

South Australia

Fair Work (Clothing Outworker Code of Practice) Regulations 2007

under the *Fair Work Act 1994*

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1—Short title

These regulations may be cited as the *Fair Work (Clothing Outworker Code of Practice) Regulations 2007*.

2—Commencement

These regulations will come into operation on 1 March 2008.

3—Interpretation

In these regulations—

Act means the *Fair Work Act 1994*.

4—Establishment of code

The code of practice set out in Schedule 1 is established under section 99C of the Act.

Schedule 1—South Australian Clothing Outworker Code of Practice

Part 1—Preliminary

1—Name of code

This code may be referred to as the *South Australian Clothing Outworker Code of Practice*.

2—General purpose

This code is intended to ensure outworkers in the clothing trades receive their lawful entitlements under the *Clothing Trades Award (SA)* and under any other enforceable industrial instrument.

3—Objectives

The code will—

- (a) aid in monitoring the use of outworkers in the manufacture of clothing products within South Australia or for retail sale within South Australia; and
- (b) prescribe practices and standards that will aid compliance with, and prevent avoidance of, the *Clothing Trades Award (SA)* and other relevant industrial instruments with respect to the engagement and performance of work by outworkers in the supply of clothing products within South Australia or for retail sale within South Australia; and

- (c) prescribe reporting practices and conduct to prevent the use of legal structures and other commercial arrangements as a means of avoiding the payment of remuneration and other lawful entitlements to outworkers in the clothing trades; and
- (d) facilitate and complement initiatives by the Government of South Australia to prevent circumvention and contraventions of laws regarding the employment conditions of outworkers in the clothing trades; and
- (e) complement and encourage compliance with the *Homeworkers Code of Practice* by signatories to that code.

4—Regulatory framework

- (1) This code is made under section 99C of the *Fair Work Act 1994*.
- (2) This code is to be read in conjunction with the Act, the State Award and any other relevant industrial instrument.

5—Definitions

In this code, unless the contrary intention appears—

Act means the *Fair Work Act 1994*;

agreement includes an arrangement or understanding—

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force within the State; and
- (d) whether or not based on legal or equitable rights enforceable within the State,

between a retailer and a supplier for the supply of clothing products, the whole or part of which are to be offered for retail sale within the State whether by the retailer, or another person on consignment or commission of the retailer;

applicable industrial standard means any statute, regulation, order, determination, award, industrial instrument or workplace agreement (whether under the Act or under the Commonwealth Act) to which the employment of an employee is subject, or which confers or imposes any rights, entitlements, obligations or liabilities upon a party engaging a worker (whether as an employer or otherwise) for the purpose of performing work, or upon a worker (whether as an employee or otherwise) or upon a party involved in the giving out of work (whether as an employer or otherwise), and includes any notional agreement preserving the State Award (NAPSA) having effect by virtue of the Commonwealth Act, but does not include the State Award;

associate of a person means—

- (a) a relative of the person; or
- (b) a partner of the person; or
- (c) a trustee of a trust in which the person is a beneficiary; or
- (d) a beneficiary of a trust in which the person is a trustee; or
- (e) where the associate is a body corporate—
 - (i) an officer of the body; or

- (ii) a related body corporate; or
- (iii) an officer of a related body corporate;

assumption, in relation to rights or obligations under an agreement, includes any conduct resulting in a person assuming the rights or obligations under an agreement—

- (a) with or without the consent of the retailer or supplier; and
- (b) whether or not the conduct has legal force within the State; and
- (c) whether or not the conduct is based on legal or equitable rights enforceable within the State;

authorised person means—

- (a) an officer or employee of the TCFUA who is authorised pursuant to section 140 of the Act; and
- (b) an inspector;

capacity to control includes a power or control—

- (a) that is indirect; and
- (b) that is, or can be, exercised as a result of, by means of, or by the revocation or breach of—
 - (i) a trust; or
 - (ii) a contract; or
 - (iii) a practice; or
 - (iv) any combination of (i), (ii) or (iii),whether or not enforceable within or outside the State; and
- (c) that is, or can be made, subject to restraint or restriction; and
- (d) whether express, informal, exercised alone or jointly with someone else;

charitable organisation means an organisation, society, institution or body carried on for a religious, educational, benevolent or charitable purpose, provided that it is not also carried on for the purpose of securing pecuniary benefit for its members;

clothing factory means any building or place in which—

- (a) 4 or more persons are engaged directly or indirectly in any handicraft or process in or incidental to the making, altering, preparing, ornamenting or finishing of any clothing, fabrics, hats, buttons or related products for trade, sale or gain; or
- (b) mechanical power is used in aid of any handicraft or process in or incidental to the making, altering, preparing, ornamenting or finishing of any clothing, fabrics, hats, buttons or related products for trade, sale or gain;

clothing products includes—

- (a) any male or female garment or wearing apparel; and
- (b) any part of a garment or wearing apparel; and
- (c) handkerchiefs, serviettes, pillowslips, pillow-shams, sheets, tablecloths, towels, quilts, aprons, mosquito nets, bed valances or bed curtains; and

