

ethical
clothing
AUSTRALIA

Guide to the Textile, Clothing, Footwear and Associated Industries Award

**Helping you
meet your legal
obligations**

As at 1 July 2015

Ethical Clothing Australia Award Guide as at 1 July 2015
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DISCLAIMER

This guide is provided in the way of general information. Every effort has been made to ensure that the representations made in the guide are accurate but you should familiarise yourself directly with the obligations imposed by the relevant legislation and Awards or seek independent advice. The guide is not a substitute for legal advice. You should not rely on the representations made in this guide with respect to the workplace rights of people to whom the *Fair Work Act 2009* applies. The writers and publishers of this guide do not expect you to rely on the representations made in this guide. The writers and publishers provide no warranty of accuracy, reliability or completeness, and accept no responsibility for errors in, or omissions from, or any loss or damage resulting from reliance on (in whole or part) the information and advice in this publication.

TCFAI Award Guide overview

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Introduction

Ethical Clothing Australia has developed this guide to help you better understand and comply with the national Textile, Clothing, Footwear and Associate Industries Award 2010 (the Award). Inside you'll find information about the Award, as well as a number of practical tools and templates to help your business meet its legal obligations.

Ethical Clothing Australia is a joint business-union initiative that works with the local textile, clothing and footwear industry to make sure Australian workers making their products receive fair wages and work in decent conditions. We do this through an accreditation and labelling system that provides consumers and buyers with a way to identify and support ethically made Australian textile, clothing and footwear products:

- The voluntary accreditation system is designed to help you navigate your various mandatory legal obligations in Australia.
- The program partners include the Textile Clothing and Footwear Union of Australia (TCFUA) that performs compliance checks of worksites to verify conditions, wages and information received. It also provides home-based workers with information and assistance in regards to realising their legal rights and entitlements.

The Ethical Clothing Australia accreditation system is a practical and affordable resource that helps you monitor your supply chains and operate within Australian law.

To find out more about Ethical Clothing Australia visit: www.ethicalclothingaustralia.org.au

ACKNOWLEDGEMENTS

Ethical Clothing Australia would like to thank the following organisations for their assistance in developing this guide

- The NSW Business Chamber, *and*
- The Textile Clothing and Footwear Union Australia.

Why read this guide?

No matter how many people you employ, whether you engage any workers directly, or where you sit in the contracting chain, if you operate in the Textile, Clothing, Footwear and Associated Industries (TCF) you should read this guide.

There are important minimum standards that businesses in the TCF must meet which are set out in Industrial Awards and legislation. You need to know your legal obligations under these laws and comply with them. Not meeting the minimum standards set by an Award is a breach of the law and can result in serious penalties.

The Textile, Clothing, Footwear and Associate Industries Award 2010 (the Award) became effective on 1 January 2010. This Award, with one exception* replaces four Federal Awards and a large number of former State Awards which operated in the TCF industry. At the same time a range of other workplace obligations, including the National Employment Standards (NES), came into effect as part of the Commonwealth Parliament's *Fair Work Act 2009* reforms.

Importantly, these laws affect the contracts your business enters into and the arrangements you make with other businesses. There are also legal obligations relating to workers, whether they are your in-house workers, 'outworkers' or 'homeworkers', or workers engaged by your suppliers or contractors.

The laws may apply to your business even though your business does not engage any homeworkers or outworkers. They also give rights to workers even when they are called 'contractors'.

In addition, some States have passed laws that provide additional rights for, and obligations to, outworkers. These laws vary from State to State. If your business operates in one of these States, it will need to comply with these laws as well. You should seek advice if you have any questions about the obligations relevant to you or your business.

This guide applies to employers in the private sector. Different rules may apply to State government and State public sector employers.

**State Awards in Western Australia continue to operate in relation to employers who are not constitutional corporations.*

What laws apply to you?

Almost all businesses in the textile, clothing and footwear industry are covered by the National Workplace Relations System. This includes the Textile, Clothing, Footwear and Associate Industries Award 2010* (the Award); the National Employment Standards (NES) under the *Fair Work Act 2009*; and any other relevant laws.

There are three factors that determine which laws apply to you:

1. whether your business is part of the textile, clothing and footwear industry (TCF)
2. whether your business is a 'constitutional corporation', *and*
3. where your business is located within Australia and when it started.

1. Check if your business is part of the TCF

CLOTHING	TEXTILE	FOOTWEAR
Your business is part of the clothing industry if you	Your business is part of the textile industry if you	Your business is part of the footwear industry if you
<ul style="list-style-type: none"> • wholly or partially design, prepare, manufacture, process, label, or finish any type of garment, apparel or articles, <i>or</i> • wholly or partially control, manage or supervise the design, preparation, manufacturing, processing or finishing of any type of garment, apparel or articles, including <ul style="list-style-type: none"> - aprons, napery, nappies, manchester, linen, handkerchiefs, mosquito nets, artificial flowers, cot covers, blankets, collars, cuffs, neckwear, earmuffs, rugs and mats, hats and headwear, umbrellas or parasols or the like. 	<ul style="list-style-type: none"> • commission dyeing, bleaching or finishing • produce, manufacture, sell or distribute any artificial silk, braids, carpets, cloth (including shade cloth, cotton, blinds, cotton wool, elastic webbing, fabrics, felt, wool and/or fibre), filament yarns, flax, hosiery, kraft paper yarns, knitted articles, labels, lace, man-made fibres, non-woven fabrics, arrow fabrics, pure silk, quilting, ribbons, technical textiles, synthetic fibres and yarns, tassels, textile waste and flock, trimmings, wadding, webbing tapes, woollen and worsted, and woven materials • produce, manufacture, sell or distribute personal and household hygiene products, medical dressings, or materials • provide embroidery, knitting or mercerising services, <i>or</i> • print textiles. 	<ul style="list-style-type: none"> • design or cut patterns for preparation and manufacturing • make or repair footwear, (including boots, shoes, sandals, surgical and fitted boots and slippers), or any component parts from any material (including cutting or preparing half soles, tip fillers or top pieces), <i>or</i> • are a bespoke bootmaker, repairer, or heel bar operative.
<p>IMPORTANT: Any allied manufacturing and fabricating industries, and bag and button making industries are included in the TCF industry.</p>		

***NOTE:** The 'Outworker Provisions' of the Award apply to businesses even when they do not engage outworkers. SEE PAGE 42

2. Is your business a 'constitutional corporation'?

If you are a Pty Ltd business and your main activity is buying and/or selling goods such as garments, articles of clothing or material, then you are a constitutional corporation. Most businesses in the TCF industry fall into this category.

- ▶ **If your business is a constitutional corporation and employs, or usually employs, one or more staff, then you MUST COMPLY with the Award and the National Employment Standards. Your business must also comply with any other relevant State or Territory based laws such as Workers Compensation.**

FOR DETAILS OF THE NATIONAL EMPLOYMENT STANDARDS, SEE PAGE 29

A small number of employers are not constitutional corporations - for example if you are an unincorporated sole trader or unincorporated partnership. Even so, you may still need to comply with the Award and the National Employment Standards.

TO FIND OUT WHAT LAWS APPLY IN THIS SITUATION, GO TO STEP 3

3. Where is your business located within Australia

If your business is NOT a constitutional corporation, then the laws that apply to you depend on which State or Territory your business is based in.

If you're based in Victoria, Northern Territory, ACT, New South Wales, Queensland, South Australia or Tasmania

- ▶ **You must comply with the Award and the National Employment Standards, as well as any other relevant State or Territory based laws such as Workers Compensation.**

If you're based in Western Australia and your business only operates in that State

- ▶ **You are not covered by the national laws, you must still comply with the relevant State laws and State Awards.**

The Award

The 'Textile Clothing Footwear and Associated Industries Award 2010' (the Award) came into effect on 1 January 2010. Along with the National Employment Standards (NES) it is designed to make sure workers across the entire industry receive fair pay and work in decent conditions.

Your key responsibilities under the Award

CONSULTATION

If your business makes a definite decision to introduce major changes (in production, program, organisation, structure or technology) that are likely to have significant effects on employees, you must notify them and their representatives, if any, and genuinely discuss the changes. You must also discuss and consider measures to avert or mitigate any adverse effects from these changes.

DISPUTE RESOLUTION

If disputes arise with your employees that cannot be resolved, they must be referred to the Fair Work Commission. Your employees are also entitled to take leave to be trained in dispute resolution procedure.

TYPES OF EMPLOYMENT

The Award covers full-time employment, part-time employment, or casual employment of in-house employees. It restricts you to employing outworkers on a full-time or a part-time basis only - NOT on a casual basis.

TERMINATION OF EMPLOYMENT AND REDUNDANCY

There are minimum requirements which your business must follow when terminating employment. The Award and the NES also set out minimum payments and other minimum entitlements for employees who are made redundant.

RATES OF PAY & ALLOWANCES

The Award sets out a classification system for your employees with the corresponding minimum rates of pay. It also covers the allowances your employees are entitled to, some of which only apply to particular parts of the TCF industries. For example, workers in the clothing industry may be entitled to a 'Head of Table allowance', which does not apply for the textile or footwear industries.

FOR THE CURRENT RATES OF PAY, SEE PAGE 27

HOURS OF WORK AND RELATED MATTERS

The Award sets out when your employees can work. It includes arrangements for working on rostered days off, and provisions regarding shiftwork. Breaks and overtime rates for your employees are also set out in the Award.

LEAVE AND PUBLIC HOLIDAYS

Under the Award, you are required to pay leave loading of 17.5%, offer special leave provisions to shift workers, and other provisions regarding the taking of annual leave. The Award also requires you to pay those who work on public holidays at the rate of 250%, for a minimum of three hours.

SUPERANNUATION

Under the Award, you are required to make super contributions for your employees in accordance with the relevant Federal legislation, no later than 28 days after the end of each month. The Award also covers voluntary employee contributions. In cases where your employee has not chosen a superannuation fund, a default fund will be used.

You can read a complete copy of the Award at www.fwc.gov.au

How to comply with the Award

If your business intends to enter into arrangements to have work done on its behalf, there are three things it must do to meet its legal requirements under the Award:

- ▶ register with the Board of Reference and keep Lists of any arrangements it makes
- ▶ make and keep up-to-date Work Records, *and*
- ▶ make appropriate 'arrangements' with anyone that does your work.

Registration with the Board of Reference and keeping Lists

THE BOARD OF REFERENCE

Boards of Reference are established under the Award and usually chaired by someone from the Fair Work Commission. There is a Board of Reference in each capital city (apart from Canberra in the ACT and Darwin in the NT).

WHY DO I NEED TO REGISTER?

Unless all of your garments or products are produced solely by your employees at your business premises, you must be registered with the Board of Reference. If you make any arrangements without being registered with the Board of Reference, you are breaking the law and may face penalties.

Under the Award, you can only

- make an arrangement with another principal if they are also registered with the Board of Reference. (*Unless that business performs all the work within their own factory premises – in that case, their business is not required to be registered.*)
- engage up to 10 individual workers (other than in-house employees) at any one time. (*If your business makes arrangements with more than 10 workers, you must have consent from the TCFUA or the Board of Reference.*)

REGISTRATION

You can get a copy of the Board of Reference application form by contacting Ethical Clothing Australia or your local TCFUA branch.

Upon registration, you will be given a registration number, which you will need to use for documents such as Work Records.

RENEWING YOUR REGISTRATION

You must renew your registration with the Board of Reference annually. You do this by completing and submitting a new Board of Reference application form each year. Unless there has been some concern about your compliance with the Award, or you have not provided sufficient information to support your application, your registration will normally be renewed for another 12 months.

