



Australian Government

Department of Education, Employment and Workplace Relations

AUSTRALIAN GOVERNMENT PROCUREMENT STATEMENT

TEXTILE, CLOTHING AND FOOTWEAR PROVISIONS

POST IMPLEMENTATION REVIEW

SEPTEMBER 2012

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PURPOSE OF THE POST IMPLEMENTATION REVIEW

In accordance with the Best Practice Regulation Handbook, where a proposal proceeds (either through Cabinet or via another decision maker) without a Regulation Impact Statement (RIS), then a Post-Implementation Review (PIR) must be undertaken within one to two years of the regulation being implemented.

A RIS was not prepared for the Australian Government Procurement Statement (AGPS). As such the Office of Best Practice Regulation (OBPR) requires the Department of Education, Employment and Workplace Relations (DEEWR) to undertake a PIR with respect to the inclusion of Textile, Clothing and Footwear (TCF) provisions in the AGPS.

The purpose of this PIR is to assess the effectiveness of the requirement for TCF manufacturers who tender to provide goods to Australian Government agencies, to be accredited or seeking accreditation with the Homeworkers' Code of Practice prior to signing a contract.

The requirement to be accredited or seeking accreditation under the Homeworkers' Code of Practice was first announced as part of the AGPS in July 2009 and was included as part of the requirement for 'Fairness in the workplace' which formed the basis of the Fair Work Principles (FWPs). DEEWR has responsibility for the implementation and promotion of the FWPs.

BACKGROUND

Commonwealth Procurement Guidelines and Commonwealth Procurement Rules

The Australian Government's overarching procurement policy was embedded in the Commonwealth Procurement Guidelines (CPGs) which were issued by the Hon Lindsay Tanner MP, Minister for Finance and Deregulation, in December 2008. The CPGs represented the core of the Government's procurement framework under which agencies were required to undertake procurements that focus on value for money. The CPGs also contained information and guidance about how agencies could achieve effective and ethical procurement outcomes.

The CPGs were replaced by the Commonwealth Government Procurement Rules (CPRs) in July 2012. Department of Finance and Deregulation (DOFD) had responsibility for the CPGs and now has responsibility for the CPRs.

Australian Government Procurement Statement

In addition to the CPGs, the Hon Lindsay Tanner MP issued the AGPS in July 2009. The AGPS explains how the Australian Government intends to improve its purchasing policies to achieve greater transparency, better value and better outcomes for small business, jobs, training and the wider community, consistent with value for money principles, the procurement framework and Australia's international obligations.

The AGPS makes specific reference to special arrangements that relate to Australian Government contractors in the TCF industry. Specifically the AGPS states:

"The Australian Government is also committed to ensuring an appropriate safety net for homeworkers. All Government contractors in the textile, clothing and footwear industry must be accredited or be seeking accreditation with the Homeworkers' Code of Practice".

Fair Work Principles

In addition to the CPGs as issued by the Minister for Finance, there are 24 procurement-connected policies administered by Australian Government agencies. DEEWR is responsible for the FWPs which are underpinned by the statement in the AGPS as described above.

The FWPs were approved by Cabinet on 30 November 2009 and announced by the then Deputy Prime Minister in January 2010. The FWPs require that Australian Government entities obtain information from tenderers about their compliance with workplace relations obligations to ensure fair, cooperative and productive workplaces and prohibit Australian Government entities from contracting with suppliers in defined circumstances.

The TCF provisions of the FWP's specifically state that:

“Suppliers in the TCF industry who tender to provide goods to the Australian Government must be accredited with the Homeworkers’ Code of Practice. This requirement also applies to any subcontractor in the supply chain.”

Further discussion of this requirement is provided below at ‘FWP's policy requirement’, Page 6.

The Homeworkers’ Code of Practice

The Homeworkers’ Code of Practice (the Code) was established in 1997 following the 1996 Senate Economics Reference Committee inquiry into outworkers (interchangeably referred to as homeworkers) in the garment industry. Accordingly, the Code pre-dates the FWP's; however, the FWP's ensured that adherence to the Code was required for organisations tendering for Australian Government business from 2009.

Several initiatives by the Australian Government to provide support and profile to the Code since 1997 have included:

- Commonwealth funding of \$1 million per year to the Homeworker Code Committee Incorporated (HCCI) since 2008
- strong statements and commitments from the Australian Government including the AGPS, amendments to the CPGs and the FWP's
- TCF legislation in 2012 (Discussed below under ‘Other regulatory arrangements’, Pages 6-7).

Rationale for the Code

The rationale for the Code is to serve as a mechanism that indicates that a TCF employer is compliant with all relevant Australian law and that their employees are receiving appropriate employee entitlements. The Code also is designed to support the TCF industry by encouraging the continuation of onshore manufacturing in Australia.

The terms of the Code were negotiated between the Council of Textile and Fashion Industries of Australia, the Australian Industry Group, the NSW Business Chamber and the Australian Retailers’ Association. There are also overarching agreements between the Textile, Clothing and Footwear Union of Australia (TCFUA) and industry groups, and individual agreements between the TCFUA and retailers and between TCFUA and manufacturers. The Code is a condition for organisations seeking to undertake TCF business with the Australian Government and contains two parts:

- a tri-partite agreement between individual retail signatories, the TCFUA and the Australian Retailers Association.
- an Application for Accreditation under the Code.

Retail signatories to the Code

Retail signatories do not undergo the same rigorous process as accredited brands and there is no fee imposed on retailers. This is because retailers may participate in the Code on a voluntary basis and in doing so, they provide a positive contribution towards ensuring transparency in the TCF industry. In providing the details of their suppliers, retail signatories are committing to take appropriate action if they are provided with evidence from the TCFUA that any of their suppliers are not meeting their legal obligations. Retail signatories are required to provide details twice a year of their Australian TCF suppliers and ensure that these suppliers are complying with the relevant Award provisions and laws.

The situation for retailers is different to TCF manufacturers who are bound by the Code as a condition of acquiring Australian Government business.