- (d) clothing ornamentations; and
- (e) a permanent label attached to an item referred in paragraphs (a), (b), (c) or (d) indicating any or all of the following:
 - (i) a trade mark;
 - (ii) a fashion house design;
 - (iii) the country of origin;
 - (iv) the style of garment or wearing apparel;
 - (v) the size of the garment or wearing apparel;
 - (vi) the washing;
 - (vii) ironing instructions,

manufactured in Australia from material of any description, but does not include second hand clothing products;

code means the South Australian Clothing Outworker Code of Practice;

Commonwealth Act means the *Workplace Relations Act 1996* of the Commonwealth;

constitutional corporation means a corporation to which section 51(xx) of the Commonwealth Constitution applies;

contractor means—

- (a) a contractor who is engaged by a supplier, continuing entity or transferee; and
- (b) a subcontractor of a contractor referred to in paragraph (a),

for the supply of clothing products for delivery to a retailer;

Director-General means the Executive Director of Safework SA;

employer of an outworker has the same meaning as given under the Act;

entered into, in relation to an agreement (or a contract or an arrangement or understanding), includes any act (whether or not legally binding) that results in the renewal or extension of an existing agreement (or contract or arrangement or understanding);

giving out of work by a party includes any contract (or any other arrangement or understanding) entered into by a party in order to obtain the supply of clothing products to the party or in order that work will be performed in the course of the supply of clothing products to the party, where any work performed upon the clothing products is to be performed at premises that are not business or commercial premises of the party, whether any such contract or arrangement or understanding is—

- (a) formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force within the State; and
- (d) whether or not based on legal or equitable rights enforceable within the State,

and includes the giving out of work to an outworker but does not include any agreement between a retailer and another person other than an outworker solely for the purpose of the supply (to the retailer) of clothing products for retail sales by the retailer (whereby the agreement does not confer upon the retailer any rights to supervise or otherwise control the performance of work prior to the clothing products being delivered to the retailer);

holding company, in relation to a body corporate, means a body corporate in which the first body corporate is a subsidiary;

industrial relations legislation means any of the following Acts and the regulations made under any such Act:

- (a) *Fair Work Act 1994*;
- (b) *Long Service Leave Act 1987*;
- (c) *Holidays Act 1910*;

inspector means a person appointed as an inspector under section 64 of the Act;

lawful entitlements of an outworker means the entitlements conferred on the outworker by law, including any entitlements conferred by or under industrial relations legislation, other legislation and the State Award;

manufacture or **manufactured**, in relation to clothing products, means the process of—

- (a) manufacturing clothing products in Australia; and
- (b) altering or working on clothing products in Australia (whether the products are imported into Australia or produced in Australia),

which is covered by a relevant industrial instrument;

officer of a body corporate means—

- (a) a director or secretary of the body; or
- (b) a person—
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part of the business of the body; or
 - (ii) who has the capacity to affect significantly the body's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the body are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the body); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the body within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the body; or

- (g) a trustee or other person administering a compromise or arrangement made between the body and someone else;

outworker means any person as so defined under the Act;

record includes—

- (a) anything on which there is writing; or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph,

that is required to be given or kept under this code;

related body corporate has the same meaning as it has under section 50 of the *Corporations Act 2001* of the Commonwealth;

relative means a spouse, parent or more remote lineal ancestor, son, daughter or more remote issue, or brother or sister of the supplier;

relevant award includes the State Award and any other relevant industrial instrument that regulates the conditions of employment of outworkers and applies to the performance of work by an outworker;

relevant industrial instrument includes the provisions of this code, a relevant award and any federal or interstate award or industrial instrument or workplace agreement (including any workplace agreement under the Commonwealth Act) that regulates the conditions of employment of outworkers and applies to the performance of work by an outworker;

relevant person means—

- (a) a supplier; or
- (b) a contractor; or
- (c) a supplier's continuing entity; or
- (d) a transferee;

retailer means—

- (a) any person, wherever domiciled, who sells clothing products by retail within the State; and
- (b) any person, wherever domiciled, who is an associate of, and has a commercial relationship with, a person referred to in paragraph (a) as to the retail sale of clothing products within the State;

second hand clothing products means clothing products that—

- (a) have been worn or used; and
- (b) are represented by a retailer as being used products;

State Award means the *Clothing Trades Award (SA)* as made or varied from time to time by the Industrial Relations Commission of South Australia;

subsidiary, in relation to a related body corporate, has the same meaning as given under section 46 of the *Corporations Act 2001* of the Commonwealth;

supplier means any person, wherever domiciled, who enters into an agreement with a retailer for the supply of clothing products within the State;

supplier's continuing entity or **continuing entity** means—

- (a) a relative of a supplier; or
- (b) a body corporate in which a supplier is an officer or has the capacity to control; or
- (c) a related body corporate of a body corporate in which a supplier is an officer or has the capacity to control; or
- (d) a trust in which a supplier—
 - (i) is a trustee; or
 - (ii) is a beneficiary; or
 - (iii) is able to appoint or remove the trustee; or
 - (iv) has the capacity to control the decision making of the trustee; or
- (e) partnership in which a supplier—
 - (i) is partner; or
 - (ii) has the capacity to control the decision making of the partnership; and
- (f) any combination of (a), (b), (c), (d) or (e) in which a supplier has a capacity to control;

supply means—

- (a) to supply manufactured clothing products; and
- (b) to manufacture clothing products; and
- (c) to arrange the manufacture of clothing products; and
- (d) to arrange the supply of manufactured clothing products; and
- (e) to do any combination of (a), (b), (c) or (d);

TCFUA means the Textile Clothing and Footwear Union of Australia, New South Wales South Australian Tasmanian Branch;

transfer includes arrangement, understanding, plan, proposal, course of action or course of conduct to confer an obligation or right under an agreement—

- (a) whether or not having legal force within or outside the State; and
- (b) whether or not based on legal or equitable rights enforceable within or outside the State;

transferee means any person to whom a supplier or continuing entity has transferred an obligation or right under an agreement by way of a bona fide commercial arrangement, but does not include a person who is a continuing entity of the supplier;

work means—

- (a) hand or machine sewing or fusion of material in the construction of clothing products; and
- (b) hand or machine sewing in the affixing of labels to clothing products.

