



New South Wales
Government

Implementation Guidelines

on

**employment and
outwork obligations**

textile clothing and
footwear suppliers

1998



Implementation Guidelines for the Code of Practice on employment and outwork obligations for textile clothing and footwear suppliers

The Code establishes the standards expected of members of the Textile Clothing and Footwear Industries, including contractors, subcontractors, agents, suppliers and all employers in the industry in all dealings with NSW government agencies.

The Code covers employment obligations with respect to employees and outworkers in the procurement of the following: textile, clothing, and footwear and related goods and components, including but not limited to the whole or any part of any male or female garment or of any wearing apparel including but not limited to neckwear and headwear; footwear; handkerchief; serviette; pillowslip; pillowsham; sheets; tablecloth; towel; quilt apron; mosquito net; bed valance; bed curtain; ornamentation made of textile, felts or similar fabrics and artificial flowers.

Vietnamese and Chinese language editions of the Code have been published.

Department of Public Works and Services
Report number 98060

ISBN 0 7313 0752 6

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Introduction

The *Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers*, February 1998 applies to all contracts for the supply of textile articles, clothing, footwear, related goods, and components to all government agencies.

These Implementation Guidelines expand on key aspects of the Code and should be read together with the Code.

Contractors and employers are required to ensure that a copy of the Code is available to all parties in the contract chain.

Vietnamese and Chinese language editions of the Code have been published to ensure that those not proficient in English are not disadvantaged.

Any enquiries concerning the Code or these Implementation Guidelines should be referred to the client government agency or to the State Contracts Control Board (SCCB) or Department of Public Works and Services at the address provided in Section 9 of this document.

Section 9 provides a helpful list of contact names and telephone numbers for industry participants employees and outworkers who want further information in relation to the Code, or specific advice in relation to industrial awards, employment conditions, occupational health, safety and rehabilitation obligations, or related assistance.

Objectives

The *Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers* defines the minimum levels of acceptable behaviour.

These are reflected in the objectives outlined in the Code in Section 2, which are supported by sanctions that will be applied, when the need arises, via the Government's right as a client to choose with whom it does business.

The compliance requirements of the Code are outlined in Section 7 of the Code and expanded in these Guidelines.

Definitions

These definitions apply in the context of these guidelines:

Award

Legally enforceable determination made by the Australian or NSW Industrial Relations Commission containing the minimum terms and conditions of employment to be met by the relevant employer, respondent or contracting party.

Affirmative action

Policies intended to redress discriminatory practices in employment. These policies commonly redress discrimination and victimisation based on age, disability, gender, marital status, sexual preference, racial or ethnic origin; and provide for equal opportunity in employment.

Textile Clothing and Footwear Industry

“The industry” includes all organised activities concerned with the production of textile articles, clothing, footwear and related goods and components.

Client

Party receiving tenders.

Contract

Agreement for supply of textile articles, clothing, footwear or related goods and components, including the services necessary to be performed to supply or repair those goods.

Contractor

Person, corporation, supplier or their agent who contracts to manufacture or arrange the manufacture and/or the supply of textile articles, clothing, footwear or related goods and components.

Employer

Person, corporation, enterprise or organisation that employs a person or persons under a contract of service, or a person deemed to be an employer under the *Industrial Relations Act (NSW)*.

Employee

Person whose employment is governed by a contract of service, or a person deemed to be an employee under the *Industrial Relations Act (NSW)*, eg. homemaker or outworker.

Employer association

Association or organisation whose membership consists of employers who operate in the Textile Clothing and Footwear Industry and which is registered or taken to be registered under the *Workplace Relations Act (Commonwealth)* or *Industrial Relations Act (NSW)*.

Goods

Textile articles, clothing, footwear and related goods and components including but not limited to: whole or any part of any male or female garment or of any wearing apparel including neckwear and headwear; footwear; handkerchief; serviette; pillowslip; pillowsham; sheets; tablecloth; towel; quilt apron; mosquito net; bed valance; bed curtain; ornamentation made of textile, felts or similar fabrics and artificial flowers.

Government agencies or agencies

New South Wales Government departments or declared authorities within the meaning of the *Public Sector Management Act (NSW) 1988*; State-owned corporations within the meaning of the *State Owned Corporations Act (NSW) 1989* as amended; or entities established by a separate Act of the New South Wales Parliament, and whether or not that corporation or entity is expressed to represent the Crown.

Industry association

Organisation representing the professional, or trade or commercial interests of members of the Textile Clothing and Footwear Industry.

Monitoring

Process of regularly collecting information to review performance against specific criteria.

New South Wales Government purchasing policies, practices and tendering requirements

The NSW Government *Code of Practice for NSW Government Procurement*, or any Codes of Practice or guidelines outlining the NSW Government's procurement and purchasing policies, practices and tendering requirements; including, but not limited to, the *Public Sector Management (Goods and Services) Regulation 1995*, and the *Local Government Tendering Regulation 1993*.

Outworker

Person, also referred to as a 'homeworker', to whom goods are given to be made up, altered, ornamented, finished, repaired or adapted for an employer and who performs the work in private residential premises or at other premises that are not the employer's factory, workshop, business, or commercial premises.

