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**REVIEW OF THE INQUIRY
INTO OUTWORKERS IN
THE GARMENT INDUSTRY**

SENATE ECONOMICS REFERENCES COMMITTEE

JULY 1998

Parliament of the Commonwealth of Australia

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Commonwealth of Australia

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ABBREVIATIONS

ABS	Australian Bureau of Statistics
ATO	Australian Tax Office
HCOPC	Homeworkers Code of Practice Committee
ILO	International Labour Organisation
NOHSC	National Occupational Health and Safety Commission
OHS	Occupational Health and Safety
RPS	Reportable Payments System
TCF	Textile, Clothing and Footwear
TCFUA	Textile, Clothing and Footwear Union of Australia
WELL	Workplace English Language Literacy

REVIEW OF OUTWORKERS IN THE GARMENT INDUSTRY

Background to the review

1.1 The Economics References Committee conducted an inquiry into outworkers in the garment industry in 1996. The Committee tabled its report titled *Outworkers in the Garment Industry* in December 1996.

1.2 In its report the Committee stated that it would undertake a review of outworking in the garment industry in 12 months' time.¹

1.3 In November 1997 the Committee held a public hearing to talk with a number of key organisations involved in the garment industry to hear, from their perspective, what developments have occurred since the committee tabled its report. The Textile Clothing and Footwear Union of Australia; Australian Business Chamber; Australian Retailers Association and the Council of Textile and Fashion Industries of Australia all gave evidence at the hearing. (Refer Appendix I) A transcript of the hearing is available at the internet address of <http://www.aph.gov.au/hansard>.

1.4 The Committee also reviewed the government response² to its report and as a consequence wrote to the Commonwealth Department of Workplace Relations & Small Business; Department of Industry Science and Tourism and the Australian Taxation Office seeking further information in March 1998. The responses were considered as part of the Committee's deliberations on the report.

1.5 On 11 March 1998 the Textile Clothing and Footwear Union of Australia (TCFUA) forwarded a supplementary submission highlighting recent developments in relation to the Committee's recommendations. The TCFUA together with the Council of Textile Clothing and Fashion Industries of Australia also provided comments on the government response to the Committee's report. In total the Committee received 8 submissions or supplementary information to the review and these are listed at Appendix II.

1.6 On 7 May 1998 the Committee received the report *The Effects of Outsourcing upon Occupational Health and Safety: A Comparative Study of Factory-based and Outworkers in the Australian Clothing Industry* prepared by Dr Claire Mayhew, a research scientist with the National Occupational Health and Safety Commission (NOHSC).

Review Findings

Homeworkers Code of Practice

1.7 The Committee congratulates the industry for the development of the Homeworkers Code of Practice. A copy of the Homeworkers Code of practice is at Appendix III. This is a

1 Outworkers in the Garment Industry Report, p. xvii.

2 The government response was tabled in Parliament on 3 September 1997

major breakthrough for the industry, and it is hoped it will finally lead to the elimination of exploitation of outworkers.

1.8 The agreement is between the Textile Clothing and Footwear Union of Australia; the Council of Textile and Fashion Industries Ltd; the Australian Chamber of Manufacturers and the Australian Business Chamber.

1.9 As at March 1998, 34 retailers and 35 manufacturers and fashion houses had signed the Homeworkers Code of Practice. In 1995 four retailers signed a 'Deed of Co-operation' with the Textile Clothing and Footwear Union of Australia. (refer Appendix IV).

1.10 The Homeworkers Code of Practice is a comprehensive document that provides for:

- accreditation;
- record keeping;
- a lists of contractors;
- accredited companies keeping a check on their contractors;
- a contractual arrangement that signatories cannot give work to outworkers for less than the award; and
- outworkers being defined and treated as employees.

These components form the major part of the clauses contained in the outworkers' award, however, still require additional support to work effectively. According to Mr Nossar, Industrial Officer of the TCFUA:

The code by itself is a piece of paper. The code needs mechanisms to work. It needs the award protections that are already there to remain and it needs the development of a calculation mechanism specifications manual, to turn the estimate of labour required for a particular garment into a mathematical exercise. There is a commitment by the industry parties, the employer parties and the union to developing that calculation mechanism.³

1.11 The implementation and success of the code across the whole of the industry can only be achieved if more companies are encouraged to sign the code. As the code is voluntary, according to the TCFUA, it needs to be underpinned by an award that provides in detail the pay and conditions for outworkers employment. If clauses in the award are weakened to the extent that companies who fail to comply with the terms of the code cannot be prosecuted under the award, the code will lose its authority and companies may start to opt out of the code's process.

1.12 In its response to the Committee's initial report, the government stated that it would support a code of practice openly entered into by industry parties, as a way of strengthening industry standards.⁴ The governments offer to fund an education program to assist in the

3 Evidence p. E939.

4 Government response to the report of the Senate Economics References Committee on *Outworking in the Garment Industry*, p. 4.

implementation of the code of practice is **supported by the Committee**, however, more needs to be done by all parties to ensure the code's success.

1.13 Clause 5 of the code provides for the establishment of a Homeworkers Code of Practice Committee, (HCOPC) comprising an equal number of representatives from the TCFUA and a combined group of employers who are party to the agreement. The duties of the Committee include:

- Accreditation of manufacturers;
- Ability to withdraw a manufacturer's accreditation;
- Holding and maintaining the Accreditation Register of accredited manufacturers;
- Confirming a retailer's entitlement to accreditation where it establishes that it is only dealing with accredited manufacturers
- Allocating monies from the Education Publicity and Compliance Fund of the code;
- Settling any disputes that may arise in relation to the operation of this Agreement. This may include the participation of an independent mediator, where agreed;
- Establishing processes and procedures to efficiently deal with issues which come before it, in particular, those which require mediation; and
- Developing standard product specifications through the establishment of an expert working party, which will report to the Code of Practice Committee. Schedule 9 of the code refers to the process for development of this product specifications manual.

1.14 The Homeworkers Code of Practice Committee met in May 1998 for the first time. Its major priority was to prepare a joint submission to the Department of Industry, Science and Tourism seeking funding for the Education, Publicity and Compliance Fund. Some of these funds will be used to develop a Standard Product Specification manual (sewing time manual) as described in Schedule 9 of the code.

1.15 The manual will be used by TCF employers to calculate accurately the payment of wages to outworkers and by HCOPC to audit wages paid to outworkers when a dispute arises. Mr Woolgar, National Secretary of the TCFUA made the following comment in evidence to the Committee:

The home workers code of practice, which we jointly developed, now depends for its future success upon the development of a standard product specification manual, which will jointly facilitate compliance with the code. In addition to developing an industrial engineering database of considerable importance to both industrial productivity and compliance with other existing protective measures for outworkers.⁵

5 Evidence, p. E930.

1.16 **The Committee supports the development of the sewing time manual as an essential requirement for the successful operation of the code, and recommends the government provide the financial assistance for this initiative.**

The TCF Advisory Board

1.17 The Committee welcomes the government's appointment of a new TCF Advisory Board to provide industry-based advice to the Productivity Commission. **However, the Committee believes a working party or committee should be established within the Board to deal specifically with outworkers issues.** A committee that includes expert representatives from government, industry, union and community groups can only assist the government in future policy development. Further, it will demonstrate the government is committed to eliminating exploitation of outworkers and improving the operation of the TCF industry.