6—Scope and interpretation of code

- (1) In the interpretation of a provision of this code, a construction that would promote the objectives underlying the code is to be preferred to a construction that would not promote those objectives.
- (2) In this code—
 - (a) a reference to a person engaging in conduct is to be read as a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, an agreement; and
 - (b) a reference to a retailer or relevant person entering into an agreement within the State is to be read as a reference to an agreement which is made under, or subject to, the law of South Australia; and
 - (c) a reference to a retailer or relevant person includes a reference to an employee, agent or officer of a retailer or relevant person.
- (3) To remove doubt regarding the application of this code to an external administrator of a body corporate, a reference to a person includes a reference to an administrator, liquidator, or receiver and manager of a body corporate.
- (4) In the event of an inconsistency between the provisions of this code and the provisions of a relevant industrial instrument, the provisions of the relevant industrial instrument that are applicable to outworkers in the clothing trades will prevail to the extent of the inconsistency.
- (5) An agreement between a retailer and a supplier will be deemed to be for the supply of clothing products within the State where—
 - (a) the retailer has outlets for the retail sale of clothing products within the State; or
 - (b) the agreement is made within the State or is subject to the law of South Australia; or
 - (c) the retailer has indicated in records kept under this code that the clothing products are for retail sale within the State; or
 - (d) the agreement stipulates that the whole, or part of, the clothing products are to be delivered to an address within the State; or
 - (e) the supplier, or contractor of the supplier, manufactures the clothing products within the State; or
 - (f) the supplier, or contractor of the supplier, engages outworkers who are domiciled within the State to perform work on the clothing products,unless the retailer is able to establish a contrary intention.

Part 2—Application and operation of code

7—Obligations under code

- (1) The provisions of this code are mandatory and apply to persons (other than charitable organisations) engaged in or in connection with the manufacture or provision of clothing products in Australia including, but not limited to—
 - (a) retailers and suppliers;
 - (b) contractors and subcontractors;
 - (c) continuing entities of suppliers;
 - (d) transferees.
- (2) A person specified in subclause (1) who fails, without reasonable excuse, to adopt any standard of conduct or practice set out in this code is guilty of an offence under this code.
Maximum penalty: \$2 500.
- (3) Subject to clause 8, a person who contravenes a provision of this code will be deemed to have failed to adopt the standard of conduct or practice specified in the contravened provision.

8—Compliance with code

- (1) A person engaged in the clothing industry, or a sector of the clothing industry, specified or described in this code must comply fully with the code, but a failure to comply with a provision of the code will be deemed to be a reasonable excuse if the person establishes that the failure was due to—
 - (a) a reasonable mistake (not being a mistake based on a lack of knowledge of the provisions of this code) and without intent to evade the provisions of this code; or
 - (b) a reasonable reliance on information supplied by another person; or
 - (c) an act or failure to act of another person, or an accident or some other cause beyond the person's control, provided that the person took reasonable precautions and exercised due diligence to avoid the failure; or
 - (d) an act done under duress or undue influence; or
 - (e) the person being a signatory to, or accredited under, the *Homeworkers Code of Practice* and acting in compliance with that code.
- (2) For the purposes of subclause (2)(e), the *Homeworkers Code of Practice* is the agreement of the name signed on behalf of The Textile Clothing and Footwear Union of Australia, The Council of the Textile and Fashion Industries Ltd, The Australian Chamber of Manufacturers and The Australian Business Chamber and various individual companies in 1997.
- (3) Subject to the operation of section 235 of the Act, proceedings for contraventions of this code may be instituted by—
 - (a) an inspector; or

- (b) where specified in this code—by an authorised officer or employee of the TCFUA.

9—Application of code to agreements

The provisions of this code apply to agreements for clothing products that are entered into on or after the commencement date of the code.

Part 3—Responsibilities of retailers

10—Retailer to take reasonable steps to ascertain compliance with code

- (1) A retailer must, before entering into an agreement with a supplier—
 - (a) ascertain from the supplier whether the services of an outworker will be, engaged under a relevant award by the supplier or a contractor of the supplier to perform work in connection with the agreement; and
 - (b) request the supplier to provide information in respect of the matters specified under Part B of Schedule 2.
- (2) Where an outworker is to be engaged by the supplier, or a contractor of the supplier, or both, to perform work on clothing products, a retailer must, before entering into an agreement with the supplier—
 - (a) obtain an undertaking from the supplier (as set out in Part B of Schedule 2) that—
 - (i) the engagement of the outworker by the supplier, or contractor, or both, will be under conditions that are no less favourable than those prescribed under the relevant industrial instrument; and
 - (ii) the addresses where work on the clothing products is to be performed is to be disclosed; and
 - (b) inform the supplier that a breach of the undertaking by the supplier, or the contractor, or both, will be taken to be a breach of an essential term of the agreement and grounds for the agreement's termination.
- (3) A retailer must not enter into an agreement with a supplier in contravention of this clause.
- (4) A breach of subclause (3) does not affect the validity of an agreement.