Objectives of the Code

The Code facilitates business compliance with statutory requirements through the provision of information, training and support to TCF businesses seeking Code compliance. It also promotes improved work health and safety through addressing TCF industry working conditions such as excessive hours and poor working environments. The Code also aims to reduce the exploitation of outworkers and homeworkers by increasing industry and consumer awareness about working conditions. Businesses accredited under the Code are also able to promote their ethical credentials to consumers.

Management of the Code

The Code is administered by the HCCI. The HCCI is made up of representatives from major stakeholders in the TCF industry who oversee the operation and management of the Code and take steps to ensure (within the framework of the current regulatory regime) compliance with the Code. The current members of the Committee are:

- The Textile Clothing and Footwear Union of Australia
- The Council of Textile and Fashion Industries of Australia
- Pacific Brands
- Jets
- Cue Clothing
- NSW Business Chamber
- Australian Industry Group.

Functions of the HCCI include that it:

- Accredits manufacturers and oversees the accreditation process
- Re-accredits and de-accredits manufacturers
- Registers and maintains the Ethical Trademark Series (ethical clothing mark and other logos and identification items)
- Administers education, publicity and compliance funds
- Establishes grievance procedures and settles disputes
- Develops and maintains accreditation tools such as garment timing resources.

Assessment criteria

Manufacturers are assessed by the HCCI for accreditation by way of a statutory declaration. A company complies with the Code when:

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

The Code also imposes obligations on participants in the manufacturer's supply chain to provide award wages and conditions to TCF homeworkers or outworkers.

Ethical Clothing Australia

Ethical Clothing Australia (ECA) is the branding that the HCCI uses to promote the Code and the ECA trademark. ECA imposes an application fee on manufacturers seeking accreditation under the Code. The fee varies depending on the size and structure of the business in the Australian supply chain.

The fee is payable whether or not the reason for seeking accreditation is due to a desire to meet the clothing and footwear provisions of the AGPS or the FWPs, or simply because the organisation wishes to establish its credibility as an ethical employer. Payment of the fee does not automatically attract accreditation under the Code. A schedule of the fees is at [Appendix A](#).

The Australian Government has provided funding of \$1 million per year since 2007/08 to assist ECA to:

- Support the development and promotion of the Code and the former 'No Sweat Shop' label
- Increase industry awareness and adoption of the Code and new ECA label
- Educate and encourage consumers to buy TCF products which have been made without exploiting homeworkers
- Encourage retailers and manufacturers to become signatories to the Code
- Improve the conditions of TCF homeworkers.

Further funding was provided to ECA for the period between 2011 and 2014 because:

- ECA demonstrated that it is effective in meeting program objectives, assessed by reference to education activities or compliance visits per quarter, the level of contact with homeworkers and accreditation rates including new applications for accreditation
- Some 3000 workers currently in accredited supply chains would be put at risk if the funding was discontinued and fewer Australian businesses in the TCF industry would be informed of their legal and award obligations and assisted to meet those obligations
- Since the existing funding has been provided to ECA (i.e. since 2007/08), ECA has worked with over 100 brands and accredited 68 businesses and has received more than 100 applications for accreditation.

FWPs Policy Requirement

As indicated above in 'Background', Section 5.5 of the FWPs User Guide (released December 2009 and revised November 2011) provides that TCF manufacturers must be accredited with the Code or seeking accreditation prior to signing an Australian Government contract. This requirement also applies to any subcontractor in the supply chain, but does not apply to TCF manufacturers who do not have a commercial presence in Australia.

An employer that has no intention to tender for Australian Government business has no obligation under the FWPs. A principal TCF employer, however, who is seeking to tender for Australian Government business, would be required to ensure that all of their subcontractors or suppliers (i.e. their supply chain) are compliant with the Code.

Other regulatory arrangements

Prior to the introduction of the *Fair Work Act 2009* (FW Act) and the commencement of the national workplace relations system (including the commencement of the Textile, Clothing, Footwear and Associated Industries Award 2010 (the TCF modern award), TCF workers were covered by a number of federal and state awards.

For example, the Clothing Trades Award 1999 applied federally and to certain named employers in Vic, the Footwear Manufacturing Industry (State) Award applied to that sector of the industry in NSW and the Clothing Trades Award applied in South Australia. Following the commencement of the TCF modern award TCF employees (including outworkers) in all jurisdictions other than WA (see below) were covered by this modern award from 1 January 2010.

The Fair Work Ombudsman (FWO) and Fair Work Australia (FWA) were established on 1 January 2010. Prior to this date, most states (WA, NSW, QLD, SA and TAS) each had their own industrial relations system including their own compliance mechanisms. Victoria and the Territories, however, were already part of the federal system. With respect to non-constitutional corporation employers in WA, this state continues to maintain its own industrial relations system on the basis that it did not refer its industrial relations powers into the national workplace relations system from 1 January 2010. Constitutional corporation employers in WA became covered by the national workplace relations system with the commencement of Work Choices in 2006.

Post Australian Government Procurement Statement

In conjunction with the AGPS a number of other measures have been taken by the Australian Government to further protect TCF workers:

- The FW Act contains a number of important protections for TCF outworkers including scope for awards to include targeted 'outworker' terms.
- Many of the general protections in the FW Act apply to contractors and additional entitlements and protections for outworkers are also contained in the TCF modern award which replaced a number of former federal and state awards as described above.
- The FW Act was amended earlier this year to enhance existing protections for vulnerable workers in the TCF industry. The FW Act as amended:
 - Extends the operation of most provisions of the FW Act to contract outworkers in the TCF industry
 - Provides a mechanism to enable TCF outworkers to recover unpaid amounts up the supply chain
 - Enables a TCF Outwork Code to be prescribed by regulation.
- The FW Act also provides specific right of entry rules in relation to suspected breaches of TCF workplace relations requirements. These rules allow entry without a 24 hour notice period, with an exception for a principal place of business of a person with appropriate accreditation. In this case, a standard 24 hour notice period applies.

