives with the addition of the General Manager or such person as they may nominate as chairperson of the board. In the event of the representative members of the board being equally divided in opinion, the chairperson may cast their vote to give a majority decision.

F.5.3 Any board member may appoint a nominee to act on their behalf at any time.

F.5.4 Three members, one of whom must be the General Manager or their nominee will constitute a quorum.

F.5.5 A board of reference may sit at such times and places as the members may agree or the General Manager or their nominee may fix and may adjourn from time to time and place to place.

F.5.6 The functions of the board of reference are to deal with any matter as provided for in this part.

F.5.7 Powers of Board of Reference to register principals

- (a) On application, the board of reference may register a principal on conditions it determines for a period of 12 months.
- (b) The board of reference may revoke the registration of principal for failure to comply with any or all of such conditions.
- (c) Upon registration, the board of reference will give principal a registration number.
- (d) The General Manager or their nominee will maintain a record of registered principals.
- (e) At the time of registration, and on each anniversary of registration, a principal must place a notice in the public notices column of a metropolitan daily newspaper circulating throughout any State in which work is to be performed stating:
 - (i) *the principal's name, address and ABN/ACN;*
 - (ii) *that the principal is registered under this award;*
 - (iii) *the principal's registration number;*
 - (iv) *the location at which all relevant records, including but not limited to work records, lists, written agreement records and stand-down records, in the principal's possession or custody may be inspected by the Union.*
- (f) A principal may make an agreement in writing with the Union or apply to the board of reference to be exempted from the notice requirement. A copy of any written agreement made between a principal and the Union must be lodged with the General Manager or their nominee.

F.6 Observance of Award

- F.6.1 A principal must not, in any way, whether directly or indirectly, be a party to or concerned in conduct that:
- (a) hinders, prevents or discourages the observance of this Schedule;
 - (b) causes or encourages or is likely to cause or encourage, a breach or non-observance of this Part.
- F.6.2 A principal must retain all work records, lists, written agreement records and/or stand down records required under this part for a period of six years after the relevant record was made.
- F.6.3 Within two working days of a request being made, the principal's work records, Lists, written agreement records and/or stand down records must be provided by the principal to the Union for inspection and copying:
- (a) At a time and place agreed between the Union and the principal; or
 - (b) In the absence of agreement, between 8.00 am and 5.00 pm on a working day at an alternative appropriate premises nominated by the principal within a 50 kilometre radius of the principal's premises (which may be the principal's premises); *or*
 - (c) If the principal fails to nominate such a place, between 8.00 am and 5.00 pm on a working day at an appropriate place nominated by the Union within a 50 kilometre radius of the principal's premises (which may include the Union's premises but must not include the principal's premises).
- F.6.4 The Union will not divulge any information contained in a work record in compliance with F.2.2(a)(ix) concerning the price to be paid for each garment or article in any circumstances to any party save for in enforcement or dispute resolution proceedings in a Court or Tribunal.

F.7 Recovery of unpaid remuneration

- F.7.1 Unpaid remuneration includes any amount payable to a worker, whether or not an arrangement applies to the worker, including but not limited to amounts in respect of:
- (a) commission;
 - (b) leave or other entitlements; *and*
 - (c) reimbursement or compensation for an expense incurred or loss sustained by the person, which has not been paid to the worker.
- F.7.2 Extended liability of principal
- (a) A principal who makes an arrangement will be liable for any unpaid remuneration payable to a worker engaged by a person with whom the arrangement is made ('the Person'), *unless*:
 - (i) *the principal has obtained a written statement ('Written Statement') from the person that all unpaid remuneration payable to the worker has been paid; and*
 - (ii) *the principal does not have reason to believe that the written statement is false.*
 - (b) A principal may withhold any payment due to the person until the person provides a written statement to the principal. Any penalty for late payment under the arrangement does not apply to a payment withheld under this clause.
 - (c) Where the person is also a principal, the person must not provide a written statement knowing it to be false.

- (d) Clause F.7.2 does not apply where the person is bankrupt or under external administration and payments under the arrangement are payable to the administrators or trustee in bankruptcy.
- (e) Nothing in this subclause limits or excludes any other liability or right of recovery in respect of:
 - (i) *Unpaid remuneration; or*
 - (ii) *Money owed by a principal to the person.*
- (f) A principal is not excluded from liability pursuant to this subclause by obtaining a written statement from a body corporate owned or managed by the worker