11—Retailers must report less favourable conditions

- (1) Where a retailer becomes aware that a relevant person is intending to engage, or has engaged, an outworker on less favourable terms than the conditions prescribed under a relevant award or other relevant industrial instrument, the retailer must report the matter in writing to the TCFUA or to the Director-General.
- (2) A retailer will be taken to contravene subclause (1) if the retailer—
 - (a) has information provided under this code; or
 - (b) has knowledge based on previous dealings or commercial arrangements with or through a relevant person; or

- (c) has information arising from an inspection of premises where work is or has been performed by outworkers,

that would lead a reasonable person in the position of the retailer to be so aware that the outworkers have been, or will be, employed on less favourable terms and conditions than that prescribed under the relevant award or other relevant industrial instrument.

12—Keeping of records by retailers

- (1) A retailer must keep a record of the following details when entering into an agreement with a supplier:

- (a) the name of the supplier of clothing products;
- (b) if applicable—the supplier’s ACN or ARBN and ABN;
- (c) the registered office or principal place of business of the supplier;
- (d) if applicable—the registered number of the supplier, and title of the relevant industrial instrument which authorises the supplier to give work out to be performed outside the supplier’s premises;
- (e) where the work is, or has been, undertaken by or through a contractor of the supplier—
 - (i) the name of the contractor; and
 - (ii) if applicable—the contractor’s ACN or ARBN and ABN; and
 - (iii) the registered office or principal place of business of the contractor; and
 - (iv) if applicable—the registered number of the contractor, and title of the relevant industrial instrument which authorises the contractor to give work out to be performed outside the contractor’s premises;
- (f) the address or addresses of where the work has, or is to be, performed—
 - (i) by the supplier; and
 - (ii) by the contractor,

and if applicable, the registration number for each address in accordance with the provisions of any occupational health and safety regulation for the registration of clothing factories;

- (g) the date of the agreement and (if applicable) the giving out of the work;
- (h) the date for the delivery (completion of order) of the clothing products to be supplied under the agreement;
- (i) a description, including specification, size, style, image or sketch drawing and any other relevant information in order to identify the clothing products to be supplied and the material used;
- (j) the number of clothing products to be supplied under the agreement;
- (k) the wholesale price or cost paid by the retailer for each item of clothing products supplied under the agreement;

- (1) the wholesale price or cost paid by the retailer for the clothing products supplied under the agreement,

where the clothing products, or some of the products, are to be offered for retail sale within the State whether by the retailer, or another person on consignment or commission of the retailer.

- (2) A retailer will be taken to comply with this clause if the retailer retains a completed copy of Parts A and B of the form provided under clauses 13 and 15, and retains copies of any other forms or written information required under this code to be submitted by a relevant person to the retailer, in relation to each agreement for the supply of clothing goods.
- (3) A retailer must provide to the Director-General, and to the TCFUA, from records required to be kept by the retailer under subclause (1), a full and accurate extract of particulars in or to the effect of Schedule 1 regarding agreements entered into with suppliers—
- (a) during the 3 months preceding each of the following periods ending on:
- (i) 4 February;
- (ii) 28 April;
- (iii) 21 July;
- (iv) 11 November,
- of each year; or
- (b) if the retailer elects to do so and notifies the Director-General in writing of that election—during the 6 month period ending on—
- (i) 28 February;
- (ii) 31 August,
- of each year.
- (4) An extract of particulars provided under subclause (3) must be submitted within 28 days of the dates specified in that subclause.

13—Retailer to provide documents to suppliers

- (1) A retailer must, before entering into an agreement with a supplier, provide to the supplier a form in or to the effect of Schedule 2 (including a completed copy of Part A of the form).
- (2) A retailer must—
- (a) at the time of providing the form under subclause (1) insert a common identifying number on the top of each page of the form; and
- (b) keep a copy of the form for a period of 7 years from the date of providing the form to the supplier.

Part 4—Responsibilities of supplier, continuing entity and contractor

14—Supplier to provide sufficient information

A supplier must provide to the retailer sufficient information to enable the retailer to comply with clauses 10, 12 and 13.

15—Obligations of suppliers to provide information

- (1) A supplier must, when showing samples of clothing or offering for sale ready made items of clothing, indicate to the retailer whether any or all of the clothing items will be, or have been manufactured in Australia.
- (2) A supplier must indicate on each invoice for the supply of clothing products to a retailer which of the clothing products supplied have been manufactured in Australia.
- (3) A supplier must include with the invoice for the supply of clothing products a completed copy of the Part B provided by the retailer under clause 13.
- (4) A retailer must retain a copy of each invoice for clothing products and the Part B provided by a supplier under this clause for a period of 7 years.