Principal

Government agency that contracts for the supply of goods and services, including the State Contracts Control Board (or its delegate).

Procurement

Process involving all activities associated with the manufacture and supply of textile articles, clothing, footwear or related goods and components. This process extends from the initial decision that goods or services are required, through component design or development, evaluation of suppliers and goods or services, administration (ordering to payment), management of the arrangement (contract), to recycling and waste disposal.

Purchasing

Actual buying process, whether placing or transmitting an order orally, in hard copy, electronically via Electronic Document Interchange (EDI) or Electronic Commerce (EC), or buying across the counter.

Record

Record(s) required to be maintained under the applicable Federal and NSW awards or the *Workplace Relations Act (Commonwealth)* or *Industrial Relations Act (NSW)*, and any other record(s) which may be kept or required to be kept to verify compliance with this Code or any laws.

Registered employer

Employer that has secured registration as an employer giving outwork, in accordance with the *Workplace Relations Act (Commonwealth)* or *Industrial Relations Act (NSW)* or an Award.

Service provider

Includes contractors, subcontractors, agents, suppliers and all employers in the Textile Clothing and Footwear Industry.

Subcontractor

Provider of goods or services to a contractor, agent, or supplier.

Supplier

Service provider that agrees to manufacture or arrange to manufacture textile articles, clothing, footwear or related goods and components.

Tenderers

Parties submitting tenders.

Tenders

Prices, bids, quotations or proposals lodged in response to an invitation or request.

Union

Organisation of employees, also referred to as a 'trade union', in the Textile Clothing and Footwear Industry, for example the Federal or NSW Branch of the Textile Clothing and Footwear Union of Australia (TCFUA). Unions must be registered under either the *Workplace Relations Act (Commonwealth)* or the *Industrial Relations Act (NSW)*. By extension, this term also includes the Labor Council of NSW, the State's peak council for employees.

Implementation and industry consultation

Implementation

The *Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers* (“the Code”) applies to all contracts for the supply of textile, clothing, related goods and components to government agencies.

Contractors, subcontractors, agents, suppliers, and employers in the Textile Clothing and Footwear Industry are required to adopt all aspects of the Code and must comply with the NSW Government’s purchasing policies, practices and tendering requirements.

Government agencies their employees or agents will be required to implement the Code as a part of their normal responsibilities to government. Accordingly, standard conditions of tender are given in Section 8 of the Code and these Guidelines.

Conditions of tender

Tenderers must provide evidence, in the form of a statutory declaration, when lodging a tender as outlined in Section 4.2 of the Code. Unless the statutory declaration and information is provided a tender will not be considered. A *Statutory declaration for tender* is shown in Appendix A.

Where goods have been produced or are to be produced outside New South Wales, the Tenderer must provide evidence that:

- it has acted and will continue to act in accordance with all the requirements of the equivalent to the Code in the place of manufacture, and
- where no equivalent of the Code exists in that place the Tenderer has complied and will continue to comply with the Code to the extent possible under the laws of that place.

Contractors and employers in the Textile Clothing and Footwear Industry are to ensure that a copy of the Code is available to all parties in the contract chain. A *Receipt of Code of Practice on employment and outwork obligations for textile clothing and footwear suppliers acknowledgement* is included in Appendix C of these Guidelines.

Any contractor, subcontractor, agent, supplier or employer who engages outworkers, whether or not they are engaged as subcontractors or employees, must provide to the outworkers information about their employment entitlements as referred to in Section 6.4 of the Code and must obtain a signed statement from the subcontractor or employee acknowledging receipt of the information. A *Receipt of Information on employment entitlements* is included in Appendix D of these Guidelines.

Consultation

The Implementation Guidelines will be reviewed from time to time to ensure that they remain appropriate to the prevailing environment. Industry will be consulted in the course of such reviews.

Roles

These Implementation Guidelines expand on the requirements outlined in the Code and should be referenced by all parties in fulfilling their roles, responsibilities and obligations.

Government agencies' responsibilities

Government agencies as clients

Government agencies, their employees or agents are required to observe the standards of behaviour outlined in Section 5.1 and will monitor compliance as outlined in Section 7.2 of the Code.

Conflict of interest

The NSW Government established the Independent Commission Against Corruption (ICAC) as a priority initiative to deter corruption in public administration.

ICAC investigations have produced a number of examples which attest to the need for all government agencies to ensure that their performance in this area is beyond reproach.

Conflict of interest, at either a personal or agency level, can arise where there is a reasonable expectation of direct or indirect benefit or loss for an individual employee with a particular personal interest that could be influenced, or appear to be influenced, in favour of that interest, in the performance of their duties. The benefit or loss may be financial or non-financial.

There is a reasonable community expectation that where such conflict occurs, it will be declared, assessed and resolved in favour of the public interest.

Individual employees therefore have an obligation to report possible or actual conflict or incompatibility between their public duties and their personal or private lives. In the event of conflict, or potential conflict, individual employees must disclose it as soon as possible and agencies need to respond appropriately.