F.7.3 Extended liability of apparent principal

- (a) A worker may make a claim ('the claim') for any unpaid remuneration relating to the work against a principal who the worker believes they carried out the work for ('the apparent principal').
- (b) A claim may be made by serving a statutory declaration on the apparent principal within six months after the completion of the work specifying:
 - (i) *the name of the worker;*
 - (ii) *the address at which the worker may be contacted;*
 - (iii) *a description of the work done;*
 - (iv) *the date or dates on which the work was done; and*
 - (v) *the amount of unpaid remuneration claimed in respect of the work.*
- (c) An apparent principal served with a claim will be taken to be liable for the unpaid remuneration other than where:
 - (i) *the apparent principal serves the claim on another person that the apparent principal serves the claim on another person that the apparent principal knows or reasonably believes is liable for the claim ('the liable party') within 14 days; and*
 - (ii) *the apparent principal notifies the worker of the service; and*
 - (iii) *the liable party pays the unpaid remuneration to the worker within 14 days of the service; and*
 - (iv) *the liable party serves notice in writing on the apparent principal that payment has been made and the amount.*
- (d) An apparent principal may set off or deduct any unpaid remuneration paid to the worker from any amount the apparent principal owes to the liable party.
- (e) Nothing in this subclause limits or excludes any other liability or right of recovery in respect of:
 - (i) *unpaid remuneration; or*
 - (ii) *money owed by an apparent principal to a liable party.*
- (f) A principal or apparent principal will not be liable for any unpaid remuneration pursuant to this clause to the extent that the principal or apparent principal proves that the relevant work was not done or the amount of unpaid remuneration claimed is in excess of the amount to which the worker is entitled.
- (g) An apparent principal is not excluded from liability pursuant to this subclause by obtaining a written statement from any party, including (but not limited to) a body corporate owned or managed by the worker. A principal or apparent principal is not excluded from liability pursuant to this subclause by obtaining a written statement from, or serving a claim upon, a body corporate owned or managed by the worker.

Information Statement for Outworkers

Appendix to Schedule F, from the Award

If you work at home or outside a workshop or factory making garments, or parts of garments or sewing sheets etc., you may be an outworker. If you are an outworker, you are entitled to the same wages and conditions, in general, as workers in clothing factories. The Textile, Clothing, Footwear and Associated Industries Award 2010 sets out legally enforceable rights and obligations. This applies to all outworkers including employees, independent contractors, and holders of business name registrations.

According to this law some of the entitlements outworkers must receive are set out below

HOURS OF WORK

An outworker may only be employed to work full-time, which is 38 hours a week, or regular part-time, which must be at least 15 hours per week. The hours must be agreed to in advance by the outworker and the employer.

This means you are guaranteed payment for the agreed number of hours per week, even if you are not given any work, unless you are stood – down in accordance with the Award.

You cannot be required to work on Saturdays, Sundays or public holidays. You may agree to work on those days if asked to do so by your employer. You will have to be paid overtime rates if you do work on these days.

As a full-time or regular part-time worker you can only be required to work seven hours and 36 minutes each day. If you are asked by your employer to work more than this number of hours, you must be paid overtime.

This means that even if you are paid by the piece you cannot receive less than the hourly Award rate of pay.

OVERTIME

If you agree to work more than seven hours and 36 minutes in a day, Monday to Friday, you must be paid one and a half times the normal hourly rate for each hour over the seven hours and 36 minutes. For every hour you agree to work on a Saturday, Sunday or public holiday, you must be paid double the normal hourly rate.

WAGES

According to law, as at 1 July 2011, the usual weekly wage for 38 hours, Monday to Friday, is \$629.70 (see page 27).

The hourly rate is \$16.57. Remember, the law says you must not be paid less than the hourly rates according to the Award.

ANNUAL LEAVE (HOLIDAYS)

You are entitled to annual leave. You should get paid 20 working days' paid leave for every year you work full-time. You should be paid before you go on holidays, and this holiday pay should include an extra amount – a holiday leave loading – of 17.5% of your pay.

This amount of annual leave for regular part-time workers depends on the hours you work in a 12 month period. The Textile, Clothing and Footwear Union of Australia or Department of Industrial Relations or The Australian Industry Group or Chamber of Manufactures of New South Wales or Victorian Employers Chamber of Commerce and Industry or Textile, Clothing and Footwear Council of Australia will help you to work this out.

Payment for public holidays (such as Christmas or New Year's Day) which occur when you are on leave, should be added onto your holiday pay.

PUBLIC HOLIDAYS

If you normally work on a day on which a public holiday falls you should receive a day's pay without working on that day. Some States have different public holidays but all have about 10 different public holidays a year.

The public holidays that apply across Australia are New Year's Day (1 January), Australia Day (26 January), Good Friday and Easter Monday in March or April, ANZAC Day (25 April), Christmas Day and Boxing Day (25 and 26 December). There are extra public holidays that apply on different days in different States.

SUPERANNUATION

By law, your employer has to make a superannuation contribution of up to 9% to an approved fund, for you. Normally, this would be the Australian Super, which is approved by both union and employer organisations.

The Textile, Clothing and Footwear Union of Australia or Department of Industrial Relations or The Australian Industry Group or Chamber of Manufactures of New South Wales or Victorian Employers Chamber of Commerce and Industry or Textile, Clothing and Footwear Council of Australia will help you to work this out.