16—Details of agreement to be provided by supplier and contractor

- (1) A supplier must—
 - (a) at the time of engaging a contractor, provide to the contractor a copy of the form issued by the retailer to the supplier under clause 13(1) (containing particulars provided by the retailer and supplier under Parts A and B of the form); and
 - (b) keep a copy of the form for a period of 7 years from the date of providing a copy of the form to the contractor.
- (2) A contractor must—
 - (a) at the time of engaging a subcontractor, provide to the subcontractor a copy of the form (including the completed Parts A and B) issued by the retailer under clause 13(1); and
 - (b) keep a copy of the form for a period of 7 years from the date of providing a copy of the document to the subcontractor.

17—Relevant person must inform retailer of any changes to details provided by retailer under this code

- (1) A relevant person has an obligation under this code to assist a retailer to maintain accurate records in respect of an agreement with the retailer for the supply of clothing products—
 - (a) to facilitate compliance with, and prevent avoidance of, a relevant award with respect to the engagement and performance of work by outworkers in the supply of clothing products or for retail sale within South Australia; and
 - (b) to prevent the use of legal structures and other commercial arrangements as a means of avoiding the payment of remuneration and other lawful entitlements to outworkers in the clothing trades.

- (2) A relevant person must inform a retailer in writing of any false or misleading information, or changes to particulars, provided to the retailer under clause 13(1) within 14 days of the relevant person becoming aware of the information or change.

18—Supplier’s continuing entity to provide information to retailer

- (1) A supplier’s continuing entity must give written notice to a retailer that the continuing entity has or intends—
- (a) to assume—
 - (i) all or any of the supplier’s obligations; or
 - (ii) any of the rights of the supplier (without assuming obligations) including, but not limited to, a claim for any remuneration or other benefit payable to the supplier; or
 - (iii) all of the supplier’s rights and obligations;
 - (b) to transfer—
 - (i) all or any of the supplier’s obligations; or
 - (ii) any of the rights of the supplier (without assuming obligations) including, but not limited to, a claim for any remuneration or other benefit payable to the supplier; or
 - (iii) all of the supplier’s rights and obligations,
- under an agreement made within the State between the retailer and supplier.
- (2) A supplier’s continuing entity must—
- (a) on the assumption of an obligation or right, under an agreement made within the State;
 - (b) if an outworker is, or has been, engaged under the State Award to perform work in respect of the supply of clothing products under the agreement,
- provide to the retailer details of arrangements for the payment of the outworker's lawful entitlements by the supplier or the continuing entity, or both, as the case may be.
- (3) The provisions of—
- (a) subclause (1) are satisfied if the supplier’s continuing entity lodges with the retailer a declaration in or to the effect of—
 - (i) in the case of the assumption of an obligation or right under an agreement—Schedule 3; or
 - (ii) in the case of the transfer of an obligation or right—Schedule 4; and
 - (b) subclause (2) are satisfied if the continuing entity lodges with the retailer a declaration in or to the effect of Schedule 5,
- within 14 days of the assumption, exercise or assignment of the obligation or right.

- (4) Notwithstanding the application of subclauses (1) and (2) to agreements made within the State, a supplier's continuing entity must not cause or permit a retailer to keep records within the State that fail to disclose any of the matters prescribed in those subclauses in respect of the continuing entity's assumption or transfer of an obligation, or right, under an agreement made outside the State.
- (5) A supplier's continuing entity may inspect any records kept by a retailer within the State relating to the continuing entities assumption or transfer of a right or obligation, or right and obligation, under an agreement.

19—Obligations of suppliers who carry on business outside the state

- (1) A supplier must assist a retailer to maintain accurate records within the State in relation to agreements with the retailer for the supply of clothing products by—
 - (a) the supplier; and
 - (b) a contractor of the supplier; and
 - (c) the supplier's continuing entity.
- (2) A supplier must not cause or permit a retailer to keep within the State—
 - (a) a copy of the form provided to the supplier under subclause (1) that—
 - (i) does not include a copy of the Part B completed by the supplier; or
 - (ii) includes a copy of the Part B which is incomplete; or
 - (iii) includes a copy of the Part B which contains false or misleading information; and
 - (b) records that fail to disclose information required to be provided by the supplier under clause 15.
- (3) A supplier may inspect any records kept by a retailer within the State relating to an agreement for the supply of clothing products by the supplier.
- (4) For the purposes of this clause, a reference to a supplier means a supplier who carries on business outside the State.

Part 5—General

20—Notice may be given to retailers to produce records

- (1) An authorised person may, by written notice, require a retailer to produce—
 - (a) for the examination by the officer or other authorised person indicated in the notice; and
 - (b) on such date and at such time and place (other than the retailer's registered office or principal place of business), as the authorised person may specify in the notice,

any record required to be kept under this code for the purpose of investigating possible contraventions of the relevant award (whether on complaint or by way of routine investigation).

