



Australian Government

Department of Education, Employment
and Workplace Relations

FAIR WORK PRINCIPLES

JAN
2010

USER GUIDE

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FOREWORD FROM MINISTER

The Australian Government recognises its public responsibility to provide a model of fairness in the workplace for those who are performing work for the Commonwealth whether as employees of a Commonwealth agency or as employees of contractors to the Commonwealth.

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

The Commonwealth will only contract out when it is in the public interest, having regard to considerations including the quality and accessibility of services, and the implications for affected public sector employees. Further, the Government expects that in conducting their businesses, government contractors meet public expectations of fair and reasonable workplace practices.

The Fair Work Principles will support the creation of quality jobs and decent work by ensuring that Commonwealth procurement decisions are consistent with the *Fair Work Act 2009*.

Among other things, the Australian Government will require all potential suppliers when submitting tenders to Australian Government agencies to provide information about how they comply with the Fair Work Principles.

This is particularly significant in industries like cleaning, and textile, clothing and footwear where there has historically been underpayment, exploitation of workers and unsafe work practices.

The Fair Work Principles demonstrate that the Government is serious by using our purchasing power to promote fairness in the significant number of contractors with which we do business.



Julia Gillard
Minister for Employment and Workplace Relations
Canberra

23 December 2009

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SECTION 1—INTRODUCTION

- 1.1 While acknowledging that value for money is the core principle underpinning decisions on government procurement, the Australian Government is committed to ensuring that government procurement decisions promote fair, cooperative and productive workplaces in which employees are treated fairly and with respect for freedom of association and their right to be represented at work.
- 1.2 The Fair Work Principles require Commonwealth Entities (as defined in section 4.2 below) to obtain information from Tenderers about their compliance with their obligation to ensure fair, cooperative and productive workplaces, and precludes Commonwealth Entities from contracting with suppliers in defined circumstances.
- 1.3 The Fair Work Principles include general provisions and expectations for suppliers of goods and services to the Commonwealth. However, given the history of exploitation and underpayment problems in the cleaning services and the textile, clothing and footwear industries, additional focus has been given to those sectors in the Fair Work Principles and additional provisions apply to these procurements.
- 1.4 This User Guide has been developed in consultation with relevant stakeholders, including the Procurement Consultation Committee to:
 - i. Assist relevant Commonwealth Entities interpret and implement the Fair Work Principles;
 - ii. Assist suppliers and Tenderers to understand the Government's expectations and requirements and therefore comply with the Fair Work Principles; and
 - iii. Demonstrate to the Australian community that the Government is meeting its responsibility to provide a model of fairness in the workplace for those performing work for the Commonwealth, whether as an employee of the Commonwealth, or as employees of a contractor to the Commonwealth.

SECTION 2—BACKGROUND

- 2.1 On 28 July 2009 the Minister for Finance and Deregulation released the Australian Government Procurement Statement (available at: www.financeminister.gov.au/media/2009) which included an announcement that the Government would introduce a requirement for suppliers, when submitting Submissions, to provide information about how they comply with the Fair Work Principles.
- 2.2 On 31 July 2009 the Minister for Employment and Workplace Relations released the Australian Government's Fair Work Principles (available at: www.deewr.gov.au/fairworkprinciples) which detail the Government's expectations and requirements of Commonwealth Entities as procurers and suppliers of goods and services to the Commonwealth.
- 2.3 The Fair Work Principles build on the following existing provisions of the Commonwealth Procurement Guidelines (CPGs):
- 6.20 *Agencies should include contract provisions requiring contractors to comply with materially relevant laws and should, as far as practicable, require suppliers to apply such a requirement to sub-contractors. Contractors must also be able to make available details of all sub-contractors engaged in respect of the procurement contract.*
- 6.21 *Agencies must not enter into contracts with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and have not paid the claim. Agencies should seek to confirm a tenderer has no such unsettled judgements by seeking a declaration on the matter from all tenderers.*
- 6.22 *Agencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.*