State Contracts Control Board (SCCB)

As indicated in Section 7.2 of the Code, the SCCB will monitor implementation of the Code to ensure that it is being consistently applied.

The State Contracts Control Board comprises the Government's major policy and procurement agencies in the State. Its membership includes the Department of Public Works and Services (DPWS) as Chair, Premier's Department, The Cabinet Office, Department of State and Regional Development, Department of Health, Department of Local Government, Department of Education and Training, Police Service, and Sydney Water Corporation. Treasury provides strategic and policy advice to the SCCB in an advisory capacity.

Department of Public Works and Services (DPWS)

The Department of Public Works and Services coordinates procurement policy on a whole-of-government basis on behalf of the SCCB, manages major contracts, develops procurement guidelines, and advises and supports the State Contracts Control Board in the exercise of its functions.

Government agencies as enforcers of law relating to employment, occupational health and safety, workers' compensation, and rehabilitation

NSW Department of Industrial Relations

The NSW Department of Industrial Relations enforces state laws relating to employment under the *Industrial Relations Act (NSW) 1996* which are referred to in Section 6 of the Code and these Guidelines. The Department will, consistent with Section 7.3, provide support in the implementation of the Code.

Workcover New South Wales

Workcover New South Wales is responsible for enforcing the laws relating to factories, shops and industries, occupational health and safety, workers' compensation and rehabilitation which are referred to in Section 6 of the Code and these Guidelines. Workcover New South Wales will, consistent with Section 7.3 of the Code, assist industry to fulfil its statutory responsibility to ensure occupational health and safety in the workplace.

Service Providers

Contractors, subcontractors, agents, suppliers and employers

All service providers are required to comply with Section 5.2 of the Code and all other requirements of the Code.

Employer and industry associations

Employer and industry associations are required to comply with the requirements outlined in Sections 5.3 and 7.4 of the Code.

Unions

Unions are required to fulfil the requirements of Sections 5.4 and 7.4 of the Code.

Employment obligations and contract work

Awards and legal obligations related to employment

Employers have certain obligations to their workers which are regarded as acceptable standards of behaviour in all employment relationships.

An employer's main obligations are to pay their workers what is legally due and payable to them including benefits, reimburse them for any work-related expenses, ensure a safe and healthy working environment, and to remit all taxes that are due.

In that connection, Section 6.1 of the Code requires all employers to be aware of the awards, enterprise agreements or other workplace arrangements, whether Federal or State, to which they are bound, and are to comply with these and all other legal obligations regarding their employees and outworkers.

In particular, employers should ensure compliance with all relevant laws governing employment conditions such as: training, annual holidays, long service leave, occupational health and safety, workers compensation, rehabilitation, discrimination, legal age of employment, superannuation, and taxation.

Contractors are required to ensure that their subcontractors and suppliers engaged in the supply of goods for government contracts comply with their legal obligations regarding their employees. Any information that a contractor obtains to satisfy him or herself that obligations are being met is to be obtained through proper and lawful means.

Any instances where award or legislative obligations relating to employment have not been met are to be dealt with by government agencies in accordance with Section 7 of the Code and these Guidelines.

Specific advice concerning awards and other legal obligations of employment can be obtained from the industrial relations agencies, employer associations or the union referred to in Section 9 of these Guidelines.

Taxation

If a person is at law an employee or deemed to be an employee, the Pay As You Earn (PAYE) system applies. The Prescribed Payment System (PPS) is distinct from the PAYE system and there should be no overlap between the two. If payments are required to be paid under PPS, the PAYE provisions do not apply.

Specific advice on the requirements of both PAYE and PPS should be obtained directly from the Australian Taxation Office.

Occupational health, safety, workers' compensation and rehabilitation

Section 6.2 of the Code requires as a minimum compliance with all occupational health, safety, workers' compensation and rehabilitation obligations.

The *Occupational Health and Safety Act (NSW) 1983* places a general duty of care on employers to:

- provide and maintain safe systems of work
- make arrangements for insuring the safe use, handling, storage of equipment and substances
- provide necessary information, instruction, training and supervision.

The *Workers' Compensation Act (NSW) 1987* requires, amongst other things, that every employer:

- take out and maintain a workers' compensation insurance policy covering all of their workers
- keep a record of wages paid for the past seven years
- send injured workers' compensation claims to the insurer within seven days
- establish a workplace rehabilitation program, and
- assist injured workers to return to work safely at the earliest time.

The Act makes a principal contractor (as defined in the Act) liable for workers' compensation insurance if the subcontractor does not have insurance.

The *Occupational Health and Safety* and *Workers' Compensation* Acts also require employees to:

- take reasonable care for the health and safety of persons at their place of work, and those who may be affected by their acts or omissions at work
- cooperate with any requirement imposed in the interests of health, safety and welfare by the employer or any other person who is authorised to do so under the Act
- tell their employer of any injury as soon as possible
- attend medical examinations as required by the relevant workers compensation insurer or the employer, and
- provide accurate information about any aspect of their workers compensation claim.