- (2) A record produced by a retailer under subclause (1) may be retained by the authorised person for such reasonable period as may be necessary to take copies of or extracts from it.
- (3) A notice under this clause—
 - (a) must be in the form or to the effect of Schedule 6; and
 - (b) may be given personally or served by post at—
 - (i) the registered office; or
 - (ii) the principal place of business; or
 - (iii) the address of the nominated agent,
of a retailer within the State.
- (4) An authorised person must provide a receipt to the retailer on the production of documents under this clause, which must indicate the time, date, place and nature of documents produced.
- (5) An authorised person must keep confidential the contents of any record made available under subclause (1).
- (6) Subclause (5) does not operate to prevent the disclosure of information if that disclosure is—
 - (a) made in connection with the administration or enforcement of the industrial relations legislation, or the provisions of this code or a relevant award; or
 - (b) made with the prior permission of the Minister; or
 - (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.
- (7) A retailer must not produce to an authorised person a record containing inaccurate or false information with intent—
 - (a) to mislead or deceive the authorised person; or
 - (b) to evade any of the provisions of this code; or
 - (c) to avoid obligations under a relevant industrial instrument; or
 - (d) to facilitate, or aid in, a relevant person evading any of the provisions of this code or a relevant industrial instrument.
- (8) Where a notice is issued by an authorised officer or employee of the TCFUA, a contravention of subclauses (1) and (7) may be enforced by the authorised officer or employee on behalf of the TCFUA.
- (9) A reference in this clause to a record includes a reference to any document (including an extract of a document or record) that is required to be kept under this code and to any particulars contained in the document.

Note—

Clause 20(8) is subject to compliance with the requirements of section 235 of the *Fair Work Act 1994*.

21—Suppliers and other relevant persons to be registered under a relevant industrial instrument

A retailer must not knowingly—

- (a) enter into an agreement with a supplier involving the engagement of an outworker unless the supplier, and each contractor used by the supplier, are registered under a relevant industrial instrument to give out work out to be performed outside the supplier's or contractor's premises; or
- (b) accept clothing products under an agreement from a relevant person where work has been performed on the goods by an outworker, unless the relevant person is registered under a relevant industrial instrument to give out work out to be performed outside the relevant person's premises.

22—Person making declarations under code taken to have authority

- (1) A person on whose behalf a declaration is made, or information has been provided, under this code, is taken to have authorised the making of the declaration or the provision of the information if the declaration or information is made or provided by—
 - (a) a person who has the capacity to control the first-mentioned person; or
 - (b) any person who is held out by the first-mentioned person to have that authority; or
 - (c) where the first-mentioned person is a body corporate—an officer of that body; or
 - (d) a person who has received a benefit directly or indirectly from the first-mentioned person for the making of the declaration or provision of the information.
- (2) Notwithstanding the provisions of subclause (1)(b) and (c), a person will not be taken to be liable under those provisions if the person can show—
 - (a) that the declaration or provision of information was done without authority of the person; and
 - (b) that in the circumstances it would be unreasonable for the person to be held liable for the declaration or the provision of the information, as the case may be.

23—Misleading or deceptive information

A retailer or relevant person must not—

- (a) knowingly engage in conduct that is misleading or deceptive, or likely to mislead or deceive an outworker regarding the outworkers—
 - (i) entitlements under a relevant award; or
 - (ii) civil liability to an employer or other relevant person;
- (b) make, order or allow to be made any entry or erasure in, or any omission from records or other document that is, produced, delivered or kept for the purposes of this code, with intent to falsify them or it, or to evade any of the provisions of this code.

24—Aiding in or facilitating the evasion of the code or outworker entitlements

- (1) A retailer or relevant person must not aid or facilitate another person to evade, or attempt to evade—
 - (a) the provisions of this code; or
 - (b) the payment of outworker entitlements under a relevant award.
- (2) A retailer or relevant person will be taken to have contravened subclause (1) if the retailer or relevant person engages in any conduct—
 - (a) which would lead a reasonable person in the position of the retailer or relevant person to believe that the conduct would aid or facilitate a person to evade—
 - (i) any provision of this code; or
 - (ii) the payment of entitlements to an outworker under a relevant award;
or
 - (b) that is performed outside the State, but which has the effect of negating or restricting—
 - (i) the implementation or operation of this code; or
 - (ii) enforcement of, and compliance with, this code; or
 - (iii) obligations under this code,
within the State in respect of a person, or class of persons, engaged in the manufacturing of clothing products.
- (3) A person must not, by intimidation, duress or undue influence, bring about an act whereby a person in the clothing industry fails to comply with any provision of this code.
- (4) Nothing in this clause is to be interpreted as affecting or removing lawful rights and entitlements which a retailer or relevant person has under a law of the State, Commonwealth or another State or Territory.

25—Schedules of code to be completed in accordance with directions

A form contained in a Schedule, or part of a Schedule, to this code must be completed in accordance with the directions and instructions specified in the form.

26—Keeping of records within the state

- (1) All records required to be kept by a person under this code (including extracts of records provided, under clause 12) must—
 - (a) be kept in the State—
 - (i) at the person's registered office or principal place of business; or
 - (ii) at the address of a nominated agent of the person,
for a period of 7 years from the date of the making of the document, unless otherwise stated in this code; and
 - (b) during normal business hours, be made available to an inspector on request.

- (2) Records kept in accordance with subclause (1) may be stored or recorded electronically if a written reproduction of the stored or recorded document is available for inspection or production in accordance with this code.

27—General requirements for documents

A document or form required to be given under this code must—

- (a) be on white or light pastel colour paper; and
- (b) be of international A4 size; and
- (c) be of medium weight and good quality; and
- (d) contain information which is clearly printed or written in black or dark blue ink in a manner that is permanent and will make possible a reproduction, by photographic, computerised or other electronic means; and
- (e) not be a carbon copy or a copy reproduced by any spirit duplication method.