SECTION 3—DATE OF EFFECT

- 3.1 The Fair Work Principles apply to:
- i. each request for tender (RFT) or request for expressions of interest (RFEOI) issued by Departments of State, Departments of the Parliament and prescribed agencies under the *Financial Management and Accountability Regulations 1997* (FMA Agencies) for the first time on or after 1 January 2010; and
 - ii. each RFT/RFEOI issued by Commonwealth authorities and companies listed in schedule 1 of the *Commonwealth Authorities and Companies Regulations 1997* required by a General Policy Order, issued under section 48A of the *Commonwealth Authorities and Companies Act 1997* (CAC Act), to apply the Fair Work Principles, once a General Policy Order has been issued.
- 3.2 The Fair Work Principles apply prospectively. That is, they do not require Commonwealth Entities to amend contracts with suppliers that are in place prior to 1 January 2010 or to amend documentation associated with a RFT/RFEOI which has been issued prior to 1 January 2010. However where current suppliers have chosen to amend their workplace relations arrangements to comply with the Fair Work Principles, Commonwealth Entities are encouraged to consult with these suppliers and consider appropriate contract variations on a case by case basis.

SECTION 4—SCOPE

4.1 Application

- 4.1.1 The Fair Work Principles apply to Covered Procurements (as explained in section 4.3 below) undertaken by relevant Commonwealth Entities. They do not apply to Commonwealth funding provided through grants or other programs.

4.2 Commonwealth Entities

- 4.2.1 For the purposes of the Fair Work Principles, 'Commonwealth Entities' are:
- i. all Departments of State, Departments of the Parliament and prescribed agencies named in the *Financial Management and Accountability Regulations 1997* (FMA Agencies); and
 - ii. all Commonwealth authorities and companies listed in schedule 1 of the *Commonwealth Authorities and Companies Regulations 1997* required by a General Policy Order, issued under section 48A of the *Commonwealth Authorities and Companies Act 1997* (CAC Act), to apply the Fair Work Principles.

4.3 Covered Procurements

- 4.3.1 The Fair Work Principles only apply to Covered Procurement activities as defined in paragraph 8.4 of the CPGs. Commonwealth Entities should note that the thresholds beyond which a procurement (subject to section 4.4 below) will be a Covered Procurement as specified by the CPGs may be subject to change, however, as at December 2009 the relevant thresholds are as follows:
- i. For procurement by FMA Agencies, other than procurements of construction services, the estimated value of the property or services being procured is above \$80,000;
 - ii. For procurements by relevant CAC Act bodies, other than procurements of construction services, the procurement threshold is \$400,000; and
 - iii. For procurements of construction services, the procurement threshold is \$9,000,000.
- 4.3.2 Consistent with paragraph 8.4 of the CPGs the Fair Work Principles do not apply to the procurements which are listed in Appendix A of the CPGs 'Exemptions from Mandatory Procurement Procedures', as these are not Covered Procurements.

4.4 Suppliers

- 4.4.1 Supplier's obligations arising from the Fair Work Principles apply to the legal entity (Tenderer) responding to the RFT/RFEOL.

4.5 Subcontractors

- 4.5.1 In relation to procurements where the Fair Work Principles apply Commonwealth Entities must contractually require suppliers to require their subcontractors for the procurement to comply with the Fair Work Principles as far as practicable.
- 4.5.2 Consistent with paragraph 6.20 of the CPGs suppliers must also be able to make available to the Commonwealth Entity details of all subcontractors engaged in respect of the procurement contract.

4.6 Overseas suppliers

- 4.6.1 The Fair Work Principles do not require overseas-based suppliers to comply with Australian laws that would otherwise not apply to them. The Fair Work Principles do however require Commonwealth Entities to contractually require that such overseas suppliers comply with all applicable workplace relations, occupational health and safety, and workers' compensation laws in the jurisdiction in which they are based.

4.7 Interaction with other policies

- 4.7.1 The Fair Work Principles operate in addition to and parallel with the existing CPGs and other procurement connected policies of the Commonwealth. That is, officials must ensure that spending proposals are not inconsistent with the Fair Work Principles or any other procurement connected policies of the Commonwealth that apply to the procurement.