LISTS

To make sure that the contracting chain is as transparent as possible, your business is required to make and retain a List that contains

- the name and address of each principal or person with which you make an arrangement, *and*
- the date each arrangement is made. *(If it is an on-going arrangement write 'on-going')*

You must provide a copy of the List to

- the General Manager of the Fair Work Commission, *and*
- the State Branch of the TCFUA in your state

within seven days of the last working day of each of February, May, August and November financial quarters.

This is part of your Board of Reference registration and compliance requirements.

Keep up-to-date Work Records

You must retain all of your businesses Work Records, Lists, written agreement records and/or stand down records for six years after the relevant record was made.

The TCFUA is entitled to inspect and copy these documents. If they do need to inspect them, you must provide any requested documents within **two working days** of the request being made.

FOR MORE DETAILS ABOUT THE INSPECTION AND COPYING OF WORK RECORDS, SEE CLAUSE F4 OF THE AWARD

FOR MORE ON HOW TO KEEP WORK RECORDS, SEE PAGE 10

Make appropriate 'arrangements' with anyone that does your work

Your business will more than likely make 'arrangements' for work to be done – at some point from a product's initial design through to its completion – by someone from outside your business.

If your business engages another business, or individuals outside of your business, to undertake work on your behalf, then you are making an external work 'arrangement'. This involves any kind of work on, or in relation to any of your products, that is carried out by someone other than an 'in-house' employee working at your business premises.

WHAT ARE YOUR RESPONSIBILITIES REGARDING ARRANGEMENTS?

When you arrange for work to be done externally, your business is responsible for the working arrangements of whoever does that work – even if the worker who ultimately does the job is not the person you made the original arrangements with.

- ▶ **The moment your business makes an arrangement with someone to have work carried out for you, the Award applies to your business. If this happens, you must enter into an appropriate arrangement with the provider, as stipulated by this guide.**
- ▶ **It is also your responsibility to make sure that everyone in the supply chain is covered by an appropriate work arrangement. Even if you are not the 'head of the chain' you are still responsible for any arrangements that occur after you pass on the work.**

SEE HOW TO MAKE EXTERNAL WORK ARRANGEMENTS, ON PAGE 12

EMPLOYEES WORKING AT YOUR BUSINESS PREMISES

If all of your production is completed solely by your employees working at your business premises, the outworker provisions of the national laws will not apply to you. If your business directly employs people, you must meet your obligations to them under the Award, the NES and any State or Territory based laws.

FOR MORE ON AWARD WAGES AND ENTITLEMENTS, SEE PAGE 27

FOR MORE ON THE NES, SEE PAGE 29

FOR MORE ON STATE AND TERRITORY LAWS, SEE PAGE 30

How to make and keep Work Records

Work Records

Each time you make an external work arrangement, your business must create and retain a document called a Work Record (often called a Garment Specification Sheet). You must give a copy of this Work Record to the person with whom you're making the arrangement before the work is commenced. Ideally, copies of Work Records should accompany the relevant garments, articles or material all the way through the contracting chain, down to the worker who ultimately carries it out.

YOUR WORK RECORD MUST INCLUDE

- Your business' name, address, ABN/ACN and/or registered business number;
- Your business' Board of Reference registration number;
- The name and address of the person to whom the arrangement applies;
- The address(es) where the work is to be performed;
- The time and date for commencement and completion of the work;
- A description of the work required and the garments, articles or material to be worked on (including diagrams where available and details of the type of garment or article, seam type, fabric type, manner of construction and finishing);
- The number of garments, articles or materials of each type;
- The sewing time for the work required on each garment, article or material, based on a fair assessment of how long the work will take using a method that you are able to demonstrate and verify. For example - using a stop watch to time the sample machinist; SEE PAGE 26
- The price to be paid for each garment, article or material.

WHEN MAKING AN ARRANGEMENT WITH A WORKER, IT MUST ALSO CONTAIN

- The time and date that the garments, articles or materials will be provided to the worker prior to commencement of the work, and picked up from them after completion;
- Details of the Time Standard you applied in order to determine the appropriate time per garment; SEE PAGE 26
- The number of working hours needed to complete the work, calculated by multiplying the number of garments by the time (including sewing time) per garment, article or material - *these measures help to make sure the Work Records contain enough information to calculate that the worker is being paid an hourly rate comparable to that of an in-house employee;*
- The total amount to be paid to the worker for their hours and days.

- ▶ You must create a new Work Record each time you make an arrangement with someone to have work performed for you. You must give a copy of this Work Record to the person prior to the commencement of any work that is part of the arrangement.

FOR THE FORMULA TO CALCULATE THIS PAY AMOUNT, SEE PAGE 27

FOR COPIES OF A WORK RECORD (GARMENT SPECIFICATION SHEET) TEMPLATE, SEE PAGES 37-38

ADAPT YOUR OWN GARMENT SPECIFICATION SHEETS

Many businesses have their own garment specification sheets that they give to people or other businesses that are doing work for them. You may like to consider adapting yours to include all of the information requirements for Work Records as well.

RECORD VALUE AND VOLUME DATA

A good method of collecting and maintaining Work Records for internal business records is to keep an Excel spreadsheet as shown below. This, in addition to the Garment Specification Sheet, to assist you in recording information to cover your legal obligations under the Award.

	A	B	C	D	E	F	G	H
1								
2	Studio Adam - production Feb 2015							
3								
4	Maker	Style	Date of Issue	Date of Return	Number of Units	\$/ Unit	Sewing Time / Unit	
5								
6	ABC Fashions	A4228	2-Feb	1-Apr	75	\$31.90	55	
7	ABC Fashions	D23498	2-Feb	1-Apr	46	\$34.80	60	
8	ABC Fashions	E23074	2-Feb	7-Apr	53	\$32.48	56	
9	ABC Fashions	G39286	2-Feb	7-Apr	23	\$27.26	47	
10	ABC Fashions	C12678	8-Feb	7-Apr	57	\$20.30	35	
11	ABC Fashions	A1296	9-Feb	9-Apr	86	\$26.68	46	
12	ABC Fashions	C12978	23-Feb	9-Apr	44	\$32.48	56	
13								
14		Rate paid \$0.58 per minute						
15								

Providing the information in the format above allows the appropriate authorities easy access and inspection of your records if necessary.

YOU CAN GET A COPY OF THIS SPREADSHEET BY CONTACTING ETHICAL CLOTHING AUSTRALIA OR YOUR LOCAL TCFUA BRANCH

How to make external work arrangements

External work arrangements can be with another principal business, or with a worker – and there are different obligations for each. The first step is to define who you are making an arrangement with.

1. Define who you are you making an arrangement with

PRINCIPALS

If you are making an arrangement with a

- business or person that may enter into arrangements to have work done outside its premises
- business that is incorporated (i.e. it has 'Pty Ltd' or 'Ltd' after its name)
- business or person that employs people in the TCF industries
- business operating in the Australian Capital Territory or the Northern Territory, *or*
- government or government authority

then you are most likely making an arrangement with another principal business. Under the Award they are called a **principal**.

- ▶ **When you make an arrangement with a principal, you must comply with the general requirements for making arrangements under the Award.**

GO TO STEP 2 FOR THESE REQUIREMENTS

WORKERS

You are making an arrangement with a **worker** if the person

- performs work at private residential premises
- performs work at premises not conventionally regarded as being business premises
- personally performs the work that is the subject of the arrangement;
- is employed by you, but does not carry out their work on your business premises
- has an ABN or calls themselves a 'contractor' or 'independent contractor', and does the work themselves; or
- is trading as an incorporated entity such as a Pty Ltd business, or an incorporated association, and the business is owned by them or a member of their family, and they or other family members do the work themselves.

- ▶ **When you make an arrangement with a worker, you must comply with the requirements for making arrangements with workers under the Award. These obligations also include the general requirements for making arrangements with principals.**

GO TO STEP 3 FOR THESE REQUIREMENTS

NOTE: Employing a person at your business premises does not count as entering into an arrangement with a worker. Such 'in-house' employees are covered by other provisions under the Award. SEE PAGE 9

2. How to make arrangements with another principal business

When you make an arrangement with another principal business, it is always possible that they may in turn have your work performed by someone else, such as an outworker or another business or contractor. This is why your arrangement must include a requirement for the other business to

- have a written agreement with any other person who performs any work which is the subject of the arrangement
- make sure that the written agreement contains all of the matters set out in the relevant Work Records, *and*
- make sure the written agreement provides for wages and conditions no less favourable than those provided to workers under the Award.

When making arrangements with another principal business, you must make sure that

- Your business is registered with the Board of Reference.
SEE PAGE 7
- The business with whom you are making an arrangement is also registered with the Board of Reference if they also enter into an arrangement to have the work performed on their behalf.
- Your arrangement with the other business contains the required minimum entitlements as specified by the NES.
SEE PAGE 29
- You have made a Work Record (often called a Garment Specification Sheet)
SEE PAGES 10-11 AND PAGES 37-38
- You have given a copy of this Work Record to the business with whom you are making an arrangement.
- You have added details of this arrangement to a running List of arrangements your business enters into.
SEE PAGE 8
- You are able to provide copies of this List as part of the Board of Reference registration form and compliance requirements.

FOR THE 'MAKING ARRANGEMENTS WITH A PRINCIPAL CHECKLIST', SEE PAGE 39

FOR EXAMPLES OF WORK ARRANGEMENTS, SEE PAGE 23

USE A STANDARD CONTRACT TO KEEP YOUR ARRANGEMENTS COMPLIANT

A straightforward way of making sure that your arrangements comply with the Award is to have a document template that is used each time you make an arrangement.

FOR WORK ARRANGEMENT TEMPLATES, SEE PAGES 34-36

3. How to make arrangements with a worker (outworker)

When you make arrangements with a worker, there are a number of requirements that you must comply with.

These requirements include

- having a written agreement with *any* other person who performs *any* work which is the subject of the arrangement
- making sure that the written agreement contains all of the matters set out in the relevant Work Records
- making sure that the written agreement provides for wages and conditions no less favourable than those provided to workers under the Award
- having a written agreement with the worker specifying the standard terms of employment as specified under the Award and the National Employment System

FOR ADDITIONAL REQUIREMENTS FOR MAKING ARRANGEMENTS WITH WORKERS, SEE PAGE 16

- providing workers with a copy of Schedule F, including Appendix to Schedule F (Information Statement for Outworkers).

FOR A COPY, SEE PAGE 50

When making an arrangement with a worker, you must make sure that

- Your business is registered with the Board of Reference.
SEE PAGE 7
- You have made a Work Record (often called a Garment Specification Sheet).
SEE PAGES 10-11 AND PAGES 37-38
- You have given a copy of this Work Record to the worker with whom you are making an arrangement.
- Your arrangement with the worker contains the required minimum entitlements as specified by the NES.
SEE PAGE 29
- You have added details of this arrangement to a running List of arrangements your business enters into.
SEE PAGE 8
- You are able to provide copies of this List when required.
- You have made a signed written agreement detailing the hours of work in accordance with the Award.
FOR DETAILS ON HOW TO CREATE ACCEPTABLE WRITTEN AGREEMENTS, SEE PAGE 16
- Your Work Records contain the required additional information for arrangements with workers.
SEE PAGE 16
- You have used the proper Time Standard to calculate the sewing time.
SEE PAGE 26
- You have provided the worker with a copy of Schedule F, including Appendix to Schedule F (Information Statement for Outworkers).
FOR A COPY, SEE PAGE 50

- You are providing the correct minimum conditions in accordance with the Award.