Specific advice concerning the *Occupational Health and Safety Act (NSW)* and the *Workers Compensation Act (NSW)* can be obtained from Workcover New South Wales at the address given in Section 9 of these guidelines.

Contract work

Any contractor who proposes to complete work using subcontract arrangements including the employment of outworkers by those to whom the work is subcontracted must comply and ensure compliance with Sections 6.3 and 6.4 of the Code.

The contractor is to provide the Principal under the contract with a quarterly report as outlined in Section 6.3 of the Code. The report is to be supported by a *Statutory declaration on contract work*, as shown in Appendix B.

Where a copy of the Code has been made available to a party in the contract chain, acknowledgement of receipt is recommended. A *Receipt of Code of Practice on employment and outwork obligations for textile clothing and footwear suppliers* has been developed for this purpose and is shown in Appendix C.

Employment of outworkers

Any contractor or employer who engages outworkers must comply and ensure compliance with Section 6.4 of the Code.

Schedule M of the *Clothing Trades Award 1982 (Federal)* has been reproduced as an example of award requirements and is shown in Appendix E. It outlines the information that the award stipulates must be provided each time that work is given out.

A standard statement to be signed by the subcontractor or employee acknowledging receipt of the information is shown in Appendix D and is recommended for use by contractors and employers.

Liability of Principal Contractor to pay employees of others

'Principal contractor' under the *Industrial Relations Act (NSW)* means a person who has entered into a contract for the carrying out of work by another person, the subcontractor. As indicated at Section 6.5 of the Code, the *Industrial Relations Act (NSW)* makes a principal contractor liable for the wages of a subcontractor's employees unless the principal contractor receives a written statement from the subcontractor stating that all wages due and other amounts payable to employees under legislation, award or enterprise agreement for the period concerned have been paid.

Any person or organisation asked to provide a statement as a condition of getting a progress payment, should be satisfied that the statement is accurate.

A person who makes a false or misleading statement may be liable to prosecution under the *Oaths Act* or the *Crimes Act*.

Membership of registered organisations

Section 6.6 of the Code provides that willing membership of unions and employer organisations through proper and lawful means is encouraged, and refers to the right-of-entry provisions which need to be observed.

Dispute settlement

Grievances and matters under dispute are to be dealt with at their source between the appropriate level of management, employees and/or union representatives, with graduated steps for discussion involving higher levels of authority should the dispute not be resolved.

As indicated in Section 6.7 of the Code, the process outlined in the applicable award, enterprise or workplace agreement must be observed by all parties.

Reasonable time limits should be allowed for each stage of the process. If the matter is not resolved, then an application should be made to the appropriate Industrial Relations Commission for settlement.

All parties to the dispute are required to comply with industrial tribunal decisions, subject to any legal appeal rights.

Industrial impacts—reporting to the Principal

Any disputes or disagreements, relating to industrial relations or occupational health and safety matters which can impact on the contract or other related contracts, must be reported to the Principal at the earliest opportunity. To ensure this, an effective and clear reporting structure must be established.

Compliance

NSW Government policy

The NSW Government is committed to the implementation of the Code. Breaches of the Code, as may be evidenced through non-compliance may result in sanctions as outlined in Section 7 of the Code.

Where a breach of the Code involves any law or statute, the matter will be referred to the relevant enforcement agency for action under the appropriate law or statute. Such action will be in addition to any action or sanction under the Code.

In considering and implementing sanctions, individual agencies must use the procedures outlined in the Code and in this section of the Guidelines.

Monitoring compliance

Section 7.2 of the Code outlines the responsibilities of government agencies as clients to monitor the application of the Code and provides a review process for unsatisfactory performance by contractors.

Review of unsatisfactory performance

Government agencies must provide the State Contracts Control Board (SCCB) with a quarterly audited report on whether contractors have met all obligations outlined in Section 6.3 and 6.4 of the Code.

If a government agency concludes that a contractor's performance is unsatisfactory, it will advise the SCCB and initiate a review as soon as possible in accordance with the procedure outlined in Section 7.2 of the Code.

The SCCB must be informed of the outcome of the agency's review and the action taken.

Occurrences of a breach

Any alleged breach of the Code must be notified by the party or organisation making the allegation to the government agency which is the client. It is then the agency's responsibility to assess the nature and extent of the breach.

Where the preliminary assessment indicates that the breach may warrant any form of sanction, the particulars of the breach must be supported by statutory declaration by the party or organisation making the allegation.

On receipt of the statutory declaration, the government agency should formally advise the organisation alleged to be breaching the Code of the nature and extent of the allegations, and request that they show cause as to why the government agency should not regard the conduct as a breach of the Code.

The organisation in question should also be advised that unless a satisfactory reply is provided within ten working days, the sanction provisions in Section 7.1 of the Code will be considered.

Application of sanctions

In the first instance, it will be the government agency which is the client which will assess the nature and extent of the alleged breach, and decide whether or not a sanction should be applied. However, for repeated or serious breaches any action proposed to be taken should be implemented only after consultation with the State Contracts Control Board (SCCB).

The procedure adopted in the assessment of an alleged breach should reflect those outlined in the following section '*Assessment of proposed government-wide sanctions*'.