IDENTIFY THE PROBLEM

The AGPS describes the Government's role as a model purchaser and its capacity to encourage good practices from its suppliers, including an expectation that its suppliers comply with Australian laws. The Australian Government also recognised its public responsibility to provide a model of fairness in the workplace for those who are performing work for the Australian Government whether as employees of a Commonwealth agency or as employees of contractors to the Commonwealth.

Specifically, the AGPS states:

"Contracting is a normal part of modern business arrangements that can provide flexibility and efficiency in resource allocation. However, it is also sometimes used as a vehicle to undermine the entitlements of employees. The Australian Government does not support the adoption of contracting arrangements for this purpose".

To ensure fair work practices among contractors, the Government, through the AGPS, undertook to provide additional focus on specific sectors where employees are at greatest risk of exploitation. One of those sectors is the TCF industry which has a history of under-payment and exploitation of workers and unsafe work practices.

State of the industry

The TCF industry covers all stages of production of textile and leather products, from processing of raw materials such as cotton, wool, leather and synthetics through to the production of final goods such as clothes, shoes, household linen, carpets and industrial textiles.

Homeworkers typically perform work, often as subcontractors, at residential or other premises that are not regarded as usual business premises. Homeworkers are particularly susceptible to exploitation, for example being underpaid, working excessive hours and not receiving entitlements like superannuation and leave. Complex supply chains in garment production also make it difficult for homeworkers to identify their actual employer.

There have been a number of studies¹, inquiries and reports published over many years confirming the exploitation of homeworkers in the TCF industry despite the existence of various former federal and state awards² which provided for the wages and conditions of employment for workers in the TCF industry. This evidence shows there is a strong need for special protective measures for homeworkers as they are amongst the most vulnerable workers in Australia.

Further details on historical issues in the TCF industry are provided in the following section on 'Ongoing issues in the TCF Industry' and a number of relevant industry figures are set out below.

Industry Figures

- In August 2011 around 42,000 people were employed in the TCF industry.
- In 2010-11 the TCF industry contributed around \$4.3 billion in value added industry (about 4% of all manufacturing).
- It is difficult to quantify the exact number of people engaged as homeworkers and outworkers in Australia in the TCF industry.
- The 2003 Productivity Commission report estimated that the full time equivalent number of homeworkers and outworkers in Australia was around 25,000.
- The Productivity Commission's report noted that other estimates vary between 30,000 and 200,000. The number is an estimate of the total pool of people who undertake outwork on a part-time, full-time or irregular basis. The report noted that homeworkers and outworkers are typically women from East Asian backgrounds aged between 25-35 with low levels of English proficiency, often with basic skills and limited formal education with young children at home.

Ongoing issues in the TCF Industry

Prior to the commencement of the FWPs in 2010, the Code was not as effective within the TCF industry as anticipated. While the Code did make some modest improvements, the effectiveness of the Code was limited by resources and the necessary backing in order for the HCCI to lift the profile of their work and gain wider industry support for the Code. In particular, the HCCI was initially operating on a limited budget with only two part-time staff working on both the administration and promotion of the Code. Further information on the HCCI is provided under 'Management of the Code', Page 5.

A number of inquiries have been conducted and reports published over many years, examining homeworkers and outworkers in the TCF industry in Australia. Notable examples include reports by the Productivity Commission in 2003 and a report by the Brotherhood of St Lawrence in 2007.

In addition, both the Senate Economics and Senate Education, Employment and Workplace Relations Committees have conducted multiple inquiries that have examined, at least in part, conditions for and the treatment of homeworkers and outworkers in the TCF industry in Australia:

¹ Productivity Commission, *Report of TCF Assistance*, August 2003; Senate Economics Reference Committee report, *Outworkers in the Garment Industry*, 1996; Diviney, E & Lillywhite S, *Ethical Threads – Corporate social responsibility in the Australian garment industry*, Brotherhood of St Lawrence, 2007; and Professor Roy Green's review for the Department of Innovation, Industry, Science and Resources in 2008.

² Federal and state awards were replaced by the modern Textile, Clothing and Associated Industries Award 2010 from 1 Jan 2010 as a result of the award modernisation process, undertaken by the Australian Industrial Relations Commission (AIRC) during 2008-09 (AIRC was replaced by Fair Work Australia on 1 Jan 2010).

- 1996 – Senate Economics References Committee report on *Outworkers in the garment industry*.
- 1998 – Senate Economics References Committee *Review of the inquiry into Outworkers in the garment industry*.
- 2006 – Senate Employment, Workplace Relations and Education Legislation Committee report on *the Provision of the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006*.
- 2008 – Senate Standing Committee on Education, Employment and Workplace Relations report on the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 [Provisions]*.
- 2009 – Senate Standing Committee on Education, Employment and Workplace Relations report on the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 [Provisions]*.

In December 1996, the Senate Economics Reference Committee (the Committee) estimated that ‘somewhere between 50,000 and 330,000 people are involved in outworking in the garment industry’. Of these, the majority were migrant women aged between 25 – 35 with young children at home. The Committee found that outworkers experienced a range of problems such as:

- Low piece rates which translate to low hourly rates of pay
- Impossible deadlines for completion of work
- Late payment, underpayment, non-payment for completed work, rejection of work and unreimbursed expenses
- Physical and verbal harassment from intermediaries (blackmail, threats, coercion and bribes)
- Substandard working environments
- Worries associated with combining work with family responsibilities

As a result of the inquiry, “the Committee believed that there were sufficient people involved in the industry for concern about them to be warranted” and went on to make several recommendations one of which was “that an industry Homeworkers’ Code of Practice should be adopted by all participants in the garment retailing and manufacturing process”.

During 1997 and 1998, the Committee conducted a review examining the progress of recommendations of the 1996 inquiry. The Committee was pleased that a Homeworkers’ Code of Practice had been implemented but noted that “more needs to be done by all parties to ensure the Code’s success”.