SEE PAGE 18

- You are paying the worker on a weekly basis.
- You are providing the worker with all necessary materials, including trimmings and threads.
- You are making sure that all materials, products, garments or articles are delivered to and collected from the worker at no cost to them.

FOR THE 'MAKING ARRANGEMENTS WITH A WORKER CHECKLIST', SEE PAGE 39

FOR EXAMPLES OF WORK ARRANGEMENTS, SEE PAGE 23

Additional requirements for making arrangements with workers (outworkers)

In addition to those already discussed, there are three important practical requirements that you must fulfill when making arrangements with workers. It is your responsibility to:

1. make a written agreement with them
2. provide them with the minimum employment conditions as specified under the Award and any other relevant law, *and*
3. provide them with a copy of Schedule F, including Appendix to Schedule F (Information Statement for Outworkers).

1. You must make a written agreement

Before any work arrangement commences, your business must make a signed written agreement with the worker specifying the type of employment, i.e. whether you are providing them with work on a full-time or part-time basis. **It is illegal under the Award to employ an outworker on a casual basis.** You must also state the hours of work – and if you are providing work on a part-time basis you must state the agreed number of hours per week. Your written agreement must also state the agreed payment.

THE TYPE OF EMPLOYMENT

You must first propose the terms of the written agreement to the worker.

This proposed written agreement must be

- expressed clearly and simply
- in a language that the worker would use and understand (you may need to have the proposed written agreement translated), *and*
- provided to the worker for a reasonable amount of time for them to review it before it is due to be signed.

You and the worker may decide to vary the agreement at a later stage (for example, to increase or decrease the number of hours). Any proposed variation must also be in writing and be signed. Any variation will start 3 days after it is signed.

You must keep copies of

- the proposed written agreement
- the signed written agreement
- any variation agreement, *and*
- an English-language version of any document that is in a language other than English.

THE HOURS OF WORK

The Award permits engagement on either a full-time or part-time basis.

It does not permit a worker to be engaged on a casual basis.

Your business can engage a worker to work

- full-time, 38 hours per week
- regular part-time, with no less than 15 regular hours per week to be agreed between your business and the worker, *or*
- regular part-time, with no less than 10 regular hours per week to be agreed between the principal and the worker with the consent of the TCFUA.

By such agreement, minimum weekly part-time hours may be averaged over a period of four weeks maximum. Overtime rates must be paid for additional hours.

There is a maximum number of hours you can engage a worker. In each ordinary working week, you must not require the worker to complete more than 38 hours work, or the agreed number of part-time hours, whichever is less.

THE AGREED PAYMENT

Each worker is entitled to a minimum payment. Under the Award, you are permitted to pay a worker on piece rates. However, you must pay them for either 38 hours work each week, or the agreed number of part-time hours, regardless of whether you provide enough work for those hours to be used (this only applies where the worker is ready, willing and able to work).

You cannot require a person to work on a Saturday, Sunday or public holiday (or set times and dates for the commencement and completion of work which requires them to work on a Saturday, Sunday or public holiday) without obtaining their prior written agreement. This written agreement must specify the date(s), and number of hours to be worked on each date(s).

If the written agreement does not specify how many hours the person is to work on a Saturday, Sunday or a public holiday, the Award deems the worker to have worked a full day (7.6 hours) on each date.

If the times and dates for the commencement and completion of work would require the person to work on a Saturday, Sunday or public holiday, then you have two options:

1. you can extend the time and date for completion to ensure that they do not have to work on that Saturday, Sunday or public holiday, *or*
2. the worker can choose to perform the work - in which case they will be deemed to have worked a full day (7.6 hours) on each of those days.

You are also required to make additional payments where work is performed on one of these days. (Refer to page 27)

There are other requirements relating to the maximum number of hours a worker should work, as well as to a worker's rights to request flexible working arrangements. These are explained on the next two pages.

FOR WRITTEN AGREEMENT TEMPLATES, SEE PAGES 34-36

2. You must provide the minimum conditions for workers

As a principal, it is your responsibility to provide the worker with a number of minimum conditions. These are set out below.

NATIONAL EMPLOYMENT STANDARDS

In addition to the Award, the National Employment Standards (NES) requires you to treat all workers as employees and ensure that they receive the full benefits of the 10 NES entitlements.

A SUMMARY OF THESE ENTITLEMENTS IS ON PAGE 29

For full details, visit www.fwc.gov.au

HOURS OF WORK, AND WORK ON WEEKENDS AND PUBLIC HOLIDAYS

THE MINIMUM REQUIREMENTS FOR HOURS AND DAYS OF WORK ARE EXPLAINED ON PAGE 17

TIME STANDARDS

THE MINIMUM REQUIREMENTS FOR TIME STANDARDS ARE EXPLAINED ON PAGE 26

PAYMENT FOR WORK DONE

An aim of the Award is to make sure that an outworker receives a rate comparable to that of an in-house employee. The Work Record must show the outworker's rate of pay and the total amount to be paid.

TO CALCULATE THE CORRECT RATE OF PAY, SEE PAGE 27

ADDITIONAL OBLIGATIONS AND PAYMENTS TO BE MADE

The Award aims to ensure that a worker is engaged on terms and conditions no less favourable than those applying to in-house employees. As a result, some significant obligations continue to apply when your business makes arrangements with workers directly, such as the requirement to pay annual leave and leave loading, other kinds of leave such as personal/carers leave and compassionate leave, and the obligation to pay superannuation.

PROVISIONS IN THE AWARD THAT APPLY TO WORKERS

While there are some provisions that don't apply to outside workers (these are listed at the bottom of the section) in some significant cases the Award requires you to treat the worker as an employee. Below are the significant provisions of the Award that apply to outworkers as well as employees:

Clause 18 – Termination of Employment

If you terminate the engagement of an outworker, you may be required to give them a certain period of notice or make a payment in lieu of notice.

Clause 19 – Redundancy

If you make a worker redundant, you may have to pay them severance payment.

Clause 22 – Higher Duties

If you require a worker to perform work that attracts a higher rate than that provided for in the worker's ordinary duties, and this work exceeds a total of two hours on any day, you must pay them for all the work done on that day at the *higher daily rate*.

Clause 24.2 – Protective Gloves or Cream

If you require a worker to use protective gloves or a protective cream to handle chemicals, solvents, solutions or dies, and do not provide the worker with protective gloves or cream, you must reimburse the worker for any costs they incur to buy them.

Clause 24.4 – First Aid Attendant Allowance

Where you appoint the worker to be a first aid attendant, you must pay them the appropriate allowance.

Clause 24.6 – Hospital Allowance

If a worker suffers an injury arising out of and in the course of their employment, and this injury does not give rise to an entitlement to Workers Compensation, but does necessitate their attendance during working hours at a doctor or hospital, then you must reimburse them for all expenses reasonably incurred in connection with that attendance.

Clause 24.7 – Uniform Allowance

If you require the worker to wear a uniform, either the uniform must be provided and claimed without charge or you must pay a relevant allowance.

Clause 24.9 – Protective Clothing Allowance

Where you require the worker to wear protective clothing you must reimburse the cost of the worker purchasing it, or supply the worker with the clothing.

Clauses 26 and 27 – Textile Industry and Felt and Wadding Industry Allowances

Workers who have to do particular kinds of work in the textile, felt and wadding industries are entitled to particular allowances.

Clause 41 – Annual Leave

In addition to the requirements in the NES, the Award provides obligations to outworkers with respect to annual leave.

Clause 42 – Personal/Carers Leave and Compassionate Leave

The requirements of the NES apply to outworkers.

Clause 44 – Superannuation

The provisions of the Award and relevant legislation apply.

Special provisions also apply to outworkers under Schedule F of the Award for:

- Hours of work
- Overtime
- Payment of wages, *and*
- Regular part-time employment.

PROVISIONS IN THE AWARD THAT DO NOT APPLY TO WORKERS

Because of the special provisions applying to workers who are not working at your business premises, some of the Award's obligations, allowances and payments are NOT applicable to them:

- Award posted provisions
- Casual employment
- Dining room allowance

- Meal allowance
- Mid day meal break
- Rest room allowance, *and*
- Tool allowance.

Specific provisions (under Schedule F) relating to the engagement of workers include the following:

- Hours of Work
 - Overtime
 - Payment of Wages, *and*
 - Regular part time employment.
-

WHEN AND HOW A PAYMENT SHOULD BE MADE TO A WORKER

Workers must be paid on a weekly basis. You must pay the worker within two working days of the end of the ordinary working week and by a method agreed between you and the worker. At or prior to the time of payment, you must provide the worker with details in writing of the gross payment, any deduction made and the next payment.

PROVISIONS OF MATERIALS

You are required to provide the worker with all necessary materials, trimmings and sewing threads to perform the work required. You must also ensure that all relevant materials, products, garments or articles are delivered to and collected from the worker at no cost to them.

PAYMENT BY RESULTS

Under the Award, you may also include a 'payment by results' system as part of payment to the worker. In such a system, employees are paid according to a formula set by the Award. In general terms, this formula requires you to guarantee the payment of at least the minimum Award rate of pay plus at the least a 20% bonus for articles produced within the set time standard. There are significant requirements imposed by the Award under such a scheme, and if you are considering using it with respect to outworkers, you should first seek legal advice.

STAND DOWN

Schedule F of the Award contains very limited provisions regarding stand down of outworkers.

COMPLIANCE WITH THE AWARD

In addition to making sure that your own business complies with the Award, you must also not in any way, whether directly or indirectly, be involved in any conduct that

- hinders, prevents or discourages the observance of the outworker provisions of the Award
- causes or encourages or is likely to cause or encourage, a breach or non-observance of the outworker provisions of the Award.

FOR EXAMPLES OF WORK ARRANGEMENTS, SEE PAGE 23

YOUR BUSINESS' OBLIGATION WHERE A WORKER DOES NOT RECEIVE THEIR REMUNERATION

Where your business as a principal makes an arrangement directly with a worker, the principal will be liable for any unpaid remuneration.

The Award also deals with two other situations where your business may be liable for a worker's unpaid remuneration, even where you have not engaged the worker directly.

Extended liability of principal

Where your business enters into an arrangement with another person to have work performed for it, and that person in turn engages another worker, your business is liable for any unpaid remuneration owed to the worker they engage.

Unpaid remuneration includes any

- commission
- leave or other entitlements, *or*
- reimbursement or compensation for any expense incurred or loss sustained by them.

However, your business will not be liable for any unpaid remuneration if

- your business has obtained a written statement from the person that all unpaid remuneration payable to the worker has been paid, *and*
- your business does not have reason to believe that the written statement is false.

You must be able to support and justify your belief based on knowledge and past experience.

You are entitled to withhold any payment owed to the person you made the arrangement with until they provide you with the written statement. Any penalty for late payment under the arrangement does not apply in this situation. If the person whom you have made an arrangement with is a principal in their own right, then they are prohibited from providing you with a written statement knowing it to be false.

NOTE: This extended liability does not apply where the person with whom a principal contracts is bankrupt or is under external administration, and payments under the arrangement are payable to the administrators or trustee in bankruptcy.

Extended liability of the 'apparent principal'

In most cases, a worker will have worked on a garment, article or material without being clear who the actual principal is that commissioned the work. For example, there may be labels or business names on a garment or invoice that are different to the name of the principal who engaged the worker.

In this case, workers can claim for any unpaid remuneration against the principal who the worker believes they carried out the work for – under the Award they are called the ‘apparent principal’.