WORKERS COMPENSATION

If you become ill or suffer injury as a result of the work you do you may be entitled to workers compensation, which helps you pay for any treatment you might need to get better, and for time off work.

The laws covering workers compensation are different in each State and it is important that you contact The Textile, Clothing and Footwear Union of Australia or Department of Industrial Relations or The Australian Industry Group or Chamber of Manufactures of New South Wales or Victorian Employers Chamber of Commerce and Industry or Textile, Clothing and Footwear Council of Australia for information and help to make a claim.

MATERIALS

Your employer must provide all necessary materials, trimmings and sewing threads for the work you are doing.

DELIVERY AND PICK UP

The employer must deliver and pick up the work free of charge to you.

RECORD OF WORK

Every time you receive work you should keep a record.

This should show:

- employer's name, address and telephone number;
- the date you receive the work and the date the work was completed;
- the number of hours and days it took to do the work;
- the number of items, what the item is and how long it took to make each item; *and*
- the total amount of money paid for the completed work.

Glossary

TERM	MEANING
agreement or contract	Referred to as an 'arrangement' in this guide and the Award
Apparent Principal	In the event of a claim by a worker for unpaid remuneration, this is the principal who a worker believes they undertook the work for.
arrangement	An arrangement describes a situation where a principal enters into an agreement to have work performed for it on its behalf (within the meaning of the Award).
Board of Reference	A Board established under the modern Award which deals with the registration and monitoring of principals in the TCF industry who have work performed on their behalf.
casual employee	A casual employee is an employee who is engaged in relieving work or work of a casual, irregular or intermittent nature, but does not include an employee who could properly be classified as a full-time or part-time employee. Outworkers may not be employed on a casual basis.
constitutional corporation	A business that is incorporated (usually a Pty Ltd or a Ltd business) and whose main activity is trading or financial.
full-time employee	An employee who works 38 hours per week.
FWA	Fair Work Australia, the national body that oversees industrial relations in Australia.
Garment Spec Sheet	referred to as 'Work Record' in this guide and the Award
List	This is a document that contains the name and address of each person a principal has made an arrangement with to have work performed on their behalf and the date each arrangement was made. Lists are part of the Board of Reference compliance requirements and are contained as part of the Registration forms.
NES	The National Employment Standards, minimum terms and conditions established by the <i>Fair Work Act 2009</i> (Cth) and operating across Australia.
outworker	Any worker who performs work at home or at a non-business premises (within the meaning of the Award). Outworkers are sometimes known as homeworkers or outside workers.

TERM	MEANING
part-time employee	<p>A part-time employee is an employee who is a day or shiftworker and</p> <ul style="list-style-type: none"> • works less than full-time hours of 38 hours per week; • has predictable hours of work; <i>and</i> • receives on a pro rata basis, equivalent pay and conditions of those full-time employees who do the same kind of work.
sewing time	Referred to as the 'Time Standard' in this guide and the Award
TCF Industry	The Textile, Clothing and Footwear Industry.
TCFUA	The Textile, Clothing and Footwear Union of Australia, the union representing workers in the TCF industries.
the Award	The Textile, Clothing, Footwear and Associate Industries Award 2010, a modern award made under the <i>Fair Work Act 2009</i> (Cth)
Principal	<p>A person or business that has entered into an arrangement to have work done by someone other than their own employees who is not an outworker (within the meaning of the Award).</p> <p>NOTE: <i>the Award definition of a principal has a slightly different meaning to that used in the industry where a business at the 'head' of a contracting chain - such as a fashion house or brand - is sometimes referred to as a 'principal'. Under the Award, a principal isn't limited to a business at the head of the contracting chain.</i></p> <p><i>See page 12</i></p>
Work Record	Work Records (often referred to as a Garment Specification Sheet) contain details of your business, and a detailed description of the work involved. These documents should accompany the job through each stage of production to completion.
worker	Refers to an outworker or homeworker, or person who personally performs work as part of an arrangement.

Contact information

WHO TO CONTACT FOR INFORMATION

Ethical Clothing Australia

(03) 9419 0222

Fairwork Australia

1300 799 675

Council of Textile Fashion Industries of Australia (TFIA)

(03) 8680 9400

NSW Business Chamber

13 26 96

Australian Industry Group (AiG)

(03) 9867 0111

Victorian Employers Chamber of Commerce and Industry (VECCI)

(03) 8662 5333

Textile Clothing and Footwear Union of Australia (TCFUA) (National Office)

(03) 9639 2955

Textile Clothing and Footwear Union of Australia (Victorian Branch)

(03) 9639 2955

Textile Clothing and Footwear Union of Australia (NSW/South Australian/Tasmanian Branch)

(02) 9789 5233

Textile Clothing and Footwear Union of Australia (Queensland Branch)

(07) 3390 7422

READ THE FULL AWARD ONLINE

www.fwa.gov.au