Government Procurement Practices

1.18 A large number of government departments and agencies are involved in clothing procurement. Currently Australia Post is the only federal government agency to sign a Deed of Co-operation with the TCFUA.

1.19 The government response to the Committee's report gave no indication that it would insist other government agencies should enter into a code or deed of ethical sourcing, as undertaken by Australia Post.

1.20 The Committee notes that government procurement officers are required to use "best practice" when purchasing, and deal only with suppliers who comply with the law. However, how agencies monitor their suppliers to determine if they are complying with the law remains unclear.

1.21 **The Committee suggest the federal government follow the lead of the NSW government by directing departments and agencies who deal with clothing procurement to enter into a deed of co-operation along the lines of the NSW code.** Departments and agencies should give an undertaking that they will only deal with suppliers who have signed the Homeworkers code of practice. The Textile Clothing and Footwear Union of Australia suggest that the same standard apply to both locally sourced and imported goods.

Government Assistance

1.22 The Committee acknowledges the Department of Industry, Science and Tourism's response that it is prepared to fund a one-off education campaign to help implement the Homeworkers Code of Practice. The timing and nature of the campaign will be determined shortly after the department receives the industry submission for funding support.

1.23 The Department of Workplace Relations and Small Business is jointly developing a national compliance and information campaign for outworkers with the Office of the Employment Advocate. The aim of the campaign is to ensure outworkers and employers in the clothing industry understand their rights, responsibilities and opportunities under the *Workplace Relations Act 1996* and the Clothing Trades Award. The Department is

considering using seminars; a national help line staffed by bilingual operators; and a series of publications printed in several languages to disseminate the information.

1.24 The Committee commends the Departments for these two initiatives, which form part of the overall TCF package.

1.25 **The Committee recommends that only retailers and manufacturers who are signatory to the agreement should benefit from industry assistance and support.** This may encourage the remaining organisations to sign on and thus achieve industry wide agreement to the code.

Deeming Outworkers as Employees

1.26 In its initial report the Committee stated that one of its major concerns was that outworkers were not recognised as employees by the majority of their employers. The Committee is very concerned that, until some agreement between the parties is found that identifies all outworkers as employees, they will continue to be exploited by questionable middlemen.

1.27 The TCFUA put forward proposed amendments to the *Workplace Relations Act 1996* that would ensure that outworkers were deemed employees and these are listed in Appendix VI.

1.28 The government argues that it is constrained by the constitutional limitation on the Commonwealth to resolve this matter in a timely manner. The Department of Workplace Relations and Small Business states in its recent correspondence to the Committee:

Any Commonwealth legislation seeking to alter the employment status of persons who might otherwise (at common law) not be employees would need to depend on constitutional powers other than the conciliation and arbitration power, such as the Commonwealth's power to legislate with respect to corporations and would be limited in its scope accordingly.⁶

1.29 In response to the Committee report, and following agreement by the States and Territories, the government has listed the matter for consideration at the next Labour Ministers Council meeting.

1.30 The Committee is very concerned about the lack of action in the past 18 months to officially deem outworkers as employees. The problem seems to be one of political will. In the case of the *Workplace Relations and Other Legislation Amendment Bill (No. 2) 1996*, Victoria had referred several of its industrial relations powers to the Commonwealth. This approach allowed the federal legislation to apply in relation to persons and conduct which would otherwise be outside the scope of the available constitutional powers. For example, freedom of association with respect to employers, employees and independent contractors.

1.31 Outwork is performed predominantly in Victoria, New South Wales, and South Australia; thus the federal/Victoria deeming provisions would clarify the employment status of outworkers significantly. From the perspective of outworkers it is vital their employment

6 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 1.

status is resolved and resolved quickly. Accordingly it is important that the federal government take immediate action and show some willingness to protect outworkers from further exploitation.

The Award Review Process

1.32 Schedule 5 of the Workplace Relations and Other Legislation Amendment Act requires awards to be simplified. For this process to occur, the parties involved need to lodge an application during the interim period, which ceases at 30 June 1998. The Act's aim to bring all the industry awards into 20 areas to be known as 'allowable matters'. Outwork is the 20th allowable matter and was included in the legislation for the first time. That deliberate additional inclusion, in the Committee view, is a signal of the importance attached to these workers

1.33 The Department of Workplace Relations and Small Business does not normally lodge a submission to the Australian Industrial Relations Commission in relation to applications for the simplification of particular awards. It does, however, intervene on behalf of the Minister of Workplace Relations and Small Business when required. As part of the process to simplify the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1995* (the hospitality award), the government detailed its position in respect to S89A2(t) 'Pay and condition for outworkers' matters. However, the Commission did not consider this matter, as outworkers are not covered in the hospitality award.

1.34 The Committee believes the government's interpretation on certain clauses in TCF Awards (in particular clauses 26, 27 and 27A of the Clothing Trades Award) is very narrow and, if implemented, would remove the TCFUA's ability to prosecute companies. The TCFUA's ability to ensure that award conditions apply to Outworkers has already been weakened by the changes introduced in the *Workplace Relations Act 1996* such as the limitation to right of access to employers' premises. The Committee is aware that the parties to TCF awards need to present their respective cases to the Commission and it will be up to the Commission to make a decision in the context of the current Act. However, if the government maintains its current position and insists the outwork allowable matter be restricted to the bare minimum, and if the commission concurs, advances achieved with the Homeworkers Code of Practice will be seriously undermined.

1.35 The Committee recommends that the existing clauses regarding outwork in the TCF awards should remain when the awards are simplified. The government should intervene and support this outcome in order to ensure that mechanisms continue to exist in the award to ensure that award pay and conditions are honoured for outworkers.

ILO Convention on Homework and Child Labour

Child Labour

1.36 The Committee notes the government's concerns with the International Labour Organisation Convention 138 that deals with child labour. The government states:

C138's overly prescriptive requirements and its inflexibility have proved it to be an inappropriate means of dealing with the problem of exploitative child labour.⁷

1.37 The Minister for Workplace Relations and Small Business has sought the agreement of States and Territories not to give further consideration to C138 as a new Convention on child labour is likely to be passed at the ILO annual convention in 1999. All but Tasmania has agreed. The federal government added:

Australia has the view that the proposed new ILO Convention on exploitative child labour, which is expected to be adopted in 1999, should be the core standard on child labour.⁸

1.38 The Committee supports this position, however, does not support the government's view that there are "no child labour problems" in Australia.⁹ Recent statements received from two young people who have been outworkers for some time indicate that this may be a serious issue in Australia. (Refer Appendix VI) **The Committee recommends the government takes a more active role to eradicate this problem.**

Homework

1.39 In its response to the Committee's report the government advised the following in respect to the ILO Convention on Homework:

The Government has certain obligations, in accordance with Article 19 of the ILO Constitution, concerning ILO Convention 177 and Recommendation 184 on Homework which were adopted by the International Labour conference in June 1996. These obligations include the tabling of the texts of the two instruments in the Australian parliament, together with a report on action proposed to be taken in relation to the two instruments. Australia is then required to report to the ILO that it has brought the instruments to the attention of the competent authority. As a federal State, Australia has until December 1997 to fulfil these obligations.¹⁰

1.40 The government has now advised that it was not able to meet this deadline because it did not complete its consultation with the States and Territories in time. The government also informed the Committee that it would be premature to provide the government's position on C177 at this stage.