A worker can claim against an apparent principal within six months of completion of the work by providing a statutory declaration in accordance with the Award. The declaration will include a description of the work, when the work was done and the amount of unpaid remuneration being claimed.

If a principal is served with a claim they will be taken to be liable for the unpaid remuneration unless they make a claim against another person that they know or reasonably believes is liable within 14 days; *and*

- the apparent principal notifies the worker of the subsequent claim they have made
- the liable party pays the unpaid remuneration to the worker within 14 days, *and*
- the liable party notifies in writing the apparent principal that payment has been made.

NOTE: An apparent principal is not excluded from liability by obtaining a written statement from any party.

However, if the work in question was not done by the worker, there is no liability. Also, if the claimed amount is above the actual amount of unpaid remuneration, there is no liability to the amount of the excess.

3. You must provide a copy of the Information Statement for Outworkers

When you make an arrangement with a worker, you must provide them with a copy of Schedule F, including Appendix to Schedule F (Information Statement for Outworkers). This appendix describes the rights and obligations you have, as an employer, to outworkers.

You must provide a copy of this schedule in the appropriate language for the worker.

FOR A COPY OF THE INFORMATION STATEMENT FOR OUTWORKERS, SEE PAGE 50

FOR THE ‘MAKING ARRANGEMENTS WITH A WORKER CHECKLIST’, SEE PAGE 39

Example work arrangements

Work arrangements in this industry range from simple agreements between two principals, or a principal and a worker, to complex combinations of arrangements – both direct and indirect. Under the Award, there are strict rules controlling which work arrangements you can legally enter into, what your responsibilities are, and how you must document those arrangements.

Your responsibility to others working on your behalf

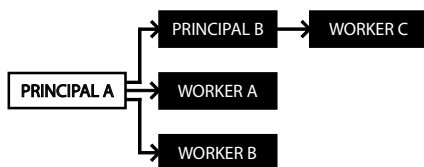
Generally, if you outsource any work, it is your responsibility to make sure anyone in the supply chain that you initiate is paid the appropriate amount and receives the appropriate working conditions as specified under the Award. Even if your business has not made an arrangement with someone directly, it can still be held responsible if they are not paid the correct Award wages and entitlements.

In all of the following supply chain examples the principal highlighted in *black text* is responsible for those that follow.

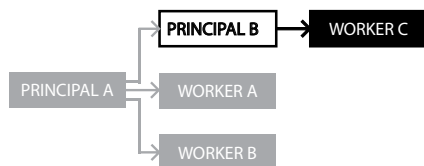
Below are two examples that show the two main points about supply chains you need to understand:

1. Under the Award, businesses that give work out are called 'principals', and anyone doing the work is called a 'worker'.
NOTE: 'Workers' include in-house workers and outworkers (sometimes called a 'homeworker')
2. Under the Award, businesses that give work out can be held responsible for making sure that those that follow in the supply chain receive the appropriate wages and entitlements under the Award. (i.e. Principal A must pay Principal B an amount that enables them to pay the correct wages and entitlements to any workers they use).

EXAMPLE 1



EXAMPLE 2



EXAMPLES CONTINUED NEXT PAGE

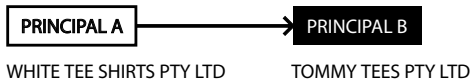
Single arrangements

The most common arrangements are those between your business and another principal business, or between your business and a worker.

NOTE: By keeping your supply chains shorter, your business is more likely to keep its making costs down and comply with the Award.

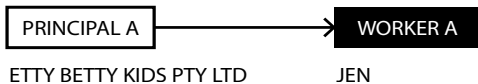
SINGLE ARRANGEMENT BETWEEN 2 PRINCIPALS (YOU AND ANOTHER PRINCIPAL)

EXAMPLE: White Tee Shirts Pty Ltd needs to get 200 shirts screenprinted, so it makes an arrangement with Tommy Tees Pty Ltd. Tommy Tees agrees to do the work on their own factory premises.



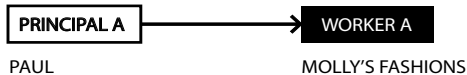
SINGLE ARRANGEMENT BETWEEN A PRINCIPAL AND A WORKER (YOU AND A WORKER)

EXAMPLE 1: ETTY BETTY KIDS PTY LTD designs and makes clothes for children. In its new summer range a number of flower-shaped badges are featured on the clothes. So, ETTY BETTY KIDS makes an arrangement directly with a worker, 'Jen', to get the badges sewn onto 10 frocks, 15 hoodies and 30 tees.



EXAMPLE 2: Paul, a dressmaker, enters into an arrangement with Molly's Fashions to produce and finish 20 dresses in 3 days. Molly's Fashions is run by the Rose family and is a registered company with an ABN.

NOTE: Mrs Rose does the work at home, sometimes with the help of her husband Mr Rose. Because they do the work from their home (i.e. non-business premises) Mr and Mrs Rose are legally classified as 'outworkers'.



Multiple arrangements

When your business needs a range of services to meet production needs or more capacity, you may enter into multiple arrangements with other principals and/or workers. The principals may in turn make their own arrangements with other principals or other workers to get the work completed.

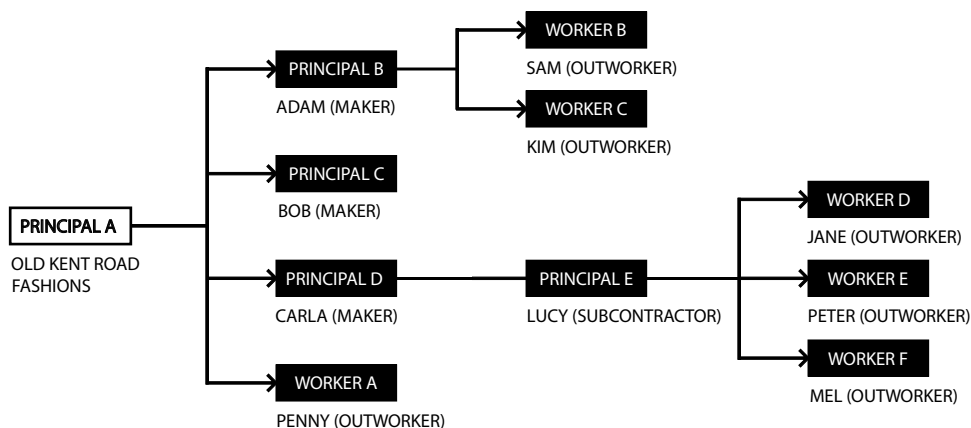
NOTE: you can still be held responsible for the correct Award wages and entitlements.

MULTIPLE ARRANGEMENTS BETWEEN YOU AND OTHER PRINCIPALS AND WORKERS

EXAMPLE: The diagram on the following page shows the owner of Old Kent Road Fashions making arrangements with makers Adam, Bob and Carla, and an outworker Penny.

The owner of Old Kent Road Fashions is responsible for paying enough to the makers Adam, Bob and Carla to allow them to pay their in-house employees and outworkers the correct Award wages and entitlements. The owner of Old Kent Road Fashions is also responsible for paying the correct Award wage and entitlements to Penny the outworker.

THIS IS IMPORTANT: Under the Outworker Provisions in the Award your business is responsible even if you don't directly engage outworkers.



Example of extended liability of the apparent principal

The owner of Old Kent Road Fashions can be held responsible if the correct Award wages and entitlements are not provided to all workers in the supply chain. This law also applies to any factory workers. For example:

- Jane is an outworker that Lucy (the subcontractor) has made an arrangement with.
- Jane knows she is making garments for Old Kent Road Fashions because of the label she sews into the garment.
- Jane keeps records of the work she does and knows she is not receiving Award wages and all her entitlements.
- Within 6 months of completing the work Jane notifies the owner of Old Kent Road Fashions of her underpayment.
- Under the Award the owner of Old Kent Road Fashions can withhold payment from Carla the maker until Jane receives her correct pay and entitlements. Carla the maker may also withhold payment to Lucy the subcontractor until correct payment is made to Jane. Alternatively, Old Kent Road Fashions, Carla and Lucy can enter into an agreement to share the underpayment amount.
- If the above options are not utilised then Old Kent Road Fashions will be held responsible for the correct Award wages and other entitlements.

SEE SCHEDULE F.8.2 OF THE AWARD

FOR MORE DETAILS ABOUT THE 'APPARENT PRINCIPAL', SEE PAGE 21

How to calculate the time (including sewing time)

As an employer, your Work Record (often called a Garment Specification Sheet) must show a fair and reasonable time (including sewing time) required for each item. If the Work Record is for an arrangement with a worker then it must show the 'Time Standard' that you applied to determine the appropriate sewing time for the work you commissioned.

The Time Standard is the logic you used in your assessment of what is a fair and reasonable time to perform the work.

Upon request from the TCFUA and other relevant authorities you must be able to demonstrate how your assessment was calculated. For example – using a stopwatch to time a sample machinist. You must be able to demonstrate the method you used.

Your calculation must take into account

- the longer time (including sewing time) needed for the work to be performed away from your premises in comparison with the Time Standard set for comparable work undertaken in a workshop or factory,
- 'Time' includes all other aspects of work potentially undertaken by the outworker, such as cutting, pressing, pattern making, etc, *and*
- reasonable additional time to perform 'ancillary' tasks such as bundling and unbundling, sorting and packing.

EXAMPLE

Time (including sewing time) for the construction of the garment (i.e. sewing *and* cutting, pressing, pattern making if applicable)

+

Time for ancillary tasks (i.e. bundling, unbundling, sorting and packing)

=

Time Standard

FOR A WORK RECORD (GARMENT SPECIFICATION SHEET) TEMPLATE, SEE PAGES 37-38

How to calculate a worker's (outworker's) minimum pay rate

STEP 1

Determine appropriate classification/skill level for the worker

- There are 5 skill levels under the Award. Each are based on the level of skills of the employee and the nature and complexity of work they perform.

THESE ARE SET OUT IN CLAUSE 20 AND SCHEDULE B AND SCHEDULE C (DEFINITIONS) OF THE AWARD.

- Although it may vary depending on the nature and complexity of the work, anyone responsible for the construction of a finished garment will usually be classified at a minimum of a skill level 3. Skill level 3 is the minimum wage for outworkers.
- Each skill level has a different weekly rate of pay. Once you have determined the skill level of a worker and the weekly rate that it attracts, you can calculate the ordinary minute rate by dividing the weekly rate by 2,280. (i.e. the ordinary minute rate is 1/2,280 of the weekly rate).

The table below sets out the minute rates for the Award classifications at the time of writing this guide.

Skill level	Weekly rate	Minute rate (= weekly rate/2280)
1	\$675.90	n/a
2	\$701.80	n/a
3	\$725.90	31.84 cents
4	\$764.90	33.55 cents
5 and thereafter	\$812.80	35.65 cents

NOTE: The weekly rates above apply from the first full pay period on, or after 1 July 2015. The weekly rates may increase each year. Always check the current version of the Award for the most up-to-date rates. The TCFUA can also help you gauge what the skill level is for various kinds of work. Skill level 3 is the minimum wage for outworkers.

Once the minute rate is calculated, you can proceed to calculate the total amount to be paid.

STEP 2

Calculate how many minutes were taken to perform the work

This should be reflected in the Time Standard (see page 26) you have set and recorded in your Work Record (see page 10). You should be able to use the Work Record to determine the time taken to perform the work.

You will also need to know when the work was carried out, in the event that any work was performed on a Saturday, Sunday or public holiday. This is only permitted with the express agreement of the worker and attracts payment at a higher rate of pay.

In addition, if the person works beyond the agreed number of weekly hours, the hours worked in excess of that amount also attract a higher rate of pay.