Proposing government-wide sanctions

When a government agency as client seeks imposition of government-wide sanctions, the agency must register the complaint with the SCCB, under the signature of the agency's Chief Executive Officer. The referral is to be fully documented, and include:

- details of the circumstances and extent of the breach or breaches
- a copy of the written information or advice given to the affected party by the government agency specifying the alleged breach
- the response of the affected party, and
- a proposal as to an appropriate sanction in terms of both degree and duration.

In addition, if the SCCB becomes aware of a contractor, subcontractor, agent or supplier who repeatedly breaches the Code, then the matter can be referred (independent of an agency recommendation) to the appropriate subcommittee of the SCCB for consideration of a sanction.

Assessment of proposed government-wide sanction

Proposals for government-wide sanctions will be investigated by a SCCB sub-committee specifically established for that purpose. The investigation as to whether or not a government-wide sanction should be applied is to be completed and a recommendation prepared within ten working days following referral of the documentation outlined above to the sub-committee.

Representations

The State Contracts Control Board (SCCB) must provide a copy of the sub-committee's recommendation to the party alleged to have breached the Code prior to its consideration by the SCCB, and allow the party ten working days (from the provision of the recommendation) to make written representations in respect of it.

The copy of the recommendation must be accompanied by details of how and where the response is to be lodged.

If no representations are received, the recommendation will be automatically considered by the SCCB.

Assessment of representations

If representations which seek a review of the recommendation to apply a government-wide sanction are received, the SCCB will consider these by arranging for a review by an independent individual, of high community standing and expertise. This person will be proposed by the SCCB and agreed to by the party alleged to have breached the Code.

If agreement is not reached the SCCB will appoint an independent person for a review. Such a person may be nominated by a recognised Alternative Dispute Resolution organisation.

The independent reviewer shall report on the following matters:

- whether, in fact, there was non-compliance with the Code and the extent of the non-compliance, and
- whether the requirements of procedural fairness were observed.

This review will not include an assessment of the sanction proposed. The review will be completed within ten working days of appointment of the independent reviewer.

Final decision and advice

A final decision regarding the application of a government-wide sanction will be made by the State Contracts Control Board (SCCB). The agency alleging the breach will be excluded from participation in the decision making process of the SCCB.

If the SCCB disagrees with the sanctions proposed by the agency, the Chief Executive Officer of that agency will be advised of the reasons for disagreement and the sanction or action considered appropriate from a government-wide perspective.

When a government-wide sanction is applied, the affected party and the government agency will be advised in writing by the SCCB of the following:

- the form of sanction to be applied
- the time-span of the sanction
- steps which should be taken by the affected party to restore their standing within government; including, but not restricted to, those actions by the party which will clearly demonstrate that offending practices have been discontinued and that adequate policies, procedures and standards have been implemented to prevent a recurrence of a similar breach, and
- specification of the earliest review date, and particulars of the body and procedures for carrying out such reviews.

Breaches by a government agency and agency employees

A number of avenues are traditionally available to private sector individuals wishing to raise issues associated with the performance of government agencies. This includes representations to Government Ministers, Members of Parliament, the Ombudsman, etc.

These mechanisms remain available, but the following procedures have also been established to ensure consistency:

- If reported breaches are attributable to an agency's policies, practices or procedures, then appropriate changes will be made.
- If the reported breach has resulted from activities of an individual, in contravention of the agency's policies, practices or procedures, consideration will be given to appropriate disciplinary action in accordance with that agency's normal practices.

Any reported breach by an agency needs to be fully documented, and include:

- details of the circumstances and extent of the breach or breaches, and
- a copy of any written information or advice exchanged with the agency.

To assist in these procedures, the following tiered reporting structure at lower levels has been established. In general all issues should firstly be dealt with at lower levels.

Level 1—Reporting direct to the agency's Chief Executive Officer (CEO)

The option of resolving any non-compliance should be fully pursued with the agency concerned. The Government has made adherence to the Code a key determinant of agency performance.

CEOs are responsible for ensuring their agency's performance is wholly consistent with the Government's requirements.

Level 2—Reporting to the Minister responsible for the agency

If a reported breach cannot be resolved within an agency, the matter should be referred to the Minister responsible for that agency.

Level 3—Reporting to the Premier

Individuals always have the option of referring matters which cannot be resolved to the Premier. However, this option should only be pursued when Level 1 and Level 2 options have been exhausted.

Enforcement of law relating to employment, occupational health and safety, workers' compensation and rehabilitation

Section 7.3 of the Code of Practice refers to the role of the NSW Department of Industrial Relations and Workcover New South Wales in supporting the implementation of the Code and assisting industry in fulfilling its statutory requirements.

Each government agency (which is a client) will assess the complaints it receives and forward those breaches of the Code which involve any employment, occupational health and safety, workers compensation and rehabilitation laws or statutes either to the NSW Department of Industrial Relations or Workcover New South Wales as may be appropriate for investigation and appropriate action. Such action will be in addition to any action or sanction under the Code.

The NSW Department of Industrial Relations and Workcover New South Wales will maintain a central register of complaints received for assessment and tracking.