1.41 The Committee feels the long delay in dealing with ILO Convention 177 and Recommendation 184 is unsatisfactory and the government should undertake to resolve the matter quickly.

Occupational Health and Safety Issues

1.42 The Committee reiterates its position that the occupational health and safety of outworkers is still a neglected problem. This important matter will require considerable effort

7 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 3.

8 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 3

9 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 2

10 Government response to the Committee's report, p.11.

by the key parties to introduce appropriate and workable intervention strategies that will improve the working environment for outworkers.

1.43 Dr Claire Mayhew, National Occupational Health and Safety Commission in association with Professor Michael Quinlan, University of NSW recently completed a study on OHS experiences of TCF factory-based workers and outworkers. Their findings revealed a higher instance of overuse injury among outworkers compared to factory workers.

1.44 The study found outworkers worked significantly longer hours and were paid much less than factory-based workers. There was overwhelming evidence that piecework, supported by low wage and a bonus payment system, resulted in short-term as well as chronic injury to outworkers. Outworkers also suffered more instances of occupational violence such as verbal abuse, threats and physical assaults. None of the 100 outworkers interviewed were given any OHS information and preventative advice.

1.45 Asian Women at Work Inc informed the Committee that outworkers not only suffer overuse injuries but also experience secondary health problems such as depression, anger and stress caused by isolation and lack of intellectual stimulus. They see a need for federal and state OHS legislation to be consistent, and to include outworkers in these Acts.

1.46 Dr Mayhew's study identified four strategies that would help reduce the instance of overuse injury and occupational violence against outworkers. These are:

- a) Development of a brochure on OHS in TCF machining work that is applicable for both factory-based and outworkers;
- b) The OHS duty of care responsibilities of middlemen, retailers/wholesalers and manufacturers using outworkers need to be identified, widely publicised and robustly enforced by the jurisdictions;
- c) Outworkers should be paid solely on the award rate without production bonus payments and with the standard benefits such as workers' compensation coverage; and
- d) Adherence to the *Code of Practice on employment and outwork obligations*, developed by the NSW government, and the TCFUA Homeworkers code of practice, is likely to promote improved OHS outcomes through more standardised working conditions.¹¹

1.47 The Committee strongly recommends that the National Occupational Health and Safety Commission (Worksafe Australia) examine Dr Mayhew's report with the view of implementing its recommendations in the very near future.

11 The effects of outsourcing upon occupational health and safety: *A comparative study of factory-based and outworkers in the Australian TCF Industry*, by Dr Claire Mayhew, Executive Summary. Printed by the National Health and Safety Commission in January 1998.

Collection of Statistical Data

The Committee notes the practical difficulties with its recommendation that the Australian Bureau of Statistics (ABS) conducts a comprehensive survey, in conjunction with the Australian Taxation Office (ATO), of the number of home-based workers across all industries. **However, the Committee still considers the information on the exact numbers of outworkers is essential for policy development, and recommends that the ABS survey scheduled for July 1999 includes specific questions on outworkers.**

1.48 In the interim the ABS should liaise with the TCFUA and community groups in contact with outworkers to collect accurate statistical data. The government should be aware that collection of statistical information is a requirement of the ILO homework convention C177.

English Language Training

1.49 It is very important that English language training is provided to outworkers. Dr Mayhew's study revealed that the majority of outworkers are new immigrants from East Asian countries. 'Middlemen' who speak their own language often dominate outworkers, subjecting them to both physical and mental abuse.

1.50 The Committee acknowledges the government's support of ongoing funding to the Workplace English Language Literacy programs and other language training programs directed at outworkers. It is essential that new migrants be targeted for language training as soon as they arrive in Australia and the classes include information on the industrial relations system and rights of workers in this country.

Taxation Compliance Issues

1.51 The Committee recommended in its initial report that the Australian Taxation Office (ATO) should take full advantage of the Reportable Payments System (RPS) to investigate taxation avoidance in TCF industries. The government responded that it has accepted the Committee's recommendation in an effort to reduce tax avoidance in the industry.

1.52 In November 1996 the Commissioner for Taxation established a Cash Economy Task Force to examine the cash economy to determine the compliance issues and how they can be addressed by the ATO. The ATO in response to the first report from Cash Economy Task Force created a number of national projects to monitor high risk industries and the clothing industry was identified as one of these high risk industries. Consequently, the ATO expanded its field presence, resulting in a significant increase in participation rates and lodgement figures within the TCF industry

1.53 The ATO is also aware that the use of "shell entities" in the industry causes many of the compliance problems, and is the main factor for the low participation rate in the RPS. Shell entities are companies with no established business premises, dummy directors and a very short life span. The ATO has been able to contain the problem but is still searching for a permanent solution:

Inroads into the non-compliance within the clothing industry have been made through the introduction of the RPS and extensive field activities. However, given the nature of the industry much remains to be done and the ATO is conscious of

this fact. To this end new approaches to compliance improvement are being sought.¹²

1.54 The Committee is pleased that the RPS is having an impact on reducing non-compliance with taxation laws in the clothing industry. **However, the Committee encourages the government to continue to develop ways to assist and encourage outworkers to become part of the legal system without reprisals for past non-compliance.**

Senator Jacinta Collins
Chair

12 Letter from the Australian Taxation Office, dated 18 May 1998, p. 2.

GOVERNMENT SENATORS' ADDITIONAL COMMENTS

Government Senators agree with the general thrust of the report and its general recommendations but would like to make some additional and dissenting comments in relation to specific areas mentioned in the report:

Government Assistance

The Minister for Workplace Relations and Small Business launched the outworker campaign on 18 June 1998. The bilingual help line will run for eight weeks, seminars have already been conducted for community groups and manufacturer seminars will be held in Melbourne and Sydney in late July. This will be followed up by targeted compliance activity to ensure that manufacturers understand and are complying with their award obligations.

Government Senators do not agree that industry assistance and support should only be provided to retailers and manufacturers who are signatories to the Homeworkers Code of Practice.

Deeming Outworkers as Employees

It is reasonable for an outworker to make a legitimate choice whether to be an employee or an independent contractor. Deeming provisions would eliminate that ability to choose, therefore deeming provisions in absolute terms are not supported.

It is acknowledged that there are problems regarding coercive or fake independent contract agreements entered into to avoid employment obligations, however, deeming provisions would also affect genuine arrangements. An approach to this problem such as the reverse onus of proof in the *Clothing Trades Award 1982* could be a more acceptable solution.

There are subsidiary problems associated with national deeming because such provisions are of limited worth if not universally applicable, especially for national operators. However, for some issues, benefits through use of the corporations power could be an improvement (eg action taken by the Commonwealth in relation to Australian Workplace Agreements, which are currently available to corporations only (outside Victoria and the Territories and Commonwealth employment) pending complementary State legislation).