STEP 3

Factor in any work to be undertaken on a public holiday

If there is a public holiday during the time you have engaged a worker, and they perform no work on that day, you must pay them the equivalent of one day's pay (1/5 of the weekly rate). If you have engaged the worker part-time, you must calculate the payment on a pro-rata basis.

STEP 4

Calculate the total amount to be paid

Use the table below to first calculate the total ordinary amount of pay accrued during ordinary working weeks, then add the amount of overtime, then any time worked on weekends or public holidays. Finally, add any public holidays that fell within the period but when no work was done. The combined total is the amount you must pay your worker.

Time	Formula for calculating payment	
Work during the ordinary working week (i.e. agreed weekly hours)	The appropriate minute rate x number of minutes worked	\$ ordinary amount
Work in excess of the agreed weekly hours	1.5 x the appropriate minute rate x number of minutes worked	+ \$ overtime amount
Work on Saturday, Sunday or public holiday (or deemed to have worked on one of these days)	2.0 x the appropriate minute rate x number of minutes worked	+ work on weekend/public holiday amount
Public holiday where no work was performed	The worker's usual daily rate	+ public holiday payment
		= TOTAL PAYMENT

NOTE: The rates normally change each year. These wage calculations do not include the costs of entitlements that you are required to pay under the Award and NES. The example below does include these.

SEE NEXT PAGE

The make price must be enough to make sure that any workers employed directly by the principal, as well as any employed by the maker/contractor, receive their correct wages and conditions under the Award.

NOTE: The cost of contractor overheads is not an Award obligation. Nonetheless, these overheads should be considered by a Principal to determine the 'make price' for a particular garment or product.

THE MAKE PRICE CALCULATION

Workers at Skill Level 3 must be paid a minimum of \$0.43 per minute to make sure you are covering their Award wage and entitlements. In addition, a principal giving work to a maker/contractor should also cover overhead costs and a profit for the maker/contractor in the make price. These amounts will vary depending on a number of factors particular to the principal's business, (e.g. the location of the business; business rental/utilities costs; city/regional costs differences; scale of operations and volume of garments/products being produced). The make price is the sewing time x the additional cost per minute*:

Cost of employing someone at Award Skill Level 3	(0.43 cents per minute)
+ Cost of contractor overheads	(0.XX cents per minute)
= Cost per minute (i.e. the 'make price')	(0.XX cents per minute)

*FOR DETAILS ON HOW TO CALCULATE THE SEWING TIME, SEE PAGE 26

National Employment Standards (NES)

The new National Employment Standards set out the key work-related entitlements for your employees, under the *Fair Work Act 2009*. There are 10 minimum standards for employment which you need to comply with, and they apply from 1 January 2010. These conditions are in addition to your obligations under the Award.

What are the 10 NES entitlements?

The NES are set out in the *Fair Work Act 2009* and comprise 10 minimum standards of employment. Each standard is covered in detail in separate fact sheets, but in summary, the NES involve the following minimum entitlements:

- 1. Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.
- 2. Requests for flexible working arrangements** – this allows parents or carers of a child under school age, or of a child under 18 with a disability, to request a change in working arrangements to assist with the care of the child.
- 3. Parental leave and related entitlements** – up to 12 months unpaid leave per employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption- related leave.
- 4. Annual leave** – four weeks paid leave per year, plus an additional week for certain shift workers.
- 5. Personal/carer's leave and compassionate leave** – 10 days paid personal/carer's leave per year, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.
- 6. Community service leave** – this allows for unpaid leave for voluntary emergency activities, and leave for jury service with an entitlement to be paid for up to 10 days jury service.
- 7. Long service leave** – a transitional entitlement for employees as outlined in an applicable pre-modernised Award, pending the development of a uniform national long service leave standard.
- 8. Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.
- 9. Notice of termination and redundancy pay** – up to five weeks notice of termination and up to 16 weeks severance pay on redundancy, both based on length of service.
- 10. Provision of a Fair Work Information Statement** – this must be provided by employers to all new employees. It contains information about the NES, modern Awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, union rights of entry, transfer of business, and the respective roles of the Fair Work Commission and the Fair Work Ombudsman.

This summary of the NES is taken from the Fair Work Ombudsman's website.

Visit www.fairwork.gov.au

Other laws you need to be aware of

In addition to the Award and the National Employment Standards, there are State-based laws and Federal legislation that you may need to comply with, including: Outworker, Workers Compensation, Occupational Health and Safety, and Equal Opportunity and Anti-discrimination laws.

Contact your branch of the TCFUA, relevant employer association, or State government department/agency to check your specific obligations.

STATE-BASED OUTWORKER LEGISLATION

If you arrange for work to be performed outside your business or commercial premises, you must still comply with any State-based legislation covering outworkers, even if your business is also under the national Award. *There are outworker laws that apply on a State-by-State basis. These laws may apply to your business even if it does not directly engage any external workers.*

WORKERS COMPENSATION

In some states, outworkers and homeworkers are also covered by Workers Compensation legislation. *In Australia, laws relating to workplace compensation are made on a State-by-State basis rather than being covered by any Federal law.*

OCCUPATIONAL HEALTH AND SAFETY (OHS)

In some states, outworkers and homeworkers are also covered by OHS legislation. *Like Workers Compensation, OHS laws are currently made by the States and Territories, rather than the Federal government.*

Visit www.safeworkaustralia.gov.au

EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION LAWS

There are laws at both the State and Federal levels that prohibit discrimination, harassment and other forms of adverse treatment. These laws apply to both current and prospective employees.

For information regarding State or Territory based legislation, contact

ACT ACT Human Rights Commission: www.hrc.act.gov.au

NSW Anti-Discrimination Board of New South Wales: www.lawlink.nsw.gov.au/adb

NT Northern Territory Anti-Discrimination Commission: www.nt.gov.au/adc

QLD Anti-Discrimination Commission Queensland: www.adcq.qld.gov.au

SA Equal Opportunity Commission of South Australia: www.eoc.sa.gov.au

TAS Office of the Anti-Discrimination Commissioner (Tasmania): www.antidiscrimination.tas.gov.au

VIC Victorian Equal Opportunity and Human Rights Commission: www.humanrightscommission.vic.gov.au

WA Equal Opportunity Commission Western Australia: www.equalopportunity.wa.gov.au

What happens if I do not meet my obligations?

The Award recognises there may be several steps in the 'supply chain' before an item reaches a worker. As a principal the Award sets out your obligations clearly so that every work arrangement you make, and each step involved in the making of any product, is transparent.

To make sure that workers at each level of a supply chain are receiving their Award wages and entitlements, it is your business' responsibility to comply fully with its legal obligations and take steps to make sure that **anyone else in the supply chain after you** also meets theirs. If one link in the chain is broken it is difficult to determine whether a worker is receiving Award wages or their correct entitlements.

FOR EXAMPLES OF TYPICAL SUPPLY CHAINS AND ARRANGEMENTS, SEE PAGES 23-25

Generally, businesses may be fined up to **\$51,000** for each breach of the Award. However, the courts have imposed significant fines – as high as **\$110,000** – on businesses found to have committed multiple breaches of the Award, even where those businesses haven't directly engaged any external workers.

Tools,
templates
and
background
information

Tools, templates and background information

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Agreement with another principal to have work carried out (Agreement with a contractor/maker)

1. Principal details

Business name

ABN or ACN

Board of Reference number

Business address

2. The other principal's details (e.g. contractor/maker)

Business name

ABN or ACN

Board of Reference number (not needed if this principal performs ALL work on their own business premises)

Address where the work will be performed

3. Agreement to supply a copy of the Work Record/ Garment Specification Sheet to the other principal (to meet your legal requirements under the Award)

I agree to providing the principal with a copy of the Work Record/Garment Specification Sheet

Is the work part of an ongoing arrangement?

Yes No

4. Is the other principal making an agreement with anyone else to get the work completed?

No, go to Step 6

Yes, you must agree to the clause at Step 5, go to Step 5

5. Other principal's written agreement regarding work by a third party

The other principal agrees to have a written agreement with the third party who will be performing the work that is the subject of this arrangement, specifying

- the other principal's business name, address, ABN/ACN and/or registered business number
- the other principal's Board of Reference registration number
- the name and address of the third party to whom the arrangement applies
- the address(es) where work will be performed
- the factory registration of premises that are used by the clothing industry (NSW requirement only)
- the date and time for commencement and completion of the work
- a description of the articles, garments or material to be worked on including diagrams and details of each type, the seam and fabric type and manner of construction and finishing (Garment Specification Sheet)
- the number of each garment or article
- **the time (including sewing time) for the work required on each**
- the price to be paid for each
- that the third party will receive wages and conditions no less favourable than those provided under the Award.

The written agreement must be entered into prior to any work being performed by the third party.

The other principal agrees to comply with all of the requirements of the Award in relation to this arrangement.

6. We hereby agree to entering into an arrangement to have work carried out, as specified above. Any agreement will provide the minimum conditions for workers and meet our obligations under the Award.

Principal's signature

Full name

Position

Signature

Date

Other principal's signature

Full name

Position

Signature

Date

Agreement with a worker to have work carried out (Agreement with a worker)

1. Principal details

Business name

ABN or ACN

Board of Reference number

Business address

2. The worker's details

Full name

Address where the work will be performed

3. The work is being provided on the following basis, as specified under the Award

Full time - 38 hours per week

Part time - 15-37 hours per week

If Part Time, write down hours agreed hours: _____ hours

Part time - less than 15 hours per week*

* If you want to employ a worker for less than 15 hours per week you need written approval from the TCFUA.

**With agreement of the worker, part time hours may be averaged over a period of 4 weeks maximum. Where part time hours are less than 15, the additional consent of the TCFUA is required.

Yes, I have written approval from the TCFUA, and have attached a copy of this document to this Arrangement

The total number of hours per week you have written approval to employ the worker for

4. Agreement to supply the worker with copies of the Work Record/Garment Specification Sheet, Fair Work Statement, and Information Statement for Outworkers prior to the commencement of any work (to meet your legal requirements under the Award).

I agree to provide the worker with a copy of the

Work Record/Garment Specification Sheet

Fair Work Statement*

Schedule F, including Information Statement for Outworkers*

*If these statements are NOT in English, enter the language below

5. Mandatory details of this arrangement

MINIMUM CONDITIONS FOR WORKERS

The Information Statement for Outworkers explains some of the minimum conditions workers are entitled to under the Award. Workers are also entitled to the benefits provided under the National Employment Standards.

AGREEMENT TO PROVIDE MINIMUM CONDITIONS

Minimum conditions of this written agreement are

- maximum weekly hours of work
- requests for flexible working arrangements
- parental leave and related entitlements
- annual leave
- personal/carer's leave and compassionate leave
- community service leave
- long service leave
- public holidays
- notice of termination and redundancy pay, *and*
- provision of the Fair Work Statement covering
 - hours of work
 - work on weekends and public holidays
 - how long it should take you to perform the work
 - how we will pay you
 - what happens if no work is available, *and*
 - a number of other provisions of the Award that factory or in-house workers are entitled to.

Visit www.fairwork.gov.au

This written agreement will be provided to the worker in a language the worker has confirmed they understand.

Any proposed variation to this agreement will also be in writing and will take effect three days after it is signed.

CONTINUED NEXT COLUMN

6. Provision of reasonable time for the worker to review the written agreement

Under the Award, workers are entitled to receive a copy of the proposed agreement within a reasonable period of time to review it before it needs to be signed.