Role of industry

Employer and industry associations and unions

Section 7.4 of the Code of Practice includes a role for employer and industry associations and unions to ensure compliance by their members with the Code.

Confirmed breaches will be referred to the relevant organisation for action under its rules or code of practice or conduct. Such action will be in addition to any action or sanction taken under the Code.

Standard conditions of tender

The Code applies to all contracts for the supply of textile, clothing, footwear, and related goods and components to government agencies.

Advertisements calling for tenders should prominently display the following:

“Tenderers must comply with the New South Wales Government Code of Practice on Employment obligations for Textile Clothing and Footwear Suppliers, and must provide evidence of compliance in the twelve months prior to the tender being lodged with applicable industrial awards and statutory obligations relating to employees and outworkers when lodging a tender. Unless the information is provided, in the form of a statutory declaration, a tender will not be considered.”

The State Contracts Control Board (SCCB) has prepared a notification for inclusion in all documents requesting tenders.

The notification should be similar to the following:

“All tenderers must comply with the New South Wales Government Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers.

Lodgement of a tender will be evidence of the tenderer’s agreement to comply with the Code and of their agreement to provide periodic evidence of compliance with the Code and access to all relevant records for the duration of any contract that may be awarded.

If any tenderer has failed to comply with the Code, their failure will be taken into account by the Client when considering this or any subsequent tender and may result in this or any subsequent tender being passed over.”

When seeking further advice or clarification, government agencies should first direct their enquiries to their State representative or, where they do not have a direct representation, to the SCCB Executive Officer. This will ensure a consistent approach is maintained.

Further information and assistance

For further information and assistance please contact one of the following organisations.

The following contact details are based on information available at the time of publication.

State Contracts Control Board (SCCB)

Executive Officer
State Contracts Control Board

c/o Department of Public Works and Services
2–24 Rawson Place
Sydney NSW 2000

phone 02 9372 8190
email sccb@dpws.nsw.gov.au

Advice about the Code and Implementation Guidelines

Policy Services Division
Department of Public Works and Services
Level 23, McKell Building
2–24 Rawson Place
Sydney NSW 2000

phone 02 9372 8911
web www.dpws.nsw.gov.au

For copies of the Code and Guidelines contact:

phone 02 9372 8852
email procurement.policy@dpws.nsw.gov.au

Advice about supply contracts

NSW Supply
Department of Public Works and Services
Level 10, 2-24 Rawson Place
Sydney NSW 2000

phone 02 9372 7500
web www.supply.dpws.nsw.gov.au

Advice about awards, Federal and NSW industrial legislation, employer and employee entitlements and obligations

NSW Department of Industrial Relations
Head Office
1 Oxford Street
Darlinghurst NSW 2010

Award Enquiry Service

phone 13 16 28 web www.dir.nsw.gov.au

Clothing Trades (State) Conciliation Committee

Industrial Registry
NSW Industrial Relations Commission
Level 1, 50 Phillip Street
Sydney NSW 2000

phone 02 9258 0866 web www.lawlink.nsw.gov.au/irc

Department of Employment and Workplace Relations

477 Pitt Street
Sydney NSW 2000

phone 02 9246 0600 web www.workplace.gov.au

Office of the Employment Advocate

GPO Box 9842
Sydney NSW 2001

phone 1300 366 632 web www.oea.gov.au

Australian Industrial Relations Commission

Level 8, Terrace Towers
80 William Street,
East Sydney NSW 2011

phone 02 8374 6666 web www.airc.gov.au

Advice about occupational health and safety, workers' compensation, rehabilitation, factory registration, discrimination in employment, equal employment opportunity

Workcover New South Wales

Health and Safety, Workers' Compensation and Rehabilitation
phone 13 10 50 web www.workcover.nsw.gov.au

Anti-Discrimination Board
Level 17
201 Elizabeth Street
Sydney NSW 2000

phone 02 9268 5544 web www.lawlink.nsw.gov.au/adb

Women's Equity Bureau

NSW Department of Industrial Relations
Level 3, 1 Oxford Street
Darlinghurst NSW 2010

phone 13 16 28 web www.dir.nsw.gov.au

**Advice on union or employer association membership, awards,
employer and employee and outworker entitlements and
obligations, occupational health and safety, workers'
compensation, rehabilitation, discrimination in employment,
equal employment opportunity**