In addition, the powers referred to the Commonwealth by Victoria do not extend to legislating with respect to independent contractors generally. The sole power referred in relation to independent contractors is power in respect of freedom of association. Referred powers only deal with specific subjects and are generally limited to 'employees' and 'industrial disputes' (ie employee-related disputes).

Government Senators believe that the issue of deeming provisions requires more than a partial response and it is appropriate that this issue be further considered by the Labour Ministers Council because a coordinated approach is preferred for this issue.

The Award review process

The Committee is aware that the following is an allowable award matter: “pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer’s business or commercial premises.”

Opposition Senators assume that award simplification will result in changes to awards affecting the TCFUA’s ability to prosecute companies. This is not an assumption which can be founded on the Government’s legislation, nor is it appropriate to pre-empt the Commission’s decision on this matter.

Furthermore, the Commission has a statutory obligation to review awards and it is inappropriate that the Committee recommend that it deal with awards in a way which is inconsistent with that obligation.

ILO Convention on Homework and Child Labour

The Australian Government has taken an active role on this issue, and will continue to do so, through its strong support for the development of the new ILO Convention, on the worst forms of child labour.

It is anticipated that the new convention will be adopted in 1999 and should become the ILO’s main standard on child labour. It is hoped that, unlike the ILO’s current standard on child labour (c.138, the Minimum Age Convention), the new Convention can be widely ratified.

Regarding ILO Convention 177 and Recommendation 184, in accordance with the Government’s treaty-making policy, announced by the Minister for Foreign Affairs in May 1996, there are several pre-conditions before ratification of a Convention can be considered. These are:

- Consultation must take place with interested parties. In the case of ILO Conventions, this includes the States and Territories, the ACCI and the ACTU.
- There must be compliance with the provisions of the Convention.

Furthermore, it is usual Australian practice not to ratify ILO Conventions unless the State and Territory Governments have formally agreed to ratification.

It is therefore premature to talk of ratifying ILO Convention 177 without fulfilling these pre-conditions. The Government is undertaking the necessary consultations with a view to determining whether ratification should be pursued.

Occupational Health and Safety Issues

Government Senators recommend that the National Occupational Health and Safety Commission examine Dr Mayhew’s report and consider implementing strategies a) and b) in the future.

Additional comments

Government Senators note the claims made by some manufacturers that the uncertainty relating to some of the obligations contained in industry codes and the threat of prosecution by the unions for minor technical breaches of the clothing award are forcing manufacturers to assemble the product offshore.

It should also be noted that clothing production is conducted by ethnic minorities in South Western Sydney and areas of Melbourne and these business activities are crucial to the work opportunities of these communities. Given this, it is appropriate to examine whether the code is having the alleged effect of increasing offshore manufacturing of clothing products.

Senator Alan Ferguson

Senator Grant Chapman

Senator Bill Heffernan

APPENDIX I

PUBLIC HEARING

A public hearing was held on: 27 November 1997 in Canberra

LIST OF WITNESSES

Textile, Clothing and Footwear Union of Australia

Mr Anthony Woolgar	National Secretary
Mr Barry Tubner	Assistant Secretary
Mr Igor Nossar	Industrial Officer
Ms Annie Delaney	Outworker Co-ordinator

Australian Business Chamber

Mr Timothy Capelin	Chief Manager – Litigation
Ms Samantha Renwick	TCF Industrial Advocate

Council of Textile and Fashion Industries of Australia

Mr Peter Kreitals	Executive Director
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Australian Retailers Association

Mr Phillip Naylor	Chief Executive Officer
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APPENDIX II

LIST OF SUBMISSIONS OR SUPPLEMENTARY INFORMATION RECEIVED FROM ORGANISATIONS

1	Textile Clothing and Footwear Union of Australia	VIC
2	Council of Textile & Fashion Industries of Australia	VIC
3	Australian Business Chamber	NSW
4	Australian Taxation Office	ACT
5	Department of Workplace Relations and Small Business	ACT
6	Department of Industry, Science and Tourism	ACT
7	Asian Women at Work	NSW
8	Worksafe Australia, National Occupational Health and Safety Commission	NSW
9	Government response to the report from the Senate Economics References Committee on Outworkers in the Garment Industry	ACT

HOMEWORKERS CODE **OF PRACTICE**

CONTENTS:

- Part 1 Retailers agreement**
- Part 1A Retailers agreement for members of the Australian
Retailers Association (ARA)**
- Part 2 Manufacturers, Wholesalers, Warehouses & Fashion
Houses agreement**

SCHEDULES

Schedules attached to Part 2 of the Code detail the reporting, contract, statutory declarations, letter to homeworkers as all requirements to be fulfilled by signatories to the Code Part 2. The licensing fee and details of the standard product specifications manual (sewing time manual) are in principal agreed to but still to be developed and established. The schedules are integral in the content and working of the Code part 2.

HOMEWORKERS CODE OF PRACTICE

PART 1 RETAILERS

AGREEMENT between

The Textile Clothing and Footwear Union of Australia and

The Council of Textile and Fashion Industries Ltd and

The Australian Chamber of Manufacturers and

The Australian Business Chamber

PARTIES

The TCFUA

The Council of the TFIA

The ACM

The ABC

Individual companies who are signatories to this Agreement.

STATEMENT OF PRINCIPLES REGARDING HOMEWORKERS WAGES AND CONDITIONS

- 1: The parties to this Statement of Principles believe that homeworkers in the Textile Clothing & Footwear Industry should not be exploited in the wages and conditions they are entitled to by their employer.
- 2: Consequently, the parties agree that employees should not get paid less than the appropriate Award skill level rate or the product rate calculated on the loaded Award skill level rate in the Clothing Trades Award as of March 1997 and as amended by the changes in the wage rates.
- 3: The parties wish to promote the public view that manufacturers conform with these standards. Manufacturers who do conform may be entitled to place on each product manufactured an indication of their compliance.
- 4: The parties wish to promote the public view that retailers who purchase products which conform with this agreement may demonstrate to their customers their commitment by an identifying sign or other indication of compliance.
- 5: 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 specified in 2, relevant to the engagement of homeworkers.

Further, the retailers who are signatories to this agreement will provide quarterly to the TCFUA in writing, the names and addresses of all suppliers given orders to make products consistent with this statement, for sale by retailers.

- 6: It is agreed that the Union shall have the responsibility of enforcing compliance with this Statement of Principles.

Where the Union has cause to believe that there is a case of exploited homeworkers they will inform the manufacturer and relevant retailer.

- 7: The retailer will investigate the case with its supplier, giving a fair opportunity for the manufacturer to demonstrate that it is complying with this statement.

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.

- 8: It is agreed that the retailers and manufacturers will contribute to a public campaign to tell manufacturers, suppliers and homeworkers the terms of this statement, the obligations of the award and the code of practice.

- 9: Nothing in this agreement shall be construed to take away any legal rights of the parties or any employee and shall not be a basis for discriminating unfairly against any employer which conforms with the agreement.

- 10: This Agreement will be for an initial two (2) year period of operation.

SIGNATORIES PART 1

Signed by

.....
on behalf of The Textile Clothing and
Footwear Union of Australia

Signed by

.....
on behalf of The Council of The
Textile and Fashion Industries Ltd

Signed by

.....
on behalf of The Australian Chamber
of Manufacturers

Signed by

.....
on behalf of The Australian Business
Chamber

APPENDIX - PART 1

The following company has agreed to become a signatory to this Agreement.