A copy of this agreement, including additional requirements that must be included in any written agreement with a worker, was provided to the worker on

Date

_____ which we agree is a reasonable period of time, before it was signed.

7. Terms of arrangements

A principal must not make an arrangement unless:

- the arrangement contains a term requiring the person with whom the arrangement is made to have a written agreement with any other person who performs any work which is the subject of the arrangement
- the written agreement must specify each of the matters set out in clause F.3.2(a); *and*
- the written agreement must provide for wages and conditions no less favourable than those contained in clauses F.4 and F.5

The written agreement must be entered into prior to any work being performed by the third party.

The worker agrees to comply with all of the requirements of the Award in relation to this arrangement.

RECORD KEEPING

As part of your obligations under the Award, you must retain a signed copy of the proposed written agreement, and any variation. If documents are provided in a language other than English you must also retain an English language version of each.

8. Agreement

We hereby agree to entering into an arrangement to have work carried out, as specified above. This arrangement will provide the minimum conditions for workers and meet the obligations under the Award.

Principal's signature

Full name

Position

Signature

Date

Worker's signature

Full name

Signature

Date

Work Record (Garment Specification Sheet) for a maker (principal)

Your details		Maker's details		Cutting date	Issue date	Completion date
Business name ABN ACN Board of Reference Number Business address Phone Email	Business name ABN ACN Board of Reference Number (if required*) Address (where work will be done) Phone Email					
Garment Specifications		Fabric	Notes	Order Quantity		
Garment outline and description including seam type, construction and finishing details				Sizes		
						Subtotal
				Total		
Sewing instructions						
Time (inc sewing time)						
Price per garment	min: \$					
Total no. of garments	no:					
Total including GST	\$					
Your signature		Other principal's (maker's) signature				
Sign	Name	Sign	Name	Date		

*The maker must be registered unless they do all the work in their own factory

Work Record (Garment Specification Sheet) for an outworker/homeworker

Your details		Worker's details		Cutting date	Issue date	Completion date
Business name	Worker's name	ABN	ACN			
ABN	ABN					
ACN	ACN					
Board of Reference Number	Address (where work will be done)					
Business address						
Phone	Phone					
Email	Email					

Garment Specifications		Fabric	Notes	Order Quantity
Garment outline and description including seam type, construction and finishing details				
Subtotal				
Total				

Sewing instructions	

Outworkers Hours of Work			Calculate the worker's payment		
Full Time (38 Hours)	yes/no:	min:	Total time	hours:	
or Regular Part Time	yes/no:	min:	Award skill level	\$	
If Regular Part Time	hours:	min:	rate	\$	
1. Agreed number of hours per week	yes/no:	no:	Total payment*		
2. Whether an agreed averaging arrangement is in place					

Your signature	
Sign	Name

Worker's signature	
Sign	Name

*These wage calculations do not include the costs of entitlements that you are required to pay under the Award and NES.

CHECKLIST FOR MAKING AN AGREEMENT WITH ANOTHER PRINCIPAL

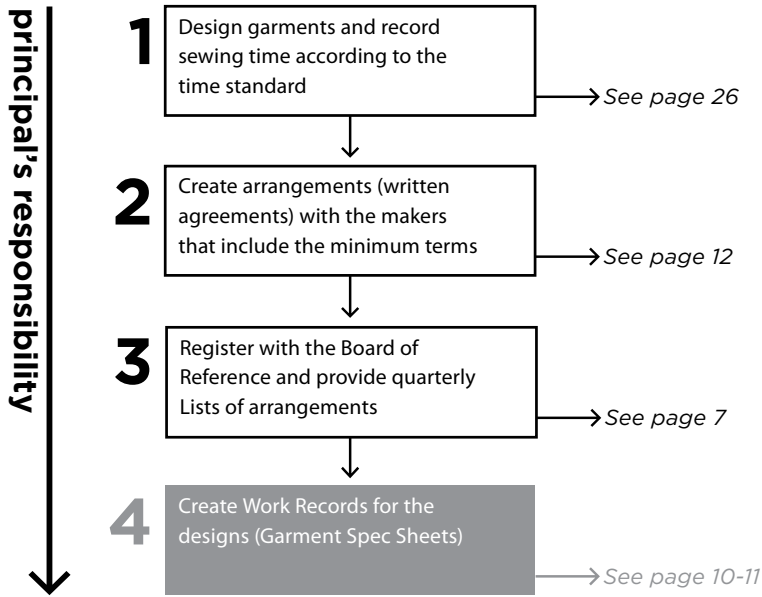
- Your business is registered with the Board of Reference
- You have added details of this arrangement to a running List of arrangements your business enters into using the table in the Board of Reference forms
- You are able to provide copies of this List to the Board of Reference on a quarterly basis
- The business with whom you are making an arrangement is also registered with the Board of Reference (if applicable)
- You have made a Work Record (Garment Specification Sheet, including a sewing time) as specified in this guide
- You have given a copy of this Work Record to the business with whom you are making an arrangement
- Your arrangement with the other business contains the required minimum terms

CHECKLIST FOR MAKING AN AGREEMENT WITH A WORKER

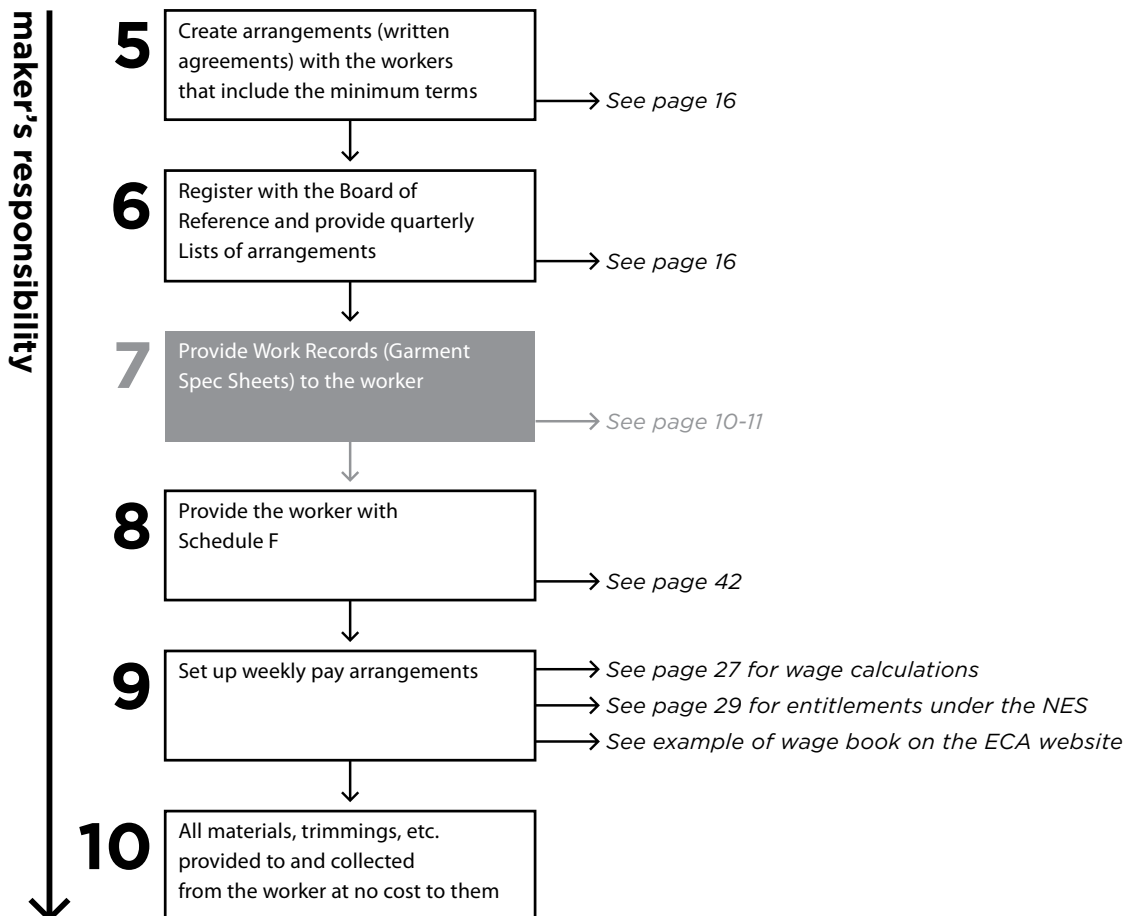
- Your business is registered with the Board of Reference
- You have added details of this arrangement to a running List of arrangements your business enters into using the table in the Board of Reference forms
- You have made a Work Record (Garment Specification Sheet, including a sewing time) as specified in this guide
- You have made a signed written agreement detailing the hours of work in accordance with the Award
- Your Work Records contain the required additional information for arrangements with workers
- You have used the proper Time Standard to calculate the sewing time
- You have provided a copy of the Outworkers Schedule F to the worker
- You are providing the correct minimum conditions in accordance with the Award
- You are paying the worker on a weekly basis
- You are making sure that all materials, trimmings, threads, products, garments or articles are delivered to and collected from the worker at no cost to them

HOW TO MAKE AGREEMENTS THAT COMPLY WITH THE AWARD

Below is the workflow from the principal initiating the work to the maker (another principal) then down to the worker.



Below is the workflow from principal (maker/contractor) down to the worker



Outworker Provisions

Clause 17 from the Award

17. Outwork and related provisions

- 17.1 Arrangements (including for the engagement of outworkers) must be made by Principals in accordance with Schedule F – Outwork and Related Provisions.
- 17.2 Nothing in this Award will operate (or is intended to operate) to cover the field (or otherwise displace or reduce the scope of jurisdiction) occupied (or exercised immediately prior to the time of the making of this Award) by State legislative regulation of any party which enters into any arrangement for the performance of work outside the business or commercial premises of the party (including arrangements for the performance of work for the party by outworkers).
- 17.3 In particular nothing in this Award will operate (or is intended to operate) to reduce the scope of application (immediately prior to the time of making this Award) of the following State legislative instruments and provisions:
- (a) *Industrial Relations Act 1996* (NSW) (as amended): sections 129A-129J inclusive (and other provisions of this or any other legislation which are necessary or incidental to the operation of these provisions);
 - (b) *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW);
 - (c) NSW Ethical Clothing Trades Extended Responsibility Scheme 2005;
 - (d) *Fair Work Act 1994* (SA) (as amended); sections 99A-99J inclusive (and other provisions of this or any other legislation which are necessary or incidental to the operation of these provisions);
 - (e) Fair Work (Clothing Outworker Code of Practice) Regulations 2007 (SA);
 - (f) *Industrial Relations Act 1999* (Qld) (as amended); sections 8C and 400A-400I inclusive (and other provisions of this or any other legislation which are necessary or incidental to the operation of these provisions);
 - (g) *Industrial Relations Act 1984* (Tas) (as amended); section 3 inclusive (and any other provisions of this or any other legislation which are necessary or incidental to the operation of these provisions);
 - (h) *Outworker (Improved Protection) Act 2003* (Vic) (as amended) and any other provisions of this or any other legislation which are necessary or incidental to the operation of this provision; *and/or*
 - (i) *Outworker (Improved Protection) Amendment Act 2005* (Vic) (as amended) and other provisions of this or any other legislation which are necessary or incidental to the operation of this provision.

Outwork and Related Provisions

Schedule F, from the Award

F.1 For information in relation to the operation of this Schedule the following organisations can be contacted for further information:

- Australian Industry Group
- Business SA
- NSW Business Chamber
- Textile, Clothing and Footwear Union of Australia

F.2 Definitions

F.2.1 Arrangement means any arrangement made by a principal with any legal or natural person to have work carried out for the principal, whether or not the person carries out the work, but does not include employment of an employee who is not an outworker to carry out the work.

