



Further Submission of the TCFUA  
to the Australian Competition & Consumer Commission

In relation to  
Homeworker Code Committee (HWCC) application for  
reauthorisation of revised Homeworkers Code of  
Conduct

(8 July 2013)

1. The Textile Clothing and Footwear Union of Australia ('TCFUA') makes this further submission in support of the application made by the Homeworkers Code Committee Incorporated ('HWCC') for reauthorisation of a revised version of the Homeworkers Code of Practice ('Code'), having reviewed the ACCC's Letter and Draft Determination dated 21 June 2013 (ACCC Reference: A91354 – A91357).
2. The TCFUA refers to its previous submissions dated 8 April 2013, made in relation to this matter, and dated 5 March 2013, made in relation to the HWCC application for interim authorisation (ACCC reference: A91252 – A91255). The TCFUA continues to rely on those submissions.
3. In its Letter and Draft Determination dated 21 June 2013, the ACCC invited further submissions in relation to:
  - Whether the Code's dispute resolution mechanisms should be broadened to include all potential stakeholders in the Code, and whether there is a practical means of doing so; and
  - The feasibility and utility of including provision under the Code for an alternative auditor to the TCFUA, with the cost of the auditor to be met by the audited business.
4. In the TCFUA's further submission, broader dispute resolution mechanisms are not necessary.
5. In the TCFUA's further submission, it is not feasible or of use to make provision for alternative auditors. Alternative auditors would not further the objective of the Code to end exploitation of homeworkers, and would undermine the integrity of the compliance audit. Furthermore, the cost of alternative auditors would be significant and may also lead to greater costs borne by ECA and the HWCC.

#### **PART 1 – DISPUTE RESOLUTION MECHANISM**

6. In the TCFUA's submission, broader dispute resolution mechanisms are not necessary as appropriate dispute resolution mechanisms are already in place for all the potential stakeholders in the Code.
7. The potential stakeholders in the Code are:
  - members of the Homeworkers Code Committee;
  - signatories to the Code; and
  - businesses who apply for accreditation.The Code currently makes provision for appropriate dispute resolution mechanisms in relation to each of these types of stakeholders.

8. The current members of the Homeworkers Code Committee are:
  - TCFUA
  - NSW Business Chamber
  - Australian Industry Group
  - Jets Swimwear a
  - Pacific Brands Limited
  - Cue Clothing Company
  
9. The current industry groups who are signatories to the Code are:
  - TCFUA
  - NSW Business Chamber
  - Australian Industry Group ('AiG')
  - Australian Retailers Association ('ARA')
  
10. If there is a dispute among any of the above, with the exception of the ARA (see paragraph 11 below), there are dispute resolution mechanisms available under Clause 2.6 of the HWCC Rules of Association. That mechanism provides for initial attempt for the parties to resolve the matter between themselves, and if the dispute remains unresolved within 28 days, the Committee must appoint an independent mediator, who will first convene a meeting between the parties to resolve the matter and must make a determination if the meeting fails to resolve the matter. A dispute under this clause may be about any matter.
  
11. ARA has access to the dispute resolution mechanism under Clause 7, Part 2 of the Code.
  
12. The businesses that apply for accreditation fall into two groups: retailers (to whom Part 2 of the Code applies) and manufacturers (to whom Part 1 of the Code applies).
  
13. If the business seeking accreditation is a retailer, it has access to the dispute resolution mechanism under Clause 7, Part 2 of the Code.
  
14. If the business seeking accreditation is a manufacturer, there is a process for disagreements about compliance during initial accreditation in Clause 9.5 and in relation to ongoing compliance in Clause 8.3 – De-accreditation. In our submission, these processes are sufficient. Simply put, compliance with legal obligations is reasonably well demonstrated through the existence, or lack thereof, of work records, time and wages records, and/or written agreements etc.