SIGNATORIES

Signed by

.....

Name

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

Date.....

Signed by

.....

Name.....
on behalf of
Company Name

Position.....

Date.....

PART 1A

AUSTRALIAN RETAILERS ASSOCIATION (ARA) AGREEMENT WITH THE TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA.

HOMEWORKERS CODE OF PRACTICE -
RETAILERS AND TCFUA

THIS CODE OF PRACTICE RELATES TO THE ELIMINATION OF EXPLOITATION OF
HOMEWORKERS
15 AUGUST 1997

1. The parties to this Code believe that homeworkers in the TCF Industry should not be exploited in the wages and conditions they are entitled to by their employer.
2. Consequently, the parties agree that employees should not get paid less than the applicable Award rate.
3. Retailers will require their TCF suppliers, in their purchase contracts, to undertake to comply with all the laws and regulations including applicable Awards, relevant to the engagement of homeworkers.
4. It is agreed that the TCFUA (the Union) shall have the responsibility of enforcing compliance with the Award. However, all parties shall be responsible for ensuring compliance with this Code.

To assist the Union the ARA will compile, from information received from individual retailers, a list of the names and addresses of all TCF suppliers given orders to make products consistent with this Code for sale by those retailers. In accordance with the following procedure the ARA will provide to the Union on request the names and addresses of each retailer on its list dealing with a supplier nominated by the Union:-

- i. The Union will designate an officer from each Branch for contacting the ARA and individual retailers for information.
- ii. The ARA and each retailer will designate a person to be contacted by the designated union officer.
- iii. On being contacted by the designated officer of the Union, the ARA will provide the name(s) and address(es) of the retailer(s) and a contact name of a designated person within each retailer which is listed with ARA as dealing with a supplier named by the union officer.

- iv. The designated union officer may then contact the retailer(s) named for assistance in investigating a breach of the Award. It is recognised that the Union Officer, if he/she is aware that a certain brand is sold by a retailer and is aware of the contact name in that retailers business, may contact the retailer directly.
 - v. The retailer will only act on the Union Officers request for assistance if the Union Officer can reasonably demonstrate to the retailer that there is a suspected breach of the Award.
 - vi. Any names and contacts provided by ARA linking a supplier with a retailer and any information given by a retailer to the Union shall be provided on a confidential basis and is to be used for the sole purpose of assisting the Union in ensuring compliance with Awards.
 - vii. On being satisfied by the Union that there is a provable case of exploitation the retailer will investigate the matter with its supplier giving a fair opportunity for the supplier to demonstrate it is complying with this Code within time lines agreed to between the retailer and the Union.
 - viii. If it is proven that the supplier has not complied, then the supplier will be expected to take the necessary measures to comply with this Code.
 - ix. In the event that the supplier still does not comply, the retailer will act in accordance with its commitment not to purchase products produced by exploited labour and where legally possible terminate the affected purchase contract along with other unfulfilled existing contracts with that supplier (Providing such contracts were entered into before the operative date of this Code). All other contracts entered into after the operative date of this code will include an enabling clause that the retailer will act in accordance with its commitment to this code.
 - x. If there is a dispute between the retailer and the Union as to whether exploitation has occurred the matter shall be referred for resolution under a process to be agreed between the ARA and the Union.
5. The parties may wish to promote the public view that manufacturers conform with these principles. Manufacturers which do not conform with these principles may be entitled to place on each product manufactured an indication of their compliance with this Code. In those instances where the label is a retailer's label, identification must be by arrangement with the retailer.
6. The parties may wish to promote publicly that retailers conform with this Code. These retailers may demonstrate their commitment by a uniform identifying sign or other agreed indication of compliance to these principles.
7. It is agreed that none of the parties to this Code will engage in any negative publicity involving a retailer over a particular issue of exploitation while the retailer is investigating a claim of exploitation and the processes in the Code are being followed.

8. Nothing in this Code shall be construed to take away any legal rights of the parties or any employees and shall not be a basis for discriminating unfairly against any employer which conforms with the Code.

9. The Code shall operate for a period of 12 months from the (agreed date of commencement to be inserted) and shall remain in operation until renegotiated or terminated by either party. The code is to be signed by the TCFUA and the ARA on behalf of their member retailers who have agreed to be party to the code. A list of said retailers will be attached to this code as an appendix.

Signed.....
(National President of the
Textile, Clothing and Footwear
Union of Australia)

Signed
(Chief Executive Officer
Australian Retailer Association)

HOMEWORKERS CODE OF PRACTICE

PART 2 **SUPPLIERS, FASHION HOUSES, WHOLESALERS & MANUFACTURERS.**

CLAUSE 1- AGREEMENT between

The Textile Clothing and Footwear Union of Australia and

The Council of Textile and Fashion Industries Ltd and

The Australian Chamber of Manufacturers and

The Australian Business Chamber

CLAUSE 2- PARTIES

The TCFUA

The Council of the TFIA

The ACM

The ABC

Individual companies who are signatories to this Agreement.

CLAUSE 3- OBJECTIVES

The objectives of this Agreement include:

- to end exploitation of Homeworkers
- to enable homeworkers to clearly understand their employment entitlements
- to ensure homeworkers receive their appropriate award entitlements and legislative protection
- to establish a system of accreditation for Manufacturers who comply with this Agreement.
- to assist Homeworkers by supporting, consistent with this Agreement, community and industry education securing compliance with this Agreement and promoting its purpose.

CLAUSE 4 - DEFINITIONS

“Accreditation” means a system of accreditation where by a Manufacturer may indicate that it complies with the terms of this Agreement.

“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 9.

“Accreditation Register” means the register of accredited manufacturers held and maintained by the Code of Practice Committee.

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

“Manufacturer” means a manufacturer that manufactures or arranges the manufacture of products.

*

“Manufacturer” the term manufacturer is used throughout this document where the word manufacturer appears it refers to and is inclusive of supplier, fashion house & wholesaler.

“Contractor” means a person engaged to produce or arrange the manufacture of products.

“Homeworker” means a person who sews products in a private dwelling or in premises other than a registered factory.

“Level of complexity” is the categorisation of each ABS product group into simple medium or complex degree of difficulty in sewing the product.

“Products” means the whole or part of any male or female (including children’s) *garment* or any article of wearing apparel. It is the intention of the parties to expand the definition of product to encompass all items manufactured by parties to this Agreement.

“Rate per product” is the rate calculated using the appropriate Award skill level rate under the Clothing Trades Award 1982, loaded for Annual Leave; Annual Leave Loading and Public Holidays X the GSD (or other similar agreed method of measurement) minute value determined for the appropriate level of complexity for the relevant classification of product within the ABS product category.

“Relevant Award” means the Clothing Trades Award 1982 as at March 1997 and as amended from time to time to provide increases in wages and conditions as approved by the AIRC.

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

“Relevant Superannuation Fund” means the Australian Retirement Fund, or such other fund as may be agreed to by the TCFUA.

“Standard Statutory Declaration” means a statutory declaration as set out in Schedule 4 and 5 of this Agreement.