Note: The obligations in this part apply whether or not a principal has obtained the work which is the subject of the arrangement pursuant to any other arrangement or from any other person.

F.2.2 Ordinary working week means the hours and days occurring between midnight on Sunday night and midnight on Friday night in any week.

F.2.3 Outworker has the same meaning as that contained in section 12 of the *Fair Work Act 2009* (Cth).

F.2.4 Principal means:

- (a) An employer; or
- (b) An outworker entity within the meaning of the *Fair Work Act 2009* (Cth).

F.2.5 Work means work on or in relation to any garment, article or material in the textile, clothing and footwear industry, including for example design, preparation, manufacture, packing, processing and finishing work, and organisation, procurement, control, management or supervision of work.

F.2.6 Worker means:

- (a) an outworker; or
- (b) a person who personally performs work which is the subject of an arrangement.

F.3 General requirements for making arrangements

F.3.1 Registration

- (a) A principal must be registered by the board of reference under clause F.6.7 prior to making any arrangement.
- (b) A principal must not make any arrangement with another principal unless the other principal is registered by the board of reference under clause F.6.7.

F.3.2 Work records

- (a) Upon making an arrangement, a principal must make and retain a written record (a 'Work Record') which contains:
 - (i) *The principal's name, address, ABN/ACN and/or registered business number;*
 - (ii) *The principal's board of reference registration number;*
 - (iii) *The name and address of the person to whom the arrangement applies;*
 - (iv) *The address(es) where work is to be performed;*
 - (v) *The time and date for commencement and completion of the work;*
 - (vi) *A description of the nature of the work required and the garments, articles or material to be worked on (including diagrams where available and details of the type of garment or article, seam type, fabric type, manner of construction and finishing);*
 - (vii) *The number of garments, articles or materials of each type;*
 - (viii) *The time (including sewing time) for the work required on each garment, article or material; and*
 - (ix) *The price to be paid for each garment, article or material.*
- (b) A copy of a work record must be given to the person with whom the arrangement is made prior to the commencement of any work which is the subject of the arrangement.

F.3.3 Lists

- (a) A principal must make and retain a list ('List') containing the name and address of each person with which it makes an arrangement and the date each arrangement is made.
- (b) A principal must provide a copy of the List to the General Manager or their nominee and to the relevant State Branch of the Union within 7 days of the last working day of February, May, August and November of each year.
- (c) The General Manager or their nominee may allow an organisation with a legitimate interest in the Textile, Clothing and Footwear Industry to peruse the List.

F.3.4 Terms of arrangements

A principal must not make an arrangement unless:

- (a) The arrangement contains a term requiring the person with whom the arrangement is made to have a written agreement with any other person who performs any work which is the subject of the arrangements;
- (b) The written agreement must specify each of the matters set out in clause F.3.2(a); *and*
- (c) The written agreement must provide for wages and conditions no less favourable than those contained in clauses F.4 and F.5.

F.4 Additional requirements for making arrangements with workers

F.4.1 A principal must comply with this clause in addition to clause F.3 where the principal makes an arrangement:

- (a) with a worker; or
- (b) with a body corporate owned or managed by the worker or member of their family.

F.4.2 Written agreements

Prior to the commencement of work which is the subject of an arrangement, a principal must make a signed written agreement ('Written Agreement') with the worker which specifies:

- (a) whether the principal will provide the worker with work on a full-time or part-time basis; *and*
- (b) if part-time, the agreed number of hours of work per week, including whether they are to be averaged and over what period, in accordance with clause F.5.2(a).

F.4.3 The proposed terms of the written agreement must be expressed clearly and simply in a language the worker understands and must be provided in writing to the worker in that language a reasonable time before it is signed.

- (a) Any proposed variation of the written agreement must also comply with clause F.4.2(b) and will take effect three days after an agreement to vary the written agreement ('Variation Agreement') is signed.
- (b) A copy of the proposed written agreement, the signed written agreement and variation agreement, along with an English language version of each document if in a language other than English, must be retained by the principal ('Written Agreement Records').

F.4.4 Additional information in work records

A work record in respect of an arrangement under this clause must contain the following information in addition to that prescribed in F.3.2:

- (a) The time and date for the garments, articles or materials to be provided to and picked up from the worker to facilitate commencement and completion of work in accordance with F.3.2(a)(v);
- (b) Details of the time standard applied in accordance with clause F.5.4(a) in order to determine the appropriate time (including sewing time) for the purposes of clause F.3.2(a)(viii);
- (c) The number of working hours that will be necessary to complete the work, calculated by multiplying the number of garments at clause F.3.2(a)(vii) by the time (including sewing time) per garment, article or material at clause F.3.2(a)(viii); and
- (d) The number of hours and days within the ordinary working week that will be necessary to complete the work in order to determine the appropriate time and date of commencement and completion at clause F.3.2(a)(v), and
- (e) The total amount to be paid to the worker for the hours and days at clause F.3.4(c), applying the appropriate rates of pay set out at clause F.5.4(b).

F.4.5 A principal must provide the worker with a copy of this Schedule in the appropriate language for the worker.

F.4.6 A principal must provide the worker with the minimum conditions set out in clause F.5.

F.5 **Minimum conditions for workers**

F.5.1 National Employment Standards

A principal must apply the NES to the worker as though the worker is an employee, whether or not the principal is an employer or the worker is an employee.

F.5.2 Hours of work

- (a) A principal must provide the worker with work which is:
 - (i) *full-time, 38 hours per week; or*
 - (ii) *regular part-time, with no less than 15 regular hours per week to be agreed between the principal and the worker; or*

- (iii) *regular part-time, with no less than 10 regular hours per week to be agreed between the principal and the worker with the consent of the Union in accordance with Schedule F – Outwork and Related Provisions.*
- (b) Agreement in accordance with F.5.2(a)(ii) and F.5.2(a)(iii) may include that regular part-time hours may be averaged over a period not exceeding four (4) consecutive weeks.
- (c) In each ordinary working week, a principal must not require the worker to complete more than 38 hours work, or the agreed number of part-time hours, whichever is less.
- (d) Subject to clause F.5.7, in each ordinary working week where the worker is ready, willing and able to work, a principal must pay the worker for either 38 hours work or the agreed number of part-time hours work, regardless of whether the principal provided enough work for those hours of work to be performed.

F.5.3 Work on weekends and public holidays

- (a) A principal must not require the worker to work, or set the time and date for commencement and completion of work so that the worker is required to work, on a Saturday, Sunday or public holiday without obtaining the prior written agreement of the worker, specifying the date/s and number of hours to be worked on each date.
- (b) Unless otherwise specified in the written agreement, the worker will be deemed to have worked 7.6 hours on each date.
- (c) Where, notwithstanding F.5.3(a), the time and date for commencement and completion of work would require the worker to work on a Saturday, Sunday or public holiday:
 - (i) The time and date for completion will be deemed to be extended by the time necessary to ensure work on a Saturday, Sunday or public holiday is not required; **or**
 - (ii) the worker may elect to perform the work and will be deemed to have completed 7.6 hours work on each Saturday, Sunday or public holiday on or between the time and date for commencement and completion of the work.

F.5.4 Time standards and payment

- (a) In determining how long work will take to perform ('the Time Standard') a principal must allow a fair and reasonable time, including:
 - (i) providing more time for the work to be performed than the time standard set for comparable work undertaken in a workshop or factory; **and**
 - (ii) providing reasonable additional time to perform ancillary tasks such as bundling and unbundling, sorting and packing.
- (b) A principal must pay the worker at the following rates:
 - (i) For each minute of work in the ordinary working week, 1/2280 of the weekly rate for the appropriate classification set out at clause 20 ('the ordinary minute rate');
 - (ii) For each minute of work in excess of 38 hours or the agreed weekly hours, whichever is less, 1.5 times the ordinary minute rate;
 - (iii) For each minute of work performed or deemed to have been performed on a Saturday, Sunday or public holiday, 200% of the ordinary minute rate; and
 - (iv) For each public holiday on which the worker does not work, 1/5 of the weekly rate for the appropriate classification set out at clause 20, calculated on a proportionate basis for a part-time arrangement.

- (v) Any additional payment due pursuant to clause 23.2 applies notwithstanding this clause.

F.5.5 Payment

- (a) A principal must pay the worker within two working days' of the end of the ordinary working week at a time and by a method agreed between the principal and the worker.

- (b) Payment for regular part-time hours must be no less than the agreed regular hours per week which may be averaged in accordance with an averaging agreement..

Note: For example, if a regular part-time hours agreement includes averaging of 15 hours over a 4 week period, a principal must pay the worker 15 ordinary hours per week. If a regular part-time hours agreement includes averaging of 10 hours over a 4 week period, a principal must pay the worker 10 ordinary hours per week.

- (c) At or prior to the time of payment, a principal must provide the worker with details in writing of the gross payment, any deduction made and the net payment.

F.5.6 A principal must provide the worker with all necessary materials, trimmings and sewing threads to perform the work required of the worker, and cause all relevant materials, products, garments or articles to be delivered and collected from the worker at no cost to the worker.

F.5.7 Stand-down

A principal may stand-down the worker where no work is available as a result of circumstances outside the control of a principal, subject to the following conditions.

- (a) The principal bears the onus of establishing that no work is available.
- (b) The stand-down is for a maximum period of two days in any four week period and ten days per year.
- (c) The principal must make and retain a written record of the stand-down ('stand-down record') setting out the name and address of the worker, the commencement date and duration of the stand-down and the reason for the stand-down.
- (d) Within two working days of a stand-down, a copy of the stand-down record must be provided to the worker and the Union.

F.5.8 A principal must apply the remaining provisions of this award to the worker as though the worker is an employee, whether or not the principal is an employer or the worker is an employee, excluding the following clauses:

- Dispute resolution (clauses 10.1 and 10.2)
- Hours of work;
- Overtime;
- Payment of wages;
- Regular part-time employment;
- Award posted;
- Casual employment;
- Dining room allowance;
- Meal allowance;
- Midday meal break;
- Rest breaks;
- Rest room allowance; *and*
- Tool allowance.

F.5.9 A principal must not make one or more arrangements covered by this Schedule with more than 10 workers at any one time, unless the principal has the consent of the Union or the board of reference, which may exercise its discretion to allow the principal to do so.

F.5.10 Dispute Resolution

In the event of a dispute involving parties to which this schedule applies in relation to a matter arising under this Award, or the NES, in the first instance the parties will attempt to resolve the dispute through direct discussions. If the dispute cannot be resolved through direct discussions, a party to the dispute may refer the dispute to the Fair Work Ombudsman. The provisions of clauses 10.3-10.5 apply in respect of the dispute.

F.6 Registration and Board of Reference

F.6.1 For the purposes of this part, the General Manager or their nominee must appoint a board of reference for each of the following places:

- Adelaide;
- Brisbane;
- Hobart;
- Melbourne;
- Perth; *and*
- Sydney, *or*

at such place as they may from time to time determine.

F.6.2 The board must consist of two Union representatives and two principal representatives with the addition of the General Manager or such person as they may nominate as chairperson of the board. In the event of the representative members of the board being equally divided in opinion, the chairperson may cast their vote to give a majority decision.

F.6.3 Any board member may appoint a nominee to act on their behalf at any time.

F.6.4 Three members, one of whom must be the General Manager or their nominee will constitute a quorum.

F.6.5 A board of reference may sit at such times and places as the members may agree or the General Manager or their nominee may fix and may adjourn from time to time and place to place.