## PART 2 – ALTERNATIVE AUDITOR

15. The Code's primary objective, as outlined in Clause 3 of the Code, is to end exploitation of homeworkers/outworkers in the TCF industry. Homeworkers/outworkers are a class of worker who are particularly vulnerable to exploitation. In the clothing industry, non-compliance with minimum legislation is widespread and exploitation is pervasive and persistent.
16. In the TCFUA's submission dated 8 April 2013, we outlined at paragraphs 14 – 18 the history, pervasiveness and extent of exploitation in the TCF industry, particularly in the clothing industry. Exploitation in the clothing industry is systemic. The nature of the industry, the phenomenon of sweatshops and outwork, and the complexity of supply chains were outlined in detail in the TCFUA's submission to the Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into the Fair Work Amendment (TCF Industry) Bill 2011 at pages 8 – 16. We refer to extensive research in this area, which documents the continued existence of exploitation in the clothing industry. The extent of exploitation and the difficulties of eradicating exploitation are exacerbated by the hidden nature of outwork and the complexity of clothing supply chains, which are multilayered and labyrinthine, with multiple cascading tiers.
17. Submissions to the ACCC, including from businesses in the industry, acknowledge the extent of the problem. For example, New Model Beauty Queen mention *"home-based operations that have been rife with exploitation"*. Fair Wear's submission outlines its frequent contact with outworkers who continue to receive *"well below award payments and conditions"*. Daisy Gardener of Oxfam Australia acknowledged that compliance in the industry was *"weak"* and gave information that she had *"met with outworkers, many working in poor conditions."*
18. Rigorous, transparent and independent compliance audits, that access the entire supply chain are crucial to and underpin the core purpose of the Code. In the TCFUA's submission, alternative auditors would render questionable the integrity of the compliance audit, the crucial element of the Code. Alternative auditors would also undermine the legitimacy and confidence of industry and the public in the Code, and weaken the support that the Code has among outworkers' representatives. The Code's current accreditation has provided consumers with a system of integrity to confidently establish that a business manufactures ethically in Australia. It is therefore neither feasible nor of use to make provision for alternative auditors in the Code. Furthermore, the cost of alternative auditors would be high both to the business seeking accreditation and to ECA itself.

### **Integrity of Compliance Audit**

19. Daisy Gardener of Oxfam Australia in her submission to ACCC stated that she supports the Code provided that the Code maintains *its fundamental aspects – supply chain transparency and the ability of the union to check the books of businesses seeking accreditation.*
20. As the primary national union that represents and advocates for the industrial interests of workers in the TCF industry, the TCFUA is best placed to perform the compliance audit. The TCFUA is a registered employee organisation with access to and the trust of homeworkers, with whom information reported by a business seeking accreditation is verified. Under the Fair Work Act 2009 and the Textile, Clothing, Footwear and Associated Industries Award 2010, the TCFUA also has powers, separate from its auditing role with ECA, to ensure compliance with minimum legal standards. These powers reinforce and enhance the rigour and thoroughness of the ECA compliance audit.
21. Through its role and its history of working with homeworkers, the TCFUA has the knowledge, experience and ability to locate homeworkers. Importantly, through decades of working with and advocating on behalf of outworkers, the TCFUA have gained outworkers' trust. The TCFUA also has employees and officials who speak relevant community languages and where appropriate, conducts its compliance audits in the outworkers' language. The TCFUA's expertise, and outworkers' trust in the TCFUA are particularly important to the audit process. As previously discussed, it is well documented that outwork is the informal, hidden part of the clothing industry.<sup>1</sup> Even when outworkers are located, they may not trust or be prepared to speak with unknown auditors. The inability to verify compliance in the audit process would undermine the primary objective of assisting homeworkers.
22. Furthermore, an alternative auditor would not have the TCFUA's powers under Fair Work Act 2009 and the Textile, Clothing, Footwear and Associated Industries Award 2010 to enter workplaces, hold discussions with employees and request documents such as work records, written agreements and time and wages records. Although a business seeking accreditation undertakes the compliance audit voluntarily, the TCFUA review of records is backed by the power to require records. Auditors that lack this power or have limited access to workers and workplaces are unable to perform a rigorous and thorough audit. Further, such auditors may be duped by a business when performing an audit.

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<sup>1</sup> See TCFUA, *Submission of the TCFUA to the ACCC in relation to HWCC Application for Reauthorisation of Revised Homeworkers Code of Practice* (8 April 2013) at paragraphs 14 – 18, particularly footnote 8.

### Independence of Auditor

23. A multiplicity of auditors would undermine the integrity of accreditation. Currently, businesses seeking accreditation, industry and consumers know that the TCFUA is the auditor, knows who the TCFUA represent, what it stands for and its expertise and history. If a business seeking accreditation may appoint an auditor, then ECA, industry, businesses seeking accreditation and consumers do not know who the auditors are or their knowledge of legal and industrial matters in the TCF industry. It would be likely that ECA's accreditation sub-committee would have to satisfy itself that the audit was performed to the appropriate high standard currently performed by the TCFUA. This would in effect be unnecessary double-auditing.
24. The independence of an auditor paid for by the business seeking the audit is questionable. Ted Eftimiadis, Committee Member of the HWCC and employee of Pacific Brands Limited stated in his submission dated 2 April 2013 that the accreditation process must be one that *is transparent and independent*. Mr Eftimiadis also stated that *the process would not stand up to proper scrutiny if the organisation that seeks accreditation was to self assess*. A business paying an auditor to perform an audit is not far removed from self-assessment.
25. There are recent examples of compromised audits in relation to the factory fires and collapses in Bangladesh. In November 2012, a fire killed 112 garment workers at the Tazreen factory in Savar, near Dhaka in Bangladesh. The Tazreen factory was in a number of well-known retailers' supply chain, including Wal-Mart's. In December 2011, Underwriters Laboratories<sup>2</sup> completed a audit that was paid for by Wal-Mart, identifying a number of safety concerns, such as blocked fire exits, too few fire extinguishers and unlabelled hazardous material. Despite identifying and documenting these unsafe conditions, Underwriters Laboratories did not recommend the closure of the factory until it met safety standards.<sup>3</sup>