The standard statutory declaration in schedule 4 refers to manufacturers who contract only to contractors and do not directly give work to homeworkers.

The standard statutory declaration in schedule 5 refers to manufacturers and contractors who give work directly to homeworkers.

Completion of one or both of these standard statutory declarations is necessary for a manufacturer to acquire accreditation.

CLAUSE 5- CODE OF PRACTICE COMMITTEE

There shall be a committee comprising an equal number of representatives from the TCFUA and a combined group of employers party to the Agreement. Decisions of the Committee shall be made by a majority vote. The maximum size of the committee shall be six.

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

- accreditation of manufacturers
- withdrawing a manufacturers accreditation
- holding and maintaining the Accreditation Register of accredited manufacturers
- confirming a retailer’s entitlement to accreditation where it establishes that it is only dealing with accredited manufacturers
- allocating monies from the Education Publicity and Compliance Fund
- settling any disputes that may arise in relation to the operation of this Agreement. This may include the participation of an independent mediator, where agreed.
- establishing processes and procedures to rapidly and efficiently deal with issues which come before it in particular those which require mediation.
- Developing standard product specifications (to be a schedule to this agreement, 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 Code of Practice Committee.

*Where the committee cannot resolve a dispute the matter will be referred to the agreed independent mediator for resolution.

CLAUSE 6- ACCREDITATION

The Code of Practice Committee shall confer accreditation on a manufacturer which establishes by way of standard statutory declarations (see schedules 4 & 5) that it complies with all of the following criteria:

- 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.
- 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.

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 Code of Practice Committee) that they have been made by an Accredited Manufacturer.

Any party to the Code of Practice Committee has the right to raise concerns and seek to review the accreditation of any manufacturer at any time.

The Committee may determine to cancel the accreditation of an Accredited Manufacturer provided that the Committee shall give twenty-eight (28) days notice to the Accredited Manufacturer before cancelling its accreditation.

If within the twenty-eight (28) days, the Accredited Manufacturer presents to the Committee reason why the accreditation should not be cancelled, the Committee may rescind its determination.

The Committee will consider a manufacturer's entitlement to accreditation on an annual basis. Re accreditation will be automatic based on the provision of updated standard Statutory Declarations, unless it can be demonstrated that the manufacturer does not have a satisfactory compliance record.

Any party to the Code of Practice Committee has the right to raise concerns regarding incidents of contractual arrangements between retailers and manufacturers which do not enable the appropriate award rate to be paid in accordance with this agreement.

CLAUSE 7- OBLIGATION ON ACCREDITED MANUFACTURERS

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

The accredited manufacturer 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.

Each accredited manufacturer who arranges for a homemaker to manufacture products must satisfy itself that the homemaker is receiving:

- the appropriate rate per product based on the appropriate loaded Award skill level hourly rate
- 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 Homemaker cannot be required to work Saturday or Sunday or beyond 7.6 hours in any one day, unless the homemaker chooses to do so.

- appropriate workers compensation protection
- appropriate superannuation contributions
- appropriate written notice upon termination
- the standard letter on union membership in accordance with Schedule 7.

Each accredited manufacturer who arranges for a homemaker to manufacture products must satisfy itself that all required records are maintained and are capable of being provided in accordance with Schedules 1 and 2.

Where an accredited manufacturer uses a contractor to make products the manufacturer 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 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 homemakers 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 Homemaker cannot be required to work Saturday or Sunday or beyond 7.6 hours in any one day, unless the homemaker 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
- the standard letter on union membership in accordance with schedule 7.

The contractor shall be required to establish to the Manufacturer, through the provision of a signed standard statutory declaration, as per schedule 4 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 standard statutory declaration, as per schedule 4, 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).

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

If the accredited manufacturer's report confirms a breach of this Agreement by a contractor, the accredited manufacturer 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- LICENSING

The Code of Practice Committee shall register and maintain whatever trademarks, logos or other identification items it deems appropriate to promote compliance with the Award and this Agreement.

The Committee shall enter into a licensing arrangement with any manufacturer who is accredited in accordance with this Agreement to become a licensee.

The Committee shall enter into a licensing agreement with a licensee according to Schedule 8 (Fee Scale) of this Agreement.

A Licensee shall be entitled to:

- affix to their products the registered trademark, logo or other identification;

- affix to their place of business, premises or any other thing the registered trademark, logo or other identification;
- promote their compliance with the Award and their acceptance of this Agreement

CLAUSE 9- ACCREDITATION OF RETAILERS

A retailer may promote that it is only dealing with accredited manufacturers who do not exploit homeworkers, by seeking accreditation from the Code of Practice Committee. Such accreditation shall be automatic provided the retailer can establish to the Committee evidence that those manufacturers, with which the retailer deals, possess current accreditation.

CLAUSE 10- 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;
- contributions from manufacturers, through payment for licenses;
- financial assistance from State and Commonwealth Governments.

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

For the period up to 30 June 1998, direct funds shall be allocated on the following basis:

- the initial \$300,000 shall be paid to the TCFUA for compliance activities in accordance with 1 below;
- the next \$100,000 shall be directed towards education and publicity activities in accordance with 2 below;
- the next \$50,000 shall be directed towards the development of product specification standards and other Code of Practice Committee costs;
- In the event that \$450,000 is not available by 31 March 1999 the parties will have discussions as to the scheduling of payments. 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.

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.

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

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

The TCFUA may inspect any records required to be maintained under this Agreement.

The TCFUA shall be given copies, if requested, of any records required to be kept under this Agreement.

CLAUSE 12 - OPERATION

This Agreement shall commence onand the parties agree to review its operation within 18 months of its commencement.

Accreditation of Manufacturers shall commence on.....

The Agreement shall be reviewed upon any of the parties withdrawing from the Agreement and giving to each other party not less than 3 months written notice of its intention to do so.

CLAUSE 13 - AMENDMENT

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

SIGNATORIES

- TCFUA
- TFIA
- ACM
- ABC
- Individual Companies

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) the name of the Contractor;
- vii) the address where the work is to be performed and the address of the Contractor, if the work is to be performed elsewhere;
- viii) the date of the Contractor's Contract;
- ix) the 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) the number and type of products to be made;
- xii) the 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 homemaker 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 ARF
- 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/orat times reasonably required by the TCFUA and/orperson authorised by the the records specified in Schedule 1 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.

SCHEDULE 4

STANDARD STATUTORY DECLARATION FOR MANUFACTURERS WHO GIVE WORK TO CONTRACTORS.

STATUTORY DECLARATION

I,(Full name)

of
(address)

do solemnly and sincerely declare as follows:

I am the ofPty Ltd
(position)

company address

I have put in place with every contractor this company engages either to manufacture products or arrange the manufacture of products by engaging homeworkers a uniform clause in our standard contracts as set out in Schedule 3 of the “Homeworkers Code of Practice”.

Each of the contractors who supply our company with goods has completed a Statutory Declaration as in Schedule 6 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 Statutory Declaration as set out in Schedule 6 of the “Homeworkers Code of Practice”.

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

on this day of 199.....

Before me

.....
Signature of person before whom the Declaration is made.