F.6.6 The functions of the board of reference are to deal with any matter as provided for in this part.

F.6.7 Powers of Board of Reference to register principals

- (a) On application, the board of reference may register a principal on conditions it determines for a period of 12 months.
- (b) The board of reference may revoke the registration of principal for failure to comply with any or all of such conditions.
- (c) Upon registration, the board of reference will give principal a registration number.
- (d) The General Manager or their nominee will maintain a record of registered principals.
- (e) At the time of registration, and on each anniversary of registration, a principal must place a notice in the public notices column of a metropolitan daily newspaper circulating throughout any State in which work is to be performed stating:

- (i) *the principal's name, address and ABN/ACN;*
 - (ii) *that the principal is registered under this award;*
 - (iii) *the principal's registration number;*
 - (iv) *the location at which all relevant records, including but not limited to work records, lists, written agreement records and stand-down records, in the principal's possession or custody may be inspected by the Union.*
- (f) A principal may make an agreement in writing with the Union or apply to the board of reference to be exempted from the notice requirement. A copy of any written agreement made between a principal and the Union must be lodged with the General Manager or their nominee.

F.7 Observance of Award

F.7.1 A principal must not, in any way, whether directly or indirectly, be a party to or concerned in conduct that:

- (a) hinders, prevents or discourages the observance of this Schedule;
- (b) causes or encourages or is likely to cause or encourage, a breach or non-observance of this Part.

F.7.2 A principal must retain all work records, lists, written agreement records and/or stand down records required under this part for a period of six years after the relevant record was made.

F.7.3 Within two working days of a request being made, the principal's work records, lists, written agreement records and/or stand down records must be provided by the principal to the Union for inspection and copying:

- (a) At a time and place agreed between the Union and the principal; or
- (b) In the absence of agreement, between 8.00 am and 5.00 pm on a working day at an alternative appropriate premises nominated by the principal within a 50 kilometre radius of the principal's premises (which may be the principal's premises); *or*
- (c) If the principal fails to nominate such a place, between 8.00 am and 5.00 pm on a working day at an appropriate place nominated by the Union within a 50 kilometre radius of the principal's premises (which may include the Union's premises but must not include the principal's premises).

F.7.4 The Union will not divulge any information contained in a work record in compliance with F.3.2(a)(ix) concerning the price to be paid for each garment or article in any circumstances to any party save for in enforcement or dispute resolution proceedings in a Court or Tribunal.

F.8 Recovery of unpaid remuneration

F.8.1 Unpaid remuneration includes any amount payable to a worker, whether or not an arrangement applies to the worker, including but not limited to amounts in respect of:

- (a) commission;
- (b) leave or other entitlements; *and*
- (c) reimbursement or compensation for an expense incurred or loss sustained by the person, which has not been paid to the worker.

F.8.2 Extended liability of principal

- (a) A principal who makes an arrangement will be liable for any unpaid remuneration payable to a worker engaged by a person with whom the arrangement is made ('the Person'), **unless**:
 - (i) *the principal has obtained a written statement ('Written Statement') from the person that all unpaid remuneration payable to the worker has been paid; and*
 - (ii) *the principal does not have reason to believe that the written statement is false.*
- (b) A principal may withhold any payment due to the person until the person provides a written statement to the principal. Any penalty for late payment under the arrangement does not apply to a payment withheld under this clause.
- (c) Where the person is also a principal, the person must not provide a written statement knowing it to be false.
- (d) Clause F.8.2 does not apply where the person is bankrupt or under external administration and payments under the arrangement are payable to the administrators or trustee in bankruptcy.
- (e) Nothing in this subclause limits or excludes any other liability or right of recovery in respect of:
 - (i) *Unpaid remuneration; or*
 - (ii) *Money owed by a principal to the person.*
- (f) A principal is not excluded from liability pursuant to this subclause by obtaining a written statement from a body corporate owned or managed by the worker

F.8.3 Extended liability of apparent principal

- (a) A worker may make a claim ('the claim') for any unpaid remuneration relating to the work against a principal who the worker believes they carried out the work for ('the apparent principal').
- (b) A claim may be made by serving a statutory declaration on the apparent principal within six months after the completion of the work specifying:
 - (i) *the name of the worker;*
 - (ii) *the address at which the worker may be contacted;*
 - (iii) *a description of the work done;*
 - (iv) *the date or dates on which the work was done; and*
 - (v) *the amount of unpaid remuneration claimed in respect of the work.*
- (c) An apparent principal served with a claim will be taken to be liable for the unpaid remuneration other than where:
 - (i) *the apparent principal serves the claim on another person that the apparent principal knows or reasonably believes is liable for the claim ('the liable party') within 14 days; and*
 - (ii) *the apparent principal notifies the worker of the service; and*
 - (iii) *the liable party pays the unpaid remuneration to the worker within 14 days of the service; and*
 - (iv) *the liable party serves notice in writing on the apparent principal that payment has been made and the amount.*
- (d) An apparent principal may set off or deduct any unpaid remuneration paid to the worker from any amount the apparent principal owes to the liable party.
- (e) Nothing in this subclause limits or excludes any other liability or right of recovery in respect of:
 - (i) *unpaid remuneration; or*
 - (ii) *money owed by an apparent principal to a liable party.*

- (f) A principal or apparent principal will not be liable for any unpaid remuneration pursuant to this clause to the extent that the principal or apparent principal proves that the relevant work was not done or the amount of unpaid remuneration claimed is in excess of the amount to which the worker is entitled.
- (g) An apparent principal is not excluded from liability pursuant to this subclause by obtaining a written statement from any party, including (but not limited to) a body corporate owned or managed by the worker. A principal or apparent principal is not excluded from liability pursuant to this subclause by obtaining a written statement from, or serving a claim upon, a body corporate owned or managed by the worker.

Information Statement for Outworkers

Appendix to Schedule F, from the Award

If you work at home or outside a workshop in the textile, clothing, footwear and associated industries, you may be an outworker. If you are an outworker, you are entitled to the same wages and conditions, in general, as workers in textile, clothing or footwear factories. The Textile, Clothing, Footwear and Associated Industries Award 2010 (the Award) 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 regular part-time, which must be at least 15 hours per week or 10 hours per week (with the agreement of the outworker and the consent of the Union). 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.

If you are a regular part-time worker, the agreed number of hours can also be averaged over a period of up to four weeks. The averaging must be agreed to in advance by the outworker and the employer.

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 regular part-time worker you can only be required to work seven 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.

OVERTIME

If you agree to work more than seven 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 seven 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

According to law, as at 1 July 2015, the usual weekly wage for 38 hours, Monday to Friday, is \$725.90 (see page 27).

The hourly rate is \$19.10. Remember, the law says you must not be paid less than the hourly rates according to the Award.

Each year, the industrial tribunal the Fair Work Commission reviews the minimum hourly rates of pay. This usually means the Award hourly rate of pay will increase each year from 1 July.

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 regular part-time workers depends on the hours you work in a 12 month period.

Payment for public holidays (such as Christmas or New Year's Day) which occur when you are on leave, should be added onto your holiday pay.

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 9.5% to an approved fund, for you. The industry default funds are Australian Super Fund and SunSuper, which is are approved by both the union and some employer organisations, unless you choose another complying fund.

WORKERS COMPENSATION

As an outworker you are entitled to a safe and healthy workplace. As an outworker you are covered by work health and safety legislation and workers compensation legislation.

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.

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:

- your name and address;
- your employer's name, address, telephone number, ABN/ACN and Board Registration number;
- the time and date you received the work and the time and date when the work is to be completed;
- a description of the nature of the work to be completed (including diagrams where available);

- the number of items, what the item is and how long it will take (hours and days) to make or work on each item;
- the price you will get for each item; *and*
- the total amount of money paid for the completed work.

If you need information or help in relation to any of your rights you can contact the Textile, Clothing and Footwear Union of Australia, the union which represents workers in the TCF industry.

Glossary

TERM	MEANING
Agreement or Contract	Referred to as an 'arrangement' in this guide and the Award
Apparent Principal	In the event of a claim by a worker for unpaid remuneration, this is the principal who a worker believes they undertook the work for.
Arrangement	An arrangement describes a situation where a principal enters into an agreement to have work performed for it on its behalf (within the meaning of the Award).
Board of Reference	A Board established under the modern Award which deals with the registration and monitoring of principals in the TCF industry who have work performed on their behalf.
Casual Employee	A casual employee is an employee who is engaged in relieving work or work of a casual, irregular or intermittent nature, but does not include an employee who could properly be classified as a full-time or part-time employee. Outworkers may not be employed on a casual basis.
Constitutional Corporation	A business that is incorporated (usually a Pty Ltd or a Ltd business) and whose main activity is trading or financial.
Full-time Employee	An employee who works 38 hours per week.
FWC	Fair Work Commission, the national body that oversees industrial relations in Australia.
Garment Spec Sheet	referred to as 'Work Record' in this guide and the Award
List	This is a document that contains the name and address of each person a principal has made an arrangement with to have work performed on their behalf and the date each arrangement was made. Lists are part of the Board of Reference compliance requirements and are contained as part of the Registration forms.
NES	The National Employment Standards, minimum terms and conditions established by the <i>Fair Work Act 2009</i> (Cth) and operating across Australia.
Outworker	Any worker who performs work at home or at a non-business premises (within the meaning of the Award). Outworkers are sometimes known as homeworkers or outside workers.

TERM	MEANING
Part-time Employee	<p>A part-time employee is an employee who is a day or shiftworker and</p> <ul style="list-style-type: none"> • works less than full-time hours of 38 hours per week; • has predictable hours of work; <i>and</i> • receives on a pro rata basis, equivalent pay and conditions of those full-time employees who do the same kind of work.
Sewing Time	Referred to as the 'Time Standard' in this guide and the Award
TCF Industry	The Textile, Clothing and Footwear Industry.
TCFUA	The Textile, Clothing and Footwear Union of Australia, the union representing workers in the TCF industries.
The Award	The Textile, Clothing, Footwear and Associate Industries Award 2010, a modern award made under the <i>Fair Work Act 2009</i> (Cth)
Principal	<p>A person or business that has entered into an arrangement to have work done by someone other than their own employees who is not an outworker (within the meaning of the Award).</p> <p>NOTE: the Award definition of a principal has a slightly different meaning to that used in the industry where a business at the 'head' of a contracting chain – such as a fashion house or brand – is sometimes referred to as a 'principal'. Under the Award, a principal isn't limited to a business at the head of the contracting chain.</p> <p><i>See page 12</i></p>
Work Record	Work Records (often referred to as a Garment Specification Sheet) contain details of your business, and a detailed description of the work involved. These documents should accompany the job through each stage of production to completion.
Worker	Refers to an outworker or homeworker, or person who personally performs work as part of an arrangement.

Contact information

WHO TO CONTACT FOR INFORMATION

Ethical Clothing Australia

(03) 9419 0222

Fair Work Commission

1300 799 675

NSW Business Chamber

13 26 96

Australian Industry Group (AiG)

(03) 9867 0111

Victorian Employers Chamber of Commerce and Industry (VECCI)

(03) 8662 5333

Textile Clothing and Footwear Union of Australia (TCFUA) (National Office)

(03) 9639 2955

Textile Clothing & Footwear Union of Australia (Victoria/Queensland/Western Australia Branch)

(03) 9639 2955

Textile Clothing and Footwear Union of Australia (NSW/South Australia/Tasmania Branch)

(02) 9704 6000

READ THE FULL AWARD ONLINE

www.fwc.gov.au

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