In 2003, the Productivity Commission conducted an inquiry into assistance provided to the TCF industry. In its final report *‘Review of TCF Assistance: Inquiry Report’*, the Productivity Commission recognised the flexibility afforded to outworkers by this type of work, but also the risk of their exploitation. The report stated that “the potential for the exploitation of outworkers through low rates of pay, long working hours and poor working conditions is a longstanding concern”. In response to these concerns various regulations have been implemented to provide protections to outworkers.

The 2006 Senate Employment, Workplace Relations and Education Legislation Committee considered the provisions of the *Independent Contractors Bill 2006* and the *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006*. The Independent Contractors Bill sought to exclude state and territory laws which deemed many independent contractors entering into commercial agreement with employers as employees. The Workplace Relations Legislation Amendment (Independent Contractors) Bill sought to make amendments to the *Workplace Relations Act 1996* especially in relation to TCF workers and unfair contracts.

In 2007, the Brotherhood of St Lawrence report, *Ethical Threads: Corporate social responsibility in the Australian garment industry* found that there had been little improvement in terms of reducing the exploitation of outworkers. The report made a number of recommendations including (but not limited to) the establishment of a multi-stakeholder platform to promote and implement the uptake of the global dimensions of corporate social responsibility in the Australian garment sector and the introduction of regulations for large corporations to demonstrate their monitoring of improving conditions in their contracting chains.

In March 2008, the Australian Government commissioned a review of the Australian textile, clothing and footwear industry which was conducted by Professor Roy Green. The review was asked to consider the nature and needs of the industry post 2010, when tariffs were scheduled to reduce and the post 2005 Strategic Investment program arrangements were due to be rescaled. Professor Green's report made recommendations that placed emphasis on corporate social responsibilities in the application of labour and environmental standards in the TCF industry. These inquiries and reports clearly demonstrated the ongoing exploitation of TCF outworkers.

Other Policy Options Considered

At the time the AGPS and the FWPs were released, a number of other policies that relate to the protection of workers in the TCF industry were being considered by Government. While it would have been possible to only require TCF businesses to be compliant with the FW Act, the Australian Government decided that it is also appropriate that Australian Government agencies require the highest workplace relations and ethical standards from their suppliers.

OBJECTIVE OF GOVERNMENT ACTION

The objective of the inclusion of TCF provisions in the AGPS and the development of the FWPs was to support the creation of quality jobs and decent work by ensuring that procurement decisions are consistent with the FW Act and its aims of promoting fair, cooperative and productive workplaces in which employees are treated fairly and with respect.

The objective of the Code was for it to be a tool for TCF businesses in Australia to ensure compliance with the TCF modern award and other legal requirements in relation to homeworkers. By requiring TCF manufacturers contracting with Australian Government agencies to be accredited or seeking accreditation with the Code, it ensures that Australian Government agencies are engaging businesses that promote fair, cooperative and productive workplaces in which employees are treated fairly and with respect including respect for freedom of association and their right to be represented at work.

In order for the Australian Government to assist in the improvement of this industry, enforcing accreditation under the Code for TCF manufacturers (that contract with the Australian Government) provides further improvement to an industry that has a history of underpayment and exploitation. There is little trend evidence to indicate that the industry would have self corrected or that the market would have solved the problem within a reasonable timeframe.

ARTICULATION OF POLICY OBJECTIVES

The Code is the only accreditation program for the TCF industry and provides guidance on compliance with workplace relations and other legal requirements. While FWA and the FWO have a role in compliance with workplace relations legislation, they do not have a compliance role in relation to superannuation, workers' compensation or work health and safety which other agencies are responsible for. Accordingly, the Code extends protection for TCF workers beyond the FW Act and represents the most comprehensive option for the Australian Government to ensure appropriate protections are provided to the TCF workforce.

The Code helps manufacturers ensure that their suppliers operate within the agreed standards as it provides a system to monitor, record and report what is being made, where it is being made, who is making it, and what rates and conditions workers receive. The accreditation process also traces who is paying the award rate to workers and who is not. The process also allows the non-complying party to be given an opportunity to comply.

IMPACT ANALYSIS

Impact on Australian Government Agencies

The requirement to only engage manufacturers who are accredited under the Code is mandatory for Australian Government agencies who tender for the supply of TCF goods. There is no requirement on agencies to report to DEEWR or to DOFD with regard to compliance. It is therefore difficult to quantify the impact on Government.

Since the introduction of the requirement in July 2009, data obtained from AusTender indicates that approximately 39 approaches to market have been made by Australian Government agencies for the supply of TCF goods. A full list of agencies and description of the types of goods sought is listed at [Appendix B](#).

Cost impact on Government

DEEWR has not been able to elicit any objective data from Australian Government agencies on whether there has been any cost impact on the Government due to the introduction of the Code. It is possible that there have been increases in cost either because of an increase in costs of goods provided by accredited manufacturers or potential suppliers who are not accredited (and were precluded from procurement processes) has reduced the competition for Australian Government contracts.

Consistent with the policy objectives of the FWPs, the Australian Government is prepared to pay a fair and reasonable price for TCF goods from Code accredited suppliers in the knowledge that it is supporting fair and ethical treatment of employees.

Impact on Industry

The impact on industry is only on manufacturers, rather than suppliers, who are now required to comply with the Code, if they are seeking to tender to supply goods to the Australian Government. There is no obligation and therefore no impact on suppliers.

While DEEWR is not able to provide a breakdown of the impact of the Code on various sectors with the TCF industry, ECA collects data that indicates when an organisation is seeking accreditation for the purposes of tendering for Australian Government work. There is no data available that would indicate when organisations have explored the accreditation process for the purposes of tendering for Australian Government work, and have determined independently (without ECA's advice or assistance) that they will not seek accreditation. The reasons these organisations might have chosen not to seek accreditation are also unknown.