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

**SCHEDULE 4
ATTACHMENT 1**

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 5

STANDARD STATUTORY DECLARATION FOR MANUFACTURERS/CONTRACTORS WHO GIVE WORK DIRECTLY TO HOMEWORKERS.

STATUTORY DECLARATION

I,(Full name)

of
(address)

do solemnly and sincerely declare as follows:

I am the ofPty Ltd
(position)

I supply work directly to homeworkers.

I have read and examined the contents of the “Homeworkers Code of Practice” between the Textile Clothing and Footwear Union of Australia and my company dated

I have paid to each of these homeworkers (doing the work referred to above) the appropriate rate per product as defined at Clauses 3 and 9 of the “Homeworkers Code of Practice” (referred to above)

I have provided to each of these homeworkers, (referred to above) the minimum workload per fortnight defined at Clause 9 of the “Homeworkers Code of Practice” as referred to above.

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 Australian Retirement Fund superannuation contributions on behalf of each of these homeworkers with the requirements of the Clothing Trades Award 1982, or appropriate award.

I have kept (in regard to each of these homeworkers) records in accordance with Schedule 2 of the “Homeworkers Code of Practice”, and I will provide these records to other parties in accordance with Schedule 2 of the “Homeworkers Code of Practice”.

I have provided 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 Clothing Trades Award 1982, or appropriate award.

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 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 _____
on this _____ day of _____ 199

Before me

.....
Signature of person before whom the Declaration is made.

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

SCHEDULE 6

STANDARD STATUTORY DECLARATION FOR MANUFACTURERS/CONTRACTORS WHO RECEIVE WORK FROM ANOTHER MANUFACTURER/CONTRACTOR AND THEN SUPPLIES WORK TO HOMEWORKERS.

STATUTORY DECLARATION

I,(Full name)

of
(address)

.....
do solemnly and sincerely declare as follows:

I am the ofPty Ltd
(position)

I have received work from Pty Ltd. Orders to complete work to be
supplied to homeworkers.

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) the appropriate rate per product as defined at Clauses 3 and 9 of the
“Homeworkers Code of Practice” (referred to above)

I will hereafter provide to each of these homeworkers, (referred to above) the minimum
workload per fortnight defined at Clause 9 of the “Homeworkers Code of Practice” as referred
to above.

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 Australian Retirement Fund superannuation contributions on
behalf of each of these homeworkers with the requirements of the Clothing
Trades Award 1982, or appropriate award.

I will hereafter keep (in regard to each of these homeworkers) records in accordance with
Schedule 2 of the “Homeworkers Code of Practice”, and I will provide these records to other parties
in accordance with Schedule 2 of the “Homeworkers Code of Practice”.

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 will hereafter only terminate the services of any of these homeworkers after providing to them the appropriate written notice upon termination in accordance with the requirements of the Clothing Trades Award 1982, or appropriate award.

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 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 _____
on this _____ day of _____ 199

Before me

.....
Signature of person before whom the Declaration is made.

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

SCHEDULE 7

Dear Homeworker

A landmark Agreement has recently 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 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

LICENSING FEE

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

\$2,000 per annum.

SCHEDULE 9

STANDARD PRODUCT SPECIFICATIONS MANUAL

Process for development of the Standard Product Specifications Manual.

The Homeworkers Code of Practice Committee (HCOPC) agrees to a process which will entail HCOPC agreeing to a number of actions in the development of a Standard Product Specifications Manual which will be used as a basis by the TCF employers for the payment of wages to outworkers, and for the HCOPC to use as a tool to assess accuracy of wages paid to outworkers in any dispute situation. These actions are:

1. Develop a submission for Federal Government funding for the development of the Standard Product Specifications Manual.
2. Acquire a “General Sewing Data” (GSD) software program and employ a consultant to undertake a GSD study of TCF products covered by the Homeworker Code of Practice.
3. Employ a consultant to undertake a Time and Motion Engineering study of TCF products covered by the Homeworkers Code of Practice, and to develop standard product specifications for each product using data acquired through “GSD” and “T&M” studies.
4. Consultant will trial draft standard product specifications both in an in-house situation using machinists and technology in a number of factories, as well as trailing them with a number of outworkers working with their technology in their private dwellings.
5. The draft standard product specifications will then be refined and presented to the HCOPC for endorsement.
6. A library of information will be developed by the consultant to form the Standard Product Specifications Manual for final endorsement by the HCOPC.

SIGNATORIES PART 2

Signed by

.....
on behalf of The Textile Clothing and
Footwear Union of Australia

Signed by

.....
on behalf of The Council of The
Textile and Fashion Industries Ltd

Signed by

.....
on behalf of The Australian Chamber
of Manufacturers

Signed by

.....
on behalf of The Australian Business
Chamber

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.....

Signed by

.....
on behalf of

Name.....

Company Name.....

Position.....

APPENDIX IV

Retailers and Manufacturers who have agreed to take responsibility for the labour behind their labels.

Retailers who signed a 'Deed of Co-operation' with the Textile Clothing and Footwear Union of Australia in 1995/96:

Australia Post
Ken Done & Associates

Country Road Pty Ltd
Target Australia Pty Ltd

Retailers who signed the Homeworkers Code of Practice

Just Jeans
Jacqui E
Witchery Fashions
Sportsgirl/Sportscraft
Cue

Najee
Review
Jag
Saba

Table Eight
Anthea Crawford
General Pants Co.

Retailers who have signed the Homeworkers Code of Practice through the Australian Retailers Association (ARA)

Coles Supermarkets
Myer Grace Bros
Katies
Sussan
Lowes Manhattan
Woolworths
The Clothing Company
General Pants

Kmart
Fosseys
David Jones
Suzanne Grae
Big W
Rockmans
Best and Less

Maggie T
Westco Jeans
Brian Rochford
Gowings
Paddymade
Roger David
Fashion Fair

Manufacturers and Fashion Houses who have signed the Homeworkers Code of Practice

Sara Lee Intimates
Sports Fashion Group
Hot Gossip Clothing
Lisa T-Shirts
Time Sportswear
Cue Design
Review
General Pants Co.
Time Sportswear
Ivorie Australia
Turning Point Aust.
Clothes Scene

King Gee Clothing Co.
Peter Weiss
L.A. Shirts Australia
Sportsgirl/Sportscraft Grp
Depict Knits
Depict Distributors
Stafford Group
S.&R. Fashions
House of Stitches
Anthea Crawford
Sheridan Aust.
Casco Blu

Paddymade
Conarge
Sunny Textile Industries
Neater Fashions
Pacific Brands
Bonds Industries
Berlei
Holeproof
Jockey/Red Robin
Candy Footwear
Pelaco
Dimension Clothing

APPENDIX V

SUGGESTED AMENDMENTS to *Workplace Relations Act 1996* Amendments highlighted in Bold

Section 4(1) "Definitions"

- (*) "employee" includes:
- (a) any person whose usual occupation is that of employee; and
 - (b) **any person (not being the occupier of a factory) who performs outside a factory, for the occupier of a factor or a trader who sells TCF products by wholesale or retail, any work in the TCF trades for which a payment or rate is fixed by an award (in which case the occupier or trader is taken as the employer);**

but does not include a person who is undertaking a vocational placement.