Textile Clothing and Footwear Union of Australia
(Federal and NSW Branch)
28 Anglo Road
Campsie NSW 2194

phone 02 9789 5233
web www.tcfua.org.au

Australian Business Limited
140 Arthur Street
North Sydney NSW 2060

phone 13 26 96
web www.australianbusiness.com.au

Australian Industry Group
51 Walker Street
North Sydney NSW 2060

phone 02 9466 5566 web www.airgroup.asn.au

or
20 Queens Road
Melbourne VIC 3000

phone 03 9867 0111

Council of Textile and Fashion Industries Association
Level 2, 20 Queens Road
Melbourne VIC 3000

phone 03 9866 8962 web www.tfia.com.au

Australian Retailers Association - NSW Branch
20 York Street
Sydney NSW 2000

phone 02 9290 3766 web www.ara.com.au

**Advice on employee and outworker entitlements,
interpreter and community-based services, co-operatives**

The Australian National Committee on Refugee Women (ANCORW)
Mathews Building
Centre for Refugee Research
University of NSW Sydney 2052

phone 02 9385 1961 web www.ancorw.unsw.edu.au

Asian Women at Work Inc. and Fair Wear Campaign
39 Burton Street

Darlinghurst NSW 2010

phone 02 9331 4230 web www.awatw.org.au

NSW Indo-China Chinese Association Inc.
Unit 8/124–128 Railway Parade
Canley Vale NSW 2166

phone 02 9728 1773

Vietnamese Community in Australia (NSW Chapter)
Level 2, 300 Chapel Road
South Bankstown NSW 2200

phone 02 9790 3934 web www.vnca.org.au

Fairfield Community Resource Centre
25 Barbara Street
Fairfield NSW 2165

phone 02 9727 4333

NSW Women's Working Centre
157 Wardell Road
Duliwch Hill NSW 2203

phone 02 9559 9355

Community Relations Commission for a multicultural NSW
175-183 Castlereagh Street
Sydney NSW 2000

phone 02 8255 6767 web www.crc.nsw.gov.au

Appendices

Appendix A	Statutory declaration for tender NSW Government
Appendix B	Statutory declaration on contract work NSW Government
Appendix C	Receipt of Code of Practice on employment and outwork obligations for textile clothing and footwear suppliers (Code)—Contract work
Appendix D	Employment of outworker—Receipt of information on employment entitlements
Appendix E	Schedule M of the Clothing Trades Award, 1982 (Federal)

Statutory declaration for tender NSW Government

Statutory Declaration
Oaths Act, 1900 Ninth Schedule

I/We the undersigned (1)	(1) insert full name
Of (2)	(2) insert business address
In the State of New South Wales (3)	(3) insert occupation
do hereby solemnly declare and affirm that; (4)	(4) the facts to be stated according to the Declarant's knowledge, belief or information, severally
1 (5)	(5) insert name of Tenderer
Of (6)	(6) insert business address of Tenderer
has lodged a Tender in respect of (7)	(7) insert name and identifying number of Contract to which Tender relates
(Tender)	
2 I make this statutory declaration in my following official capacity with the Tenderer (8)	(8) insert official relationship with Tenderer
3 My authority to make this declaration on behalf of the Tenderer is (9)	(9) insert details of authority to make this declaration

Statutory declaration for tender (continued)

<p>4 I am personally aware of the business activities of the Tenderer from (10)</p>	<p>(10) insert details to demonstrate knowledge of business of Tenderer</p>
<hr/> <hr/>	<p>(11) (i) insert full details of Compliance with the Code including name of relevant Federal or State Awards</p>
<p>5 I have read the NSW Government Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers (Code)</p>	<p>(ii) attach copy of any enterprise workplace or other agreement for employees or outworkers</p>
<p>6 I have read the Conditions of Tender for the Contract in the Tender and I understand the obligations of a Tenderer particularly with regard to the Code.</p>	<p>(iii) provide registration number of factory or workshop (if applicable)</p>
<p>7 I am aware that the Tenderer during: (11)</p>	<p>(iv) provide registration number as an employer giving outwork (if applicable)</p>
<p>1. the period of twelve months preceding the Tender, or 2. the period of commencement of business, if less than twelve months</p>	<p>(v) provide Workers Compensation policy number, insurer and renewal date</p>
<p>has complied with the Code in the following manner (11)</p>	<p>(vi) provide Superannuation membership number, provider and current status</p>
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<p>(vii) advise location of timebook, sheet or records required to be maintained under applicable Federal/ State Award and Industrial Legislation</p>
<p>8 I am aware that if the Tender is successful and the Tenderer is awarded a contract the Tenderer will be under a contractual obligation during the term of the Contract, to ensure that the Tenderer and any subcontractor or supplier will Comply with the Code and that the Tenderer intends to comply with this obligation in the following manner (12)</p>	<p>(viii) statements of Compliance with the Code should be supported by Annex Documents</p>
<hr/> <hr/> <hr/> <hr/>	<p>(12) insert full details as to how the Tenderer intends to Comply with the Code and the contractual obligations</p>

Statutory declaration for tender (continued)

9 I am aware that if the Tender is successful and the Tender is awarded a contract the Tenderer will be under a contractual obligation to satisfy the Principal the Tenderer and any subcontractor or supplier has Complied with the Code. The Tenderer will comply with this obligation by producing the following to the Principal: (13)

(13) insert full details of information and documentary evidence to be provided to the Principal

And I/We make this solemn declaration, as to the matter aforesaid, according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

TAKEN and declared at.....in the)
Said State this.....day of)
.....19 before me/us)