The impact on manufacturers that go through the accreditation process is discussed further in the consultation section on pages 14 and 15. Four accredited manufacturers were contacted on the impact of the accreditation process. For those businesses that were accredited prior to the release of the AGPS there was no impact. One business said that the accreditation process has had very little impact on their business and another business said that the impact on their business is balanced by the benefit. However, concerns were raised by another manufacturer that the accreditation process was somewhat arduous and time consuming because of the requirement to map their supply chain.

Impact on competition

It is possible that imposition of the requirement to be accredited or seeking accreditation under the Code could impact on competition. However, the Code applies only to Australian manufacturers' Australian operations by virtue of the FWPs.

Failure to achieve accreditation under the Code could potentially affect competition between onshore Australian manufacturers. However, this impact is limited to manufacturers who choose not to seek accreditation, or do not comply with their legal obligations by providing award pay and conditions for their workers. The latter are the very manufacturers the Australian Government is seeking to preclude from Australian Government procurement processes.

Impact on consumers

DEEWR considers that ECA assists in increasing the awareness and adoption of the Code by Australian TCF businesses, promotes ethical manufacturers, retailers and designers and assists consumers to make informed purchasing decisions.

Australian Competition and Consumer Commission (ACCC)

The regulatory nature of the Code means that there is potential to attract legal action on the basis that the conduct arising from the application of the Code breaches the *Competition and Consumer Act 2010* (the Act).

The ACCC is the independent Australian Government agency responsible for administering the Act. The ACCC can grant immunity from legal action in certain circumstances for conduct that might otherwise contravene provisions of the Act.

One way immunity can be obtained is by application to the ACCC for what is known as an 'authorisation'. The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.

The Code has been authorised by the ACCC since 2000.

In reaching its February 2011 decision to reauthorise the Code, the ACCC found that application of the Code was likely to result in a public benefit that would outweigh the detriment to the public constituted by the lessening of competition arising from the arrangements.

The ACCC also found that the Code prevents certain operators in the market from gaining an unfair advantage through exploiting homeworkers by not providing homeworkers with statutory workplace entitlements. This is consistent with Australian Government's objective in producing the CPRs, the AGPS and the FWPs.

The ACCC also considers that the Code may assist in educating consumers about working conditions in the TCF industry and the use of the swing tag and trademark by accredited businesses will enable consumers to more readily identify and purchase ethically produced Australian made TCF products. The ACCC says in their re-authorisation of the Code that the Code may provide a point of distinction for businesses to promote their ethical credentials to consumers through the accreditation process.

Impact on TCF Workers

The AGPS and the FWPs are part of an important suite of measures that the Australian Government has implemented to address the exploitation of TCF workers. In combination, these measures are having an impact on workers in the supply chain with 68³ companies accredited by the Code, ensuring that they comply with all relevant pay and conditions requirements that are monitored, confirmed and protected to a standard not previously seen.

The Code has further assisted TCF workers by providing information and advice to workers about their rights and entitlements which may place homeworkers in a better position to pursue their entitlements. It is noted that ECA provided case studies as part of the ACCC re-authorisation process which illustrate how the Code has assisted homeworkers who were not receiving award entitlements or who were working in poor conditions.

For example, in one case an ECA compliance officer visited an industrial laundry which was cluttered and poorly ventilated with only one industrial fan which was in bad condition. The workplace also provided no tea room and supplied only broken and filthy chairs and table.

The compliance officer found it very uncomfortable talking to the workers about the conditions, however following a series of discussions with the employer, the employer rectified these issues.

³ As at 30 June 2012.

ECA advise that since the commencement of Australian Government funding, they have provided advice or assistance to nearly 6000 homeworkers of which approximately 3000 are in accredited supply chains. While DEEWR or ECA cannot quantify the number of employees impacted by the Code prior to the provision of funding, the above case study (and other similar examples) as submitted by ECA during the ACCC re-authorisation process, demonstrate the impact that the Code and the associated education and compliance functions have on TCF workers.

However, the Senate Education, Employment and Workplace Relations Legislation Committee heard from several outworkers (in their public hearing held on 2 February 2012) who described their continued experiences of exploitation in the TCF industry. Their descriptions of their working conditions are included at [Appendix C](#).

Unintended consequences

Some unintended consequences were identified during the course of consultation with stakeholders as to the impact of the TCF provisions in the AGPS on business and government. A particular concern was the assumption that Australian manufacturers tender for Australian Government work at a rate which would translate into pressure on manufacturers to become accredited. The data shows that it is suppliers to the Australian Government (not manufacturers) who are awarded the majority of contracts to supply clothing and footwear.

Of the 39 clothing and footwear contracts let by the Defence Material Organisation (DMO) since the introduction of the regulation, only two were let to manufacturers, the other 37 were let to suppliers. Accreditation under the Code is available to manufacturers and businesses within the supply chain of those manufacturers. Suppliers to the Australian Government cannot attain accreditation under the Code because they are not manufacturers, and in the main do not employ TCF workers. It is likely that suppliers source their goods from offshore manufacturers to whom the Code does not apply but this cannot be verified from the available data.

COSTS AND BENEFITS

Costs

The annual fee for businesses seeking accreditation under the Code varies depending on the size and structure of the business in the Australian supply chain. A schedule of the fees is at [Appendix A](#).

The fees range from \$300 to a maximum of \$6000, however significant discounts are provided to businesses who are applying for re-accreditation, businesses who use accredited suppliers, businesses who use the now Ethical Clothing Australia label (trademark) and for businesses where the out-sourced cut, make and trim manufacturing is less than \$200,000 per year. Given the fee charged for accreditation is minimal, it is unlikely these costs would be passed onto other businesses in the supply chain or to consumers, however this is not readily quantifiable.

The administrative burden (and associated cost) is considered to be minimal as accreditation is achieved by manufacturers by way of a statutory declaration in accordance with a list of criteria which includes rates of pay and minimum workloads. ECA use the funds received from accreditation applications to assist businesses with the accreditation process. They also use the funds to promote the trademark and accredited brands to consumers and buyers.