28—Application of state award protection standards

- (1) The provisions of the State Award in respect of any matters relating to outworkers apply and have effect by force of this subclause in relation to constitutional corporations involved in the giving out of work and also in relation to outworkers, which are engaged by constitutional corporations.
- (2) To avoid doubt, the provisions of the State Award in respect of any matters relating to outworkers extend to all provisions of the State Award (except insofar as the provisions confer rights or entitlements solely for the benefit of an employee other than an outworker or impose obligations or liabilities upon an employer solely in relation to an employee other than an outworker) including (but not limited to)—
- (a) provisions which confer rights or entitlements upon outworkers; and
 - (b) provisions which impose obligations or liabilities upon a party involved in the giving out of work, whether such provisions impose—
 - (i) obligations requiring a party involved in the giving out of work to make or keep records of such work given out; or
 - (ii) obligations requiring a party involved in the giving out of work to disclose any information about such work given out; or
 - (iii) obligations prescribing any other conditions with which a party involved in the giving out of work must comply; or
 - (iv) liabilities arising from obligations to provide entitlements to an outworker performing any work given out; and
 - (c) provisions which confer powers of entry and inspection upon a representative of an employee association in relation to premises for a purpose connected with the giving out of work (including any purpose connected with outworkers); and
 - (d) provisions which confer powers to oversee or regulate the giving out of work upon any body constituted pursuant to the Act or upon any officer authorised pursuant to the Act.

- (3) Subject to subclause (4), a constitutional corporation which is involved in the giving out of work is required to comply with a provision of the State Award having effect by force of subclause (1) as if the constitutional corporation were an employer (or other party) bound by and subject to the State Award.
- (4) A constitutional corporation bound by and subject to an applicable industrial standard is required to comply with a provision of the State Award having effect by force of subclause (3) if the constitutional corporation is involved in the giving out of work, except insofar as the applicable industrial standard—
 - (a) imposes upon the constitutional corporation obligations and liabilities which are equivalent to the obligations and liabilities imposed by the provision of the State Award; and
 - (b) confers upon an outworker rights and entitlements which are equivalent to, or more generous than, the rights and entitlements conferred by the provision of the State Award; and
 - (c) confers upon a representative of an employee association powers of entry and inspection in relation to premises and documents (concerning the giving out of work), which powers are equivalent to the powers of entry and inspection (concerning the giving out of work) conferred upon a representative of the employee association by the State Award.
- (5) Whether an entitlement which would have been owed by the constitutional corporation under the applicable industrial standard in relation to a matter is more generous than the entitlement owed in relation to the corresponding matter under the provision of the State Award having effect by force of subclause (3) is to be ascertained in accordance with the ordinary meaning of the term "more generous".
- (6) A constitutional corporation may, after the constitutional corporation has paid to the outworker concerned any part of the amount of an entitlement owed under an applicable industrial standard in respect of any matter relating to outworkers, deduct or set-off the amount the constitutional corporation has paid to the outworker from any amount that the constitutional corporation owes to the outworker under a provision of the State Award (in respect of the corresponding matter) having effect by force of subclause (3).
- (7) This clause does not (except as provided by subclauses (4), (5) and (6)) limit or exclude any other rights of recovery of an outworker, or any obligation or liability of any person with respect to the giving out of work or with respect to the remuneration of such an outworker or in respect of the provision of rights or entitlements to such an outworker, whether or not arising under the Act or this code or any other law or an applicable industrial standard.
- (8) Nothing in this clause limits the powers of entry and inspection of an official of an employee association for the purpose of investigating time books or wage records or workplaces or for the purpose of investigating non-compliance with the Act or non-compliance with the provisions of the State Award having effect by force of subclause (3).

Schedule 1
 (Clause 12(3))

Schedule of supplier's particulars relating to the period ending 20.....

Supplier's name (including ABN/ARBN and CRN)	Supplier's address (registered office or principal place of business)	Date of agreement	Engagement of outworkers
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

.....
 Name of retailer

.....
 Registered office/Principal place of business of retailer in SA

.....
 Date of return

.....
 Signature

.....
 Designation

Schedule 2—Part A

(Clause 13)

No: 20 / Year Retailer's identification number

Details to be provided by retailer to supplier:

1. Details of agreement

Name of retailer

Agreement for the supply of clothing products by(supplier)

ACN/ARBN..... ABN

of (supplier's address)

dated on /..... /.....

2. Manufacture of clothing products

Are the clothing products to be manufactured to retailer's specifications? YES NO

If no, go to question 3.

If yes, provide a description (including size, style, image or sketch drawing) and any other relevant information in order to identify the clothing products to be supplied by the supplier.....

.....

A description of the nature of the work to be performed (eg overlocking, machine fusing, etc)..

.....

3. General information regarding supply of clothing products

Has the supplier provided a copy of the order form for the clothing products? YES NO

If yes, the order form must be attached with the copy of this document that is kept by the retailer.

4. Commencement of agreement

Agreement to commence on:

- the date on which details are provided by the supplier to the retailer under Part B of this form; or
- the date of this form

(Whichever is later)

Signature Designation

dated on /..... /.....