SECTION 5—IMPLEMENTING THE FAIR WORK PRINCIPLES

5.1 Complying with the Fair Work Act and/or other relevant laws

5.1.1 As previously noted the CPGs already include the following requirements:

6.20 *Agencies should include contract provisions requiring contractors to comply with materially relevant laws and should, as far as practicable, require suppliers to apply such a requirement to sub-contractors. Contractors must also be able to make available details of all sub-contractors engaged in respect of the procurement contract.*

6.21 *Agencies must not enter into contracts with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and have not paid the claim. Agencies should seek to confirm a tenderer has no such unsettled judgements by seeking a declaration on the matter from all tenderers.*

5.1.2 The Government recognises that the procurement framework has not always been effective in ensuring that all Tenderers meet their legal obligations, including to their employees. Commonwealth Entities have often had only limited access to information about the past conduct of suppliers, both prior to and during the RFT/RFEOL process, and during the life of contracts. This has made it difficult for agencies to consistently take into consideration behaviour by suppliers.

Policy Requirement

5.1.3 Suppliers of goods and services to the Australian Government are required to comply with all relevant workplace laws, which include the *Fair Work Act 2009* (the Fair Work Act) or any applicable workplace relations laws (including obligations under awards, industrial instruments and employee superannuation entitlements, etc), occupational health and safety laws, and workers compensation laws.

5.1.4 Suppliers operating within a workplace relations jurisdiction(s) other than the Federal jurisdiction must comply with all applicable legal obligations, including the relevant workplace relations laws and all relevant occupational health and safety, and workers' compensation laws.

5.1.5 Commonwealth Entities must include as a Minimum Content and Format requirement in any Covered Procurement that Tenderers provide, in their Submission:

- i. details of any adverse Court or Tribunal (see definition of Court or Tribunal in section 9) decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law in the two years preceding the date of the RFT/RFEOL; and
- ii. details of orders from any Court or Tribunal decisions the Tenderer has not fully complied with relating to a breach of workplace relations law, occupational health and safety law, or workers' compensation law.

5.1.6 As required under the CPGs, a failure to comply with, or provide information on, the Minimum Content and Format requirements in 5.1.5 may¹ result in a Submission being excluded from further consideration.

5.1.7 Commonwealth Entities must not enter into contracts with Tenderers who have had an adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law and the Tenderer has not fully complied, or is not fully complying, with the order (subject to the exemptions below).

¹ Under the CPGs Commonwealth Entities may allow Tenderers to correct an unintentional error such as a failure to include a piece of Minimum Content.

Notes for sections 5.1

- A reference to decisions or orders that the Tenderer has not fully complied with includes any penalty or order of a Court or Tribunal with which the Tenderer has not complied or is not complying. It does not extend to infringement notices issued by workplace inspectors or a provisional improvement notice issued by an occupational health and safety inspector.
- A decision or order that the Tenderer has not fully complied with does not include those instances where a penalty or order has been imposed but the period for payment/compliance has not expired.
- Commonwealth Entities are able to contract with suppliers that have had adverse Court or Tribunal decisions which have been rectified or are currently under appeal.
- Where a Tenderer indicates an intention to appeal, and the appeal period has not expired, they are to be regarded as if they have lodged an appeal.

5.2 Dispute Resolution Procedures

- 5.2.1 The Fair Work Act fosters effective dispute resolution which can help employers to maintain good relationships with their employees by dealing with workplace issues at an early stage. Employees are likely to be more cooperative and productive if they know that their grievances will be taken seriously by the employer and there is the opportunity for an independent party to assist in resolving the dispute if it cannot be resolved at the workplace.
- 5.2.2 A good dispute resolution process with a focus on effective resolution at the workplace level may also help to avoid the costs of resolving a claim externally; for instance, via Courts or Tribunals.

Policy Requirement

- 5.2.3 Where the Tenderer has an enterprise agreement made under the Fair Work Act on or after 1 January 2010, Commonwealth Entities must require the Tenderer to confirm, in their Submission, that the agreement includes genuine dispute resolution procedures.
- 5.2.4 This requirement only applies to *Fair Work Act 2009* enterprise agreements made on or after 1 January 2010. Tenderers with any other forms of industrial instruments and arrangements (that is Tenderers operating under State workplace relations jurisdictions and overseas Tenderers) must comply with applicable dispute settlement procedure requirements.
- 5.2.5 For a procedure to be considered a “genuine dispute resolution procedure” it must include as a minimum:
- the ability for employees to appoint a representative in relation to the dispute;
 - in the first instance procedures to resolve the dispute at the workplace level;
 - if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
 - if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.
- 5.2.6 The dispute resolution mechanisms set out in Schedule 6.1 of the Fair Work Regulations 2009 are an example of a ‘genuine dispute resolution procedure’. They provide for the representation of employees and the settlement of the dispute by Fair Work Australia if discussions at the workplace, and mediation or conciliation by Fair Work Australia, have failed to resolve the dispute.