Benefits

Consistent with the overall Australian Government objective, a benefit of the introduction of this regulation is that Australian Government agencies now have a way of ensuring that they do not contract with TCF manufacturers that exploit their workers, and in turn improve the overall working conditions of homeworkers. Any adverse effect of the regulation focuses on employers who exploit workers and do not comply with their legal obligations by providing award pay and conditions. Of considerable benefit to TCF manufacturers is that requiring manufacturers to be accredited under the Code prevents certain manufacturers in the market from gaining an unfair competitive advantage through exploitation of homeworkers.

CONSULTATION

Consultation with Australian Government agencies

For the purposes of this review, DEEWR undertook a sampling exercise by consulting three agencies identified through AusTender data as large procurers of TCF goods. DEEWR contacted the Australian Customs and Border Protection Service, Department of Human Services and the Department of Defence. DEEWR also contacted the Australian Federal Police because of that organisation's special circumstances in respect to the application of the AGPS and the FWPs. These agencies reported no issues with the inclusion of the requirement that Australian Government contractors be accredited or seeking accreditation under the Code.

Australian Customs and Border Protection Service

The Australian Customs and Border Protection Service (Customs) reported that they had only released one approach to market since the AGPS was issued, and no tenderers were precluded based on their accreditation status. The approach to market created a panel arrangement from which three deeds of standing offer have been executed with accredited manufacturers. In addition, deeds of standing offer have been executed with three suppliers, all of whom hold letters of exemption from ECA. The exemptions are provided on the basis that these suppliers do not use 'homeworkers' and / or are purely suppliers, not manufacturers.

Department of Human Services

The Department of Human Services (DHS) reported that two requests for tenders (RFT) were released, Centrelink in April 2009, and Medicare Australia in August 2009, both for the supply of corporate wardrobe. The AGPS was issued in July 2009, and the FWPs in January 2010. Neither request for tender contained a requirement that tenderers must be accredited or seeking accreditation under the Code. One contract was awarded in December 2009 as a result of the two RFT processes. DEEWR was able to ascertain that the successful Tenderer has held accreditation under the Code since at least December 2008.

Department of Defence

The Department of Defence did not respond to DEEWR's request for information, however DEEWR has undertaken an analysis of AusTender data pertaining to procurement activities by the Defence Materiel Organisation (DMO) and concluded that contracts awarded since the AGPS was released have either been awarded to accredited manufacturers or suppliers to whom the Code does not apply.

Australian Federal Police

The Australian Federal Police (AFP) is exempt from the TCF provisions of the AGPS and the FWPs because of an exemption under Schedule 3 (paragraph 28(1)(a)) of the FMA Regulations that they are not required to comply with the Commonwealth Procurement Rules. The AFP sources its requirements via a contract for the Supply and Management of Uniforms and Related Equipment. This contract requires the supplier to ensure that TCF manufacturers are accredited, even though the AFP is not required to comply with FWPs.

Consultation with industry

For the purposes of this review, DEEWR contacted ECA to request their assistance in consulting with a sample of accredited manufacturers. DEEWR was mindful of privacy considerations, given the Code and accredited organisation information is not owned or administered by the Government.

DEEWR contacted four accredited manufacturers:

- **Organisation A** is a leading Australian manufacturer of hats, based in NSW. They report that their application for accreditation under the Code was in direct response to the AGPS requirements. They would not have applied otherwise as they do not employ outworkers. Other than the \$2000 fee, the accreditation process has had very little impact on their business.
- **Organisation B** is an Australian company with a global reach. This company employs over 5000 workers across the world including in Australia, New Zealand, China, United Kingdom, Malaysia and Indonesia. This manufacturer considers accreditation as a good business practice that ensures that an independent organisation verifies their ethical behaviour. They report that accreditation for the purpose of tendering for Australian Government work is incidental as they were accredited prior to the release of the AGPS or FWPs. This organisation advertises its commitment to support working conditions and ethical, responsible and sustainable conduct across its entire business.
- **Organisation C** is a leading designer and manufacturer of specialist work wear and protective clothing, based in VIC. They pride themselves on supporting the Australian TCF industry by maintaining manufacturing onshore. They report that the key reason for seeking accreditation under the Code is to allow them to tender for Australian Government contracts. They advised that the company prides itself on running an ethical business, regardless of any accreditation they hold. They report that they use the ECA logo on their stationery, email sign-off etc and are proud to display the fact that they are accredited. They report that the impact on their business is balanced by the benefit of being able to tender for Australian Government business as an accredited supplier.
- **Organisation D** is a leading manufacturer of workwear, school wear and sportswear based in QLD. They also undertake some specialised fashion garment manufacturing. Organisation D is a relative new comer to the accreditation process having gained accreditation in 2011 purely for the purposes of tendering for Australian Government work. This manufacturer reported that they found the accreditation process somewhat arduous. Despite tendering for some Australian Government work, in particular work for the Defence Materiel Organisation, this manufacturer has thus far been unsuccessful. This manufacturer suggested that many of the contracts had been awarded to manufacturers who were known throughout the industry to exploit TCF workers, however no detail was provided to support this view. Any specific complaints about claims of exploitation would be referred to the Fair Work Ombudsman for investigation.

The responses provided through consultation with a sample of accredited manufacturers indicates that the requirement to be accredited or seeking accreditation under the Code in order to tender for Australian Government work has had mixed results. In the main suppliers see accreditation as a benefit to their business. On the one hand, the application fee payable can be seen as an additional cost to business, but as Organisation C reports, is relative to the benefit provided.

Ethical Clothing Australia's view

ECA submits that through more than ten years of operation, the Code has delivered numerous public benefits, including lessening the exploitation of TCF workers by ensuring the provision of award pay and conditions, and providing information and advice to TCF workers about their rights and entitlements.

ECA further submits that the Code assists in facilitating business compliance with statutory requirements through the provision of information, training and support to TCF businesses seeking TCF Award and Code compliance and promoting improved work health and safety through addressing TCF industry working conditions, such as excessive hours, poor working environments and low pay. ECA has also made the following observations about the Code:

- ECA submits that whilst the arrangements may have the potential to constrain suppliers, the arrangements under the Code do not substantially affect a participating business' ability to compete and the arrangements encourage and facilitate a point of distinction in the market place.