- (*) "employer" includes:
- (a) a person who is usually an employer; and
 - (b) an unincorporated club; and
 - (c) **the occupier of a factory or a trader who sells TCF products (by wholesale or retail) who gives out any work in the TCF trades (for which a payment or rate is fixed by an award) directly to a person (not being the occupier of a factory) who performs that clothing work outside a factory.**

S.170 VQ Effect of AWA on awards and agreement:

S.170 VQ (1) [Award] During its period of operation, an AWA operates to the exclusion of any award that would otherwise apply to the employee's employment, **except in relation to any award concerning the giving out of work to be performed outside a factory (in which case an AWA does not operate to the exclusion of such an award).**

This subsection has effect subject to subsections (2) and (3).

S.170 VQ (4) [State award or agreement] - During its period of operation, an AWA operates to the exclusion of any State award or State agreement that would otherwise apply to the employee's employment, **except in relation to any state ward concerning the giving out of work to be performed outside a factory (in which case an AWA does not operate to the exclusion of such a State award).**

S.170 VR Effect of AWA on other laws.

170 VR (1) [Conditions in State law] Subject to this section an AWA prevails over conditions of employment specified in a State law, to the extent of any inconsistency.

- (2) [Provisions operating subject to State law] Provisions in an AWA that deal with the following matters operate subject to the provisions of any State law that deals with the matter:
- (a) occupational health and safety;
 - (b) workers compensation;
 - (c) apprenticeship;
 - (d) **the giving out of work to be performed outside a factory;**
 - (e) any other matter prescribed by the regulations.

S.285B Investigating suspected breaches of Act etc

285B (1) [Application of section] This section applies if a person who holds a permit in force under this division suspects that a breach has occurred, or is occurring, of:

- (a) this Act; or
- (b) an award, an order of the Commission, or a certified agreement, that is in force and binds the organisation of which the person is an office or employee.

(2) [Entry of premises] For the purpose of investigating the suspected breach, the person may enter, during working hours, any premises where employees work who are members of the organisation of which the person is an officer or employee, **or any premises from which work is being given out to be performed outside those premises.**

(3) [Inspection of documents etc] After entering the premises, the person may, for the purpose of investigating the suspected breach:

- (a) require the employer of the employees to allow the person, during working hours, to inspect and, if the person wishes, to make copies of any of the following that are kept by the employer on the premises and are relevant to the suspected breach:
 - (i) any time sheets; or
 - (ii) any pay sheets; or
 - (iii) **any records relating to the giving out of work to be performed outside those premises; or**
 - (iv) any other documents, other than an AWA, an ancillary document or a document that shows some or all of the content of an AWA or an ancillary document; and

S.285D Conduct not authorised under sections 285B and 285C

(2) [Notice must be given] A person is only entitled to enter premises, and exercise powers, under section 285B or 285C if the person has given the occupier of the premises at least 24 hours notice of the person's intention to do so, **unless work is**

being given out from those premises (to be performed outside those premises) in which case a person is entitled to enter those premises and exercise powers under section 285B or 285C without giving any prior notice of the person's intention to do so.

STATEMENTS FROM TWO CHILD OUTWORKERS

Statement No.1

When asked how I feel about my parents being outworkers, I feel very bitter and angry that my parents are outworkers. Growing up with two little sisters and one little brother and one older brother, I feel very disappointed and disadvantaged with my parents working seven days a week, 20 hours a day without one day off no matter what day it is, Christmas or New Years Day.

With my parents working so much and my brother in Year 12, I started looking after my little brother and sisters a lot. After school I would go and pick them up at school and we would walk home, not having enough money to spend on a bus or train ride home. I would then make them do their homework or have a shower, then I help my parents to sew. We would always be quiet at home because we were scared to make too much noise and distract my brother from doing his homework.

I would make dinner around 6 O'clock and we would eat it except my parents would keep on sewing. Then they would go play some quiet game or something while I helped my parents again. Around 9 O'clock they would go to bed, since we didn't have a TV I wouldn't have to tell them to turn it off. They would go to bed without me telling them to and during the time they were asleep I would bring my parents dinner. It was exactly the same thing I had except it was cold and they didn't want me to heat it up because it would make the gas bill bigger and since we didn't have a microwave they would eat it just like that. During the time they ate their dinner I would help them sew the clothes.

Sometimes my little brother and sisters wouldn't see my parents for a whole week unless they went out to the garage to see them but then my parents would tell them to get out of the garage and do their homework. Soon we needed to buy more stuff for my brother such as his textbooks and his calculator so I would help my parents more to get more money and soon my little brother and sisters had to walk home from school by themselves while I helped my parents.

There were times when I would sew till 5am and go to sleep then wake up at 7am to make my little brother and sister's breakfast and lunch and then I would go to school.

During mid-year of my Year 11, I decided to quit school completely and stay home and help my parents sew and find more money to send my brother to University. After I quit school I helped my parents everyday and they started to accept more work and I would sometimes not sleep for a couple of days to help my parents. I feel really

sorry for my little brother and sisters because my parents never have time to spend with them at all and they know never to disturb them.

My little brother and sisters never go out because they are expected to go home straight after school and are beginning to help them sew, cut or iron. My youngest sister is eight and does some small jobs.

I think it is a great injustice because they are just little children eight, ten and twelve years of age and are needed to help our parents sew, cut or iron. The same age as when I began helping to sew. So they have enough money to pay the bill and buy food. I quit school two years ago and I don't think I will ever go back because my parents need me too much at home.

TANG - 17 years, March 1998

Statement No: 2

As a child my family and I lived in poverty in Vietnam till we immigrated to Australia. I thought we would be better off in Australia than in Vietnam, but then we couldn't pay all the bills with my mother and father began working as outworkers.

They started sewing a lot and soon I didn't see my parents much except when they asked me to help them because they couldn't finish all their work.

Soon whenever I had spare time I would be in the garage sewing and helping them sew the hems and iron the dresses and shirts or whatever their bosses would give them to sew. I was in Grade 6 when I began doing this work.

After a few months I would stay up till 2am to help them out and wake up around 5 am to help them sew because we never seem to have spare money to buy the things we needed. Every month my parents would dread the bills coming so they accepted more work and soon I would come home straight after school to help sew.

Sometimes if we were really desperate I would stay home the whole day and help them. On those days my parents would always worry how my school work was suffering and what bad parents they were. I always tried to comfort them by saying that I was doing fine and would do my school work during the spare times I had.

In reality I didn't have any spare time and I would always have bags under my eyes and felt really tired. Recess was a time when I would try to get some sleep or do my work. My friends knew what I was going through because they were going through the same things so that sometimes we would compare how much sleep we got.

This year I am in Year 12 and I wonder if I going to pass this year because now we aren't getting paid a lot because the boss keeps telling us about how we have sewn the garments wrong and refuses to pay us. My parents and I know that there is nothing wrong with the garments but my parents are too scared that their boss would find a problem and fire them. Then we won't have any money to pay the bills and we might

be forced to go back to Vietnam. So now my parents are accepting more work everyday and we've got less time to do it in.

I just hoped that I could pass my V.C.E. and get a decent job because I didn't want to end up like my parents being outworkers and being paid next to nothing.

LINH - 17 years March 1998