Schedule 2—Part B
(Clause 15)

Details to be provided by supplier to retailer:

1. Details of agreement

Agreement for the supply of clothing products to (name of retailer)
ACN/ARBN (retailer) ABN.....
of (retailer's address)
dated on /..... /.....

2. Supplier's particulars

Name of the supplier of the clothing products
ACN/ARBN ABN
Address of the supplier's principal place of business
.....
Address where the work is to be performed

If the work is to be performed in a factory, provide details of the registered factory number/approval and the legislation under which the registration /approval is effected

If outworkers are to be used in the supply of clothing products, provide details of:

- (a) the registration number and the name of the relevant industrial instrument under which the supplier is authorised to give out work to be performed outside the supplier's premises.....
- (b) the name and address of each outworker
- (c) the name and address of the employer of the outworkers

3. Contractor's particulars

Name of each contractor to be engaged by the supplier

1)
ACN/ARBN ABN

Address of each contractor's registered office or principal place of business

2)
.....

Address where the work is to be performed

If the work is to be performed in a factory, provide details of the registered factory number/approval and the legislation under which the registration /approval is effected

If outworkers are to be used in the supply of clothing products, provide details of:

- (a) the registration number and the name of the relevant industrial instrument under which each contractor is authorised to give out work.....
.....
- (b) the name and address of each outworker
- (c) the name and address of the employer of the outworkers.....
.....

4. Details of clothing products supplied under agreement

The number of and type of clothing products to be made under the agreement

Address where clothing products are to be delivered to the retailer

Date of supply / /

Undertaking as to the employment of outworkers under relevant award

To be completed in respect of clothing products manufactured to retailer's specifications

I..... of do hereby agree

- (1) that the engagement of outworkers by *me/us and by *my/our contractors will be under conditions that are no less favourable than those prescribed under , the relevant award; and
- (2) that all addresses where work is performed on the clothing products (whether at a factory or at the residential address of an outworker) will be disclosed to the retailer; and
- (3) that a breach of this undertaking by *me/us and *my/our contractors will be taken to be breach of an essential term of the agreement referred to in Part A of this form, and will be grounds for termination of the agreement.

Signature..... Designation

Date of supplier providing details *and undertaking to retailer / /

*Strike out words which are not applicable

Note—A supplier who carries on business outside SA must not cause or permit the retailer to keep within SA a copy of this Part B which is incomplete, or which contains insufficient information or information that is false or misleading, in relation to details of the supplier or a contractor of the supplier.

Schedule 3

(Clause 18(3)(a)(i))

Declaration by supplier's continuing entity

(Assumption of obligations and/or rights)

To (name of retailer)

of (address of retailer)

*I/we (names of continuing entity/ies)

of (address)

and

being a supplier's continuing entity within the meaning of the South Australian Clothing Outworker Code of Practice, do hereby declare that:

*I/we intend to assume/have assumed from the obligations (*and/or)

dated on / /

rights of (supplier's name)

in the performance of an agreement dated between

you and the supplier in respect of the delivery of clothing products on / /

Obligations *and/or rights assumed or to be assumed are:

.....

.....

*I/We are authorised to make this declaration.

Signature Designation

dated on / /

*Strike out words which are not applicable

Schedule 4

(Clause 18(3)(a)(ii))

Declaration by supplier's continuing entity

(Transfer of obligations and/or rights)

To(name of retailer)

of(address of retailer)

*I/we

of(address of continuing entity/ies)

and

being a supplier's continuing entity within the meaning of the South Australian Clothing Outworker Code of Practice, do hereby declare that:

*I/we intend to transfer/have transferred to of

..... from

the obligations **and/or* rights of (the supplier)

in the performance of an agreement dated

between you and the supplier in respect of the supply of clothing products on/...../.....

Obligations **and/or* rights to be transferred, or which have been transferred, under the agreement are:

.....

.....

*I/We are authorised to make this declaration.

Signature Designation

dated on /..... /.....

*Strike out words which are not applicable

Schedule 5

(Clause 18(3)(b))

Declaration by supplier's continuing entity

(Engagement of outworkers)

To(name of retailer)

of (address of retailer)

*I/we (names of continuing entity/ies)

of (address of continuing entity/ies)

and

being a supplier's continuing entity within the meaning of the South Australian Clothing Outworker Code of Practice, do hereby declare that:

- 1) in respect of an agreement between the supplier and you dated
work *is to be/has been performed by outworkers engaged by
..... under the provisions

Name of person engaging outworkers

of

award or other statutory instrument

being the State Award; and

- 2) the following arrangements have been made by

Person engaging outworkers

for the payment of lawful entitlements to outworkers:

.....

*I/We are authorised to make this declaration.

Signature Designation

dated on /..... /

*Strike out words which are not applicable

Schedule 6

(Clause 20)

Notice to retailer to produce records

To:(name of retailer)

You are hereby required under clause 20 of the South Australian Clothing Outworker Code of Practice (the Code) to produce to me or *another inspector/authorised industrial officer or employee of the TCFUA on (date) at (time) at (full details of place) the records referred to in the Schedule to this notice that are required to be kept by you under the Code.

Schedule

.....

Signature of person giving notice

.....

Print name (*An inspector/authorised industrial officer or employee of the TCFUA)

.....

Date of issue of notice

* Strike out words which are not applicable

Made by the Governor

with the advice and consent of the Executive Council
on 18 October 2007

No 239 of 2007