- ECA notes that there is no evidence that the arrangements have had any adverse effect on competition in any market affected by the Code over the past five years and are unlikely to have any adverse effect on competition in any market in the future.
- ECA advised that to date, instances of a breach have been resolved without recourse taken to cancel contracts. Enforcement generally takes the form of persuasion directed towards the retailer who in turn seeks to persuade the supplier to remedy instances of non-compliance.
- ECA notes that the Code also assists in educating consumers, enabling them to identify and purchase ethically produced Australian made TCF products and support the local industry.

CONCLUSION

In order for the Australian Government to assist in the improvement of the TCF industry, enforcing accreditation under the Code for TCF manufacturers provides further improvement to an industry that has a history of underpayment and exploitation. The Code is a joint industry-union initiative. There is little trend evidence to indicate that the industry would have self corrected or that the market would have solved the problem within a reasonable timeframe.

Requiring manufacturers and their subcontractors to be accredited under the Code goes some way to ensuring that the Australian Government does not support manufacturers that exploit TCF workers. Accreditation under the Code ensures contractors (who are manufacturers) are complying with Australian workplace laws, including complying with the modern TCF Award by paying appropriate wages. It also ensures that other legal obligations such as superannuation, work health and safety requirements are met. On this basis, it cannot be considered to be 'unfair' or 'inappropriate' for the Australian Government to impose it.

The impost on tenderers is that they must participate in the accreditation process, and pay a small fee that is based on their workload.

The impost on Australian Government Agencies is to ensure tender documentation includes a mandatory requirement for tenderers for Australian Government work to be accredited or seeking accreditation under the Code. There have been no reported instances of tenderers being excluded from a tender process due to non compliance with this requirement and no evidence of non-compliant tenderers being engaged. Whilst this arrangement may have the potential to restrict trade, the arrangements do not substantially affect the ability of compliant businesses to compete. Further, it is arguable that competition is enhanced by the TCF provisions of the AGPS because it reduces the opportunity for certain manufacturers to gain an unfair advantage through exploitation of their workers.

Based on information received from ECA, accredited manufacturers and government, DEEWR considers the introduction of the requirement for accreditation under the Code has had a negligible impact on those manufacturers (and businesses in their supply chains) tendering specifically for Australian Government contracts. Noting the small number of Australian Government procurement contracts that have been affected by the requirement and the limited cost to Government associated with managing the Code, we consider that the Code is step towards improving the welfare of Australian outworkers.

No unsolicited representations have been received from manufacturers, suppliers or from ECA on behalf of any of their accredited businesses for changes to the Code. DEEWR further considers that any adverse effect of the Code is focussed on employers who exploit workers and do not comply with their legal obligations by providing award pay and conditions.

Appendix A – Schedule of Fees

Type of business	Fees	Discounts
A business that has been going less than 3 years	\$300	-
A sole trader that does all of its 'cut, make and trim' manufacturing in-house	\$300	-
A business with 4 or less fulltime equivalent textile, clothing or footwear production staff that does all of its 'cut, make and trim' manufacturing in-house (exclusively on premise), apart from value add services (e.g. screen printing)	\$400	10% discount if the business is accredited and has used the No Sweatshop labels (now Ethical Clothing Australia) for the previous 12 months
A business with 5 - 15 fulltime equivalent textile, clothing or footwear production staff that does all of its 'cut, make and trim' manufacturing in-house (exclusively on premise), apart from value add services (e.g. screen printing)	\$600	10% discount if the business is accredited and has used the No Sweatshop labels (now Ethical Clothing Australia) for the previous 12 months
A business with 16 - 40 fulltime equivalent textile, clothing or footwear production staff that does all of its 'cut, make and trim' manufacturing in-house (exclusively on premise), apart from value add services (e.g. screen printing)	\$1000	10% discount if the business is accredited and has used the No Sweatshop labels (now Ethical Clothing Australia) for the previous 12 months
A business with 41+ fulltime equivalent textile, clothing or footwear production staff that does all of its 'cut, make and trim' manufacturing in-house (exclusively on premise), apart from value add services (e.g. screen printing)	\$2000	10% discount if the business is accredited and has used the No Sweatshop labels (now Ethical Clothing Australia) for the previous 12 months
A business that outsources part or all of its 'cut, make and trim' manufacturing and the annual value of the outsourced work is \$1,000,000	\$2000	10% discount if the business is accredited and has used the No Sweatshop labels (now Ethical Clothing Australia) for the previous 12 months + 20% discount if the business uses accredited suppliers + \$1000 discount if the value of the businesses out-sourced 'cut, make and trim' manufacturing is less than \$200,000 per year and the business employees 3 or less full time equivalent textile, clothing or footwear production staff

Type of business	Fees	Discounts
A business that outsources part or all of its 'cut, make and trim' manufacturing and the annual value of the outsourced work is \$1,000,001 - \$5,000,000	\$3000	10% discount if the business is accredited and has used the No Sweatshop labels (now Ethical Clothing Australia) for the previous 12 months + 20% discount if the business uses accredited suppliers + \$1000 discount if the value of the businesses out-sourced 'cut, make and trim' manufacturing is less than \$200,000 per year and the business employees 3 or less full time equivalent textile, clothing or footwear production staff
A business that outsources part or all of its 'cut, make and trim' manufacturing and the annual value of the outsourced work is \$5,000,001 - \$9,999,999	\$4000	10% discount if the business is accredited and has used the No Sweatshop labels (now Ethical Clothing Australia) for the previous 12 months + 20% discount if the business uses accredited suppliers + \$1000 discount if the value of the businesses out-sourced 'cut, make and trim' manufacturing is less than \$200,000 per year and the business employees 3 or less full time equivalent textile, clothing or footwear production staff
A business that outsources part or all of its 'cut, make and trim' manufacturing and the annual value of the outsourced work is \$10,000,000+	\$6000	10% discount if the business is accredited and has used the No Sweatshop labels (now Ethical Clothing Australia) for the previous 12 months + 20% discount if the business uses accredited suppliers + \$1000 discount if the value of the businesses out-sourced 'cut, make and trim' manufacturing is less than \$200,000 per year and the business employees 3 or less full time equivalent textile, clothing or footwear production staff