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<sup>2</sup> Underwriters Laboratories is described as the "largest and best known independent, not-for-profit testing laboratory in the world." Underwriters Laboratories "conducts safety and quality tests on a broad range of products". Underwriters Laboratories operates worldwide, including having a for-profit division that performs inspections of factories in the developing world: Advameg Inc. *Encyclopaedia of Business* <<http://www.referenceforbusiness.com/small/Sm-Z/Underwriters-Laboratories-UL.html>>, accessed 5 July 2013.

<sup>3</sup> Henn, S 'Factory Audits and Safety Don't Always Go Hand In Hand', NPR (1 May 2013) <<http://www.npr.org/2013/05/01/180103898/foreign-factory-audits-profitable-but-flawed-business>>, accessed 4 July 2013; Jamieson, D. 'Bangladesh Collapse Shows Safety Audit Shortcomings', Huffington Post (4 May 2013) <[http://www.huffingtonpost.com/2013/05/04/bangladesh-collapse-safety-audit\\_n\\_3211091.html](http://www.huffingtonpost.com/2013/05/04/bangladesh-collapse-safety-audit_n_3211091.html)>, accessed 4 July 2013. Many more examples of the flawed nature of business funded auditing programmes can be found in The American Federation of Labour - Congress of Industrial Organizations (AFL-CIO), 'Responsibility Outsourced: Social Audits, Workplace

26. Currently, compliance audits performed by the TCFUA are part funded by the ECA funding and part absorbed by the TCFUA. The business seeking accreditation does not pay the TCFUA to complete the audit.
27. The TCFUA is a not for profit organisation that is genuinely independent of businesses seeking accreditation. The TCFUA is the primary national union that represents and advocates for the industrial interests of workers in the TCF industry. As a registered employee organisation, the TCFUA has external reporting obligations to the Fair Work Commission and its Rules and financial records are made publicly available on the Fair Work Commission's Registered Organisations site.

### **Cost of Compliance Audit**

28. There is currently no specific cost to businesses seeking accreditation under the Code for the compliance audit. The cost of an alternative auditor would depend on the identity of the auditor but is likely to be significant and comparable to hourly legal or accountancy fees. The only cost to businesses seeking accreditation under the Code is the annual licensing fee, which is comparably quite low.
29. Having alternative and multiple unknown auditors would also create more costs to ECA itself to ensure that the audit has been performed correctly. In effect, there would be double auditing because ECA would most likely refer any audit not performed by TCFUA to its accreditation subcommittee to review the audit itself. ECA is a small organisation with limited funding. It is impractical and would be costly to assess a multiplicity of different auditors to ensure their audits were thoroughly performed. This would be an unnecessary waste of its limited resources, and a burdensome cost for it to bear. Ultimately, there may be an increase in licensing fees, which could be counterproductive to the Code's objectives.

### **Genuine, Multi-Stakeholder Support**

30. A key advantage of the Homeworkers Code of Practise is that it is a genuinely multi-stakeholder body, which has the support and involvement of union, workers' representatives and industry. The TCFUA has given its imprimatur to ECA on the grounds that compliance audits of businesses seeking accreditation are genuine, independent and focussed upon ending exploitation of homeworkers. The TCFUA could not be satisfied that audits are genuine or independent where they are performed by auditors paid for by the business seeking accreditation.

### **CONCLUSION**

31. In the TCFUA's experience, the Code has made a practical difference to the lives of outworkers who perform work in accredited supply chains. The TCFUA is finally starting to see a difference in the working conditions of outworkers. The TCFUA is a registered employee organisation, which is uniquely placed to verify that outworkers receive their minimum entitlements. The TCFUA is genuinely independent of the businesses seeking accreditation. Rigorous and thorough compliance auditing at each level of the supply chain by a transparent and genuinely independent body is critical to the Code, and to the confidence that both industry and consumers have in the Code's accreditation system.
32. The TCFUA strongly supports the reauthorisation of the Code as sought in the HWCC application.

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