Statutory declaration on contract work NSW Government

Statutory Declaration
Oaths Act, 1900 Ninth Schedule

I/We the undersigned (1)	(1) insert full name
Of (2)	(2) insert business address
In the State of New South Wales (3)	(3) insert occupation
do hereby solemnly declare and affirm that; (4)	(4) the facts to be stated according to the Declarant's knowledge, belief or information, severally
1 (5)	(5) insert name of Contractor
Of (6)	(6) insert business address of Contractor
has a Contract in respect of (7)	(7) insert name and identifying number of Contract
(Contract)	
2 I make this statutory declaration in my following official capacity with the Contractor (8)	(8) insert official relationship with Contractor
3 My authority to make this declaration on behalf of the Contractor is (9)	(9) insert details of authority to make this declaration

Statutory declaration on contract work (continued)

4 I am personally aware of the business activities of the Contractor from (10)

(10) insert details to demonstrate knowledge of business of Contractor

5 I have read the Contract and I understand the obligations of a Contractor particularly with regard to the NSW Government Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers (Code).

6 I am aware that Contractor has complied with the Code in the following manner (11)

(11)
 (i) insert full details of Compliance with the Code including name of relevant Federal or State Awards
 (ii) attach relevant 3 monthly report of all records and work list returns required to be maintained in relation to contract work or outwork

7 I am aware that the Contractor, subcontractors and suppliers have Complied with the Code in the following manner: (12)

(12) statements of Compliance with the Code should be supported by Annex Documents

And I/We make this solemn declaration, as to the matter aforesaid, according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

TAKEN and declared at.....in the)
Said State this.....day of)
.....19 before me/us)

Receipt of Code of Practice on employment and outwork obligations for textile clothing and footwear suppliers (Code)—Contract work

Receipt of NSW Government Code of Practice on employment and outwork obligations for textile clothing and footwear suppliers for contract work

I (insert name)

acting on behalf of

(insert business/corporate name of organisation, contact address and telephone number)

provided the New South Wales Government *Code of Practice on employment and outwork obligations for textile clothing and footwear suppliers* to the person referred to in the following acknowledgement on / / (insert date).

Acknowledgement of receipt by person or organisation receiving the Code

Name

Title of position

Address

Telephone number

Signature

Date

Employment of outworker—Receipt of information on employment entitlements

Receipt of information on employment entitlements by outworker

I (insert name) _____
acting on behalf of _____

(insert business/corporate name of organisation, contact address and telephone number)

have provided (insert name of person) _____
information about their employment entitlements on / / (insert date) in
accordance with _____
(here provide details of Award and Industrial Legislation under which entitlement arises)

Acknowledgement of receipt of information on employment entitlements

Name _____
Address _____

Telephone number _____
Signature _____
Date _____

Schedule M —Clothing Trades Award 1982 (Federal)

Schedule M has been reproduced here as an example, and to assist in understanding what is already required under the Federal Award.

The following is reproduced based on information accurate at the time of publication of the Guidelines.

Information to be given to Outworkers

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

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

The Clothing Trades Award 1982 sets out legally enforceable rights and obligations. This applies to all outworkers including employees, independent contractors, and holders of business name registrations.

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

Hours of Work

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

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

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

As a full time or part time worker you can only be required to work 7 hours and 36 minutes each day. If you are asked by your employer to work more than this number of hours, you must be paid overtime. This means that even if you are paid by the piece you cannot receive less than the hourly award rate of pay.

Schedule M —Clothing Trades Award 1982 (Federal) (continued)

Overtime

If you agree to work more than 7 hours and 36 minutes in a day, Monday to Friday, you must be paid one and a half times the normal hourly rate for each hour over the 7 hours and 36 minutes.

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

Wages

Refer to Award for most up to date weekly wage for 38 hours and hourly rate.

Remember, the law says you must not be paid less than the hourly rate according to the Award.

Annual Leave (Holidays)

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

This amount of annual leave for part time workers depends on the hours you work in a 12 month period. *The Textile, Clothing and Footwear Union of Australia* or *Department of Workplace Relations and Small Business* or *Australian Chamber of Manufacturers* or *Australian Business Chamber Pty Ltd* or the *Victorian Employers Chamber of Commerce and Industry* or the *Textile and Footwear Industry Association* will help you to work this out.

Public Holidays

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

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

Superannuation

By law, your employer has to make a superannuation contribution of up to 6% to an approved fund, for you. Normally, this would be the Australian Retirement Fund, which is approved by both union and employer organisations.

Schedule M—Clothing Trades Award 1982 (Federal) (continued)

The Textile, Clothing and Footwear Union of Australia or Department of Workplace Relations and Small Business or Australian Chamber of Manufacturers or Australian Business Chamber Pty Ltd or the Victorian Employers Chamber of Commerce and Industry or the Textile and Footwear Industry Association will help you to work this out.

Workers' Compensation

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

The laws covering workers' compensation are different in each State and it is important that you contact the *Textile, Clothing and Footwear Union of Australia or Department of Workplace Relations and Small Business or Australian Chamber of Manufacturers or Australian Business Chamber Pty Ltd or the Victorian Employers Chamber of Commerce or the Council of Textile and Footwear Industry Association* for information and help to make a claim.

Materials

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

Delivery and Pick Up

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

Record of Work

Every time you receive work you should keep a record.

This should show:

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