Appendix B - Tender List

Year	Agency	Description
2012	Defence Materiel Organisation	Supply of Aiguillettes, 7 Lines
2012	Defence Materiel Organisation	Flying Clothing including Gloves
2012	Defence Materiel Organisation	Peak, Service Cap, Double Row
2012	Defence Materiel Organisation	Shoulder Board, Army, Various
2012	Defence Materiel Organisation	Supply of ADF Socks
2012	Defence Materiel Organisation	Notice of Approach to Market for Request for Tender Knitwear
2012	Defence Materiel Organisation	Bandage Cover, NBC, Cloth Charcoal,
2012	Defence Materiel Organisation	Sweater Lightweight Airforce Blue & Khaki Field Coolweather
2011	Defence Materiel Organisation	Neckties various styles and Cummerbunds various styles
2011	Defence Materiel Organisation	Supply of Form, Shoulder Board, Plastic
2011	Defence Materiel Organisation	Fire Fighting Ensemble
2011	Defence Materiel Organisation	Sash, Various (5 Line items)
2011	Defence Materiel Organisation	Flags, various (6 line items)
2011	Defence Materiel Organisation	Embroidered Insignias on Disruptive Pattern Base Cloth, 12 Lines
2011	Defence Materiel Organisation	Special Industrial, One Piece Polycarbonate, Wraparound type, Smoke Tinted with Case.
2011	Defence Materiel Organisation	Trousers and Skirts - RAN
2011	Defence Materiel Organisation	Coat, Cold Weather
2011	Defence Materiel Organisation	Gloves, Chemical Protective.
2011	Defence Materiel Organisation	Coats, Mens, Navy, Various sizes
2011	Defence Materiel Organisation	Ribbon, Service Cap, Tally Bands, 16 Lines
2011	Defence Materiel Organisation	Food Handlers Clothing
2011	Defence Materiel Organisation	Coats & Trousers Food Handlers.
2011	Defence Materiel Organisation	Jackets, Raincoats and Overcoats
2011	Defence Materiel Organisation	Sporting Attire - Circular Amendment 3
2011	Defence Materiel Organisation	Supply of Lanyards, 10 lines
2011	Defence Materiel Organisation	Supply of Embroidered Insignias for RAAF Cadets
2011	Defence Materiel Organisation	Procurement of undergarments for ADF requirements.
2011	Defence Materiel Organisation	Bathing suit Woman's and Trunk Swimmers Men's
2011	Defence Materiel Organisation	Insignia, Shoulder Sleeve, Cadets
2011	Defence Materiel Organisation	Windproof Jackets and Overtrousers
2010	Australian Maritime Safety Authority	Supply and Delivery of Corporate Clothing and Personal Protective Equipment for a 3 year period.
2010	Dept Parliamentary Services	Uniforms, Personal Protective Clothing and Footwear
2010	Defence Materiel Organisation	Tri-Service Maternity Wear
2010	Defence Materiel Organisation	Supply of Combat Gloves
2010	Defence Materiel Organisation	Supply of Cadet Embroidered Insignias
2010	Defence Materiel Organisation	Requirement for Qty 8000 Hoods; Anti-Flash, White I.A.W
2010	Defence Materiel Organisation	Embroidered Badges, Cadets, 27 Lines
2010	Defence Materiel Organisation	Lace, Ornamental, Black & Blue
2009	Department of Defence – DSG	Hood, Cold Weather.

Appendix C – Case Studies

The Senate Education, Employment and Workplace Relations Legislation Committee heard from several outworkers on 2 February 2012 who described their experiences in the TCF industry.

Ms Nguyet stated:

I have been working as an outworker for 21 years. I make a range of different lace fashion dresses for several different labels from the high end of the clothing market. The garments I make are complex with different colours of material needing to be sewn together. It takes me around one hour to finish a garment. I have a lot of experience working at home as an outworker. My pay is very low, around \$5 or \$6 per hour, without benefits. That is the reason why, sometimes, I refuse an order because of the very complex garments. There are too many colours to match and I feel too much pressure. This salary came with the first time I was given an order to complete.

It is common for me to be given 100 garments to complete in one week. It is one hour of complex work for one complex garment. I told my employer that I can only handle 50 garments a week. This means my income is now very low. My body is tired and one of my legs is very sore, so I cannot handle the heavy workload anymore. My hopes for the future are the same as my friends. Others who are working at home like me would like to get fair wages and better conditions. We want the government to help improve our conditions at work so we can keep working and contributing to Australian society.

Ms Anh Dang and Ms Susan Tran also shared their experiences as outworkers:

I have been working for one employer for four years, but I have not got any entitlements. My employer pays me about \$5 per hour. Whether I can make enough money or not depends on how difficult the job is. Sometimes I have to work day and night but I cannot make enough money because the work is so difficult to do. I virtually have to work 12 hours per day, including weekends. I do not have enough time for my daughter. I do not have enough time for myself. With the little money, not only do I need to spend very carefully on my living expenses but I also need to pay for other working expenses such as power, cotton, machine and other costs when the machinery is broken. My boss normally pays me two or three weeks after the delivery. If the work has any mistakes for any reason, I do not get paid until I have fixed all the orders.

The employer wants me to show him my ABN before I can get the job. My life is so difficult. Sometimes I ask the boss for more money but he says can't pay more. If I ask too much he would stop the work and give to other people. I do not want to stop working or find another job because of my age. My daughter is in year 10 and I have to keep working to make money to raise her and pay for the rent.

I hope my work is more stable and I can make enough money for my living and have some rights and entitlements so I do not have to worry so much if my boss stops his work or make me redundant.