5.3 Fair, Cooperative and Productive Workplaces

5.3.1 In order to comply with the Fair Work Principles, suppliers are to promote fair, cooperative and productive workplace relations, including where appropriate a commitment to supporting apprenticeships and education and training in the workplace.

Policy Requirement

- 5.3.2 Commonwealth Entities must require Tenderers to provide confirmation in their Submission that they:
- have consultation arrangements which encourage cooperation and engagement of employees and management; and
 - understand and respect their employees' rights in relation to freedom of association and the right to representation at work, including that the Tenderer allows its employees to be able to make a free and informed choice about whether to join a union and be represented at work.
- 5.3.3 The requirements in section 5.3.2 apply to overseas-based suppliers only insofar as relevant domestic laws apply or exist.
- 5.3.4 While acknowledging that value for money is the core principle underpinning decisions on government procurement, where Commonwealth Entities consider it appropriate, they may give preference to Tenderers who have a demonstrated commitment to supporting apprenticeships and education and training in the workplace. Use of this criterion must be clearly indicated in the RFT/RFEOL documentation, including appropriate information requirements, the proposed assessment method and weighting if appropriate.
- Commonwealth Entities considering using such a criterion are encouraged to discuss their proposed approach with the Department of Education, Employment and Workplace Relations (DEEWR) prior to finalising the preparation of their RFT/RFEOL documentation.

5.4 Cleaning Services Contracts

- 5.4.1 In view of the history of underpayment, exploitation and unsafe work practices in the cleaning industry, the Government has identified this sector as requiring assistance to promote fairness, bargaining, freedom of association and other workplace rights.
- 5.4.2 While many of these matters are significantly enhanced by the Fair Work Act and the modernised *Cleaning Services Award 2010*, the Government has chosen to introduce additional Fair Work Principles requirements to improve the working conditions of all cleaners working in Commonwealth buildings.
- 5.4.3 The combined effect of these initiatives are consistent with the intent of the Clean Start campaign which the Australian Government supports.
- 5.4.4 In addition, a tri-partite consultative group comprising property owners and managers, cleaning contractors and relevant unions will develop best practice measures that can be embraced by cleaning contractors to fully realise the Fair Work Principles cleaning contract requirements. Details on this process will be made available in 2010 via www.deewr.gov.au/fairworkprinciples.

Policy Requirement

- 5.4.5 Commonwealth Entities must require Tenderers to provide an undertaking in their Submission that they:
- provide their employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;
 - provide their employees with a written duty schedule at each site listing specific tasks to be completed;

- set fair and reasonable workloads for all employees and provide adequate staff to achieve the required performance levels; and
- acknowledge and support freedom of association and representation of employees.

Notes for section 5.4:

- As cleaning services for many Commonwealth premises are not directly contracted by agencies but are subcontracted by building managers or owners these requirements will also apply to procurement for building management services.
- The requirements in section 5.4.5 only apply to cleaning services contractors who do not have a commercial presence in Australia insofar as they subcontract or employ cleaning staff within Australia.

5.5 Textile, Clothing and Footwear Manufacturers

- 5.5.1 The Australian Government is committed to ensuring an appropriate safety net for homeworkers in the textile, clothing and footwear industry. This is being done via multiple means, including supporting the Homeworkers' Code of Practice Committee improve the working conditions of homeworkers in the textile, clothing and footwear industry by ensuring that minimum legal wages and standards are met.
- 5.5.2 The Homeworkers' Code of Practice (HWCP) is a joint union-industry initiative aimed at ending exploitation in the Australian clothing and fashion industry. The HWCP encourages Clothing and Footwear Manufacturers to take an ethical approach and be responsible for staying informed of all the steps involved in the production of their products.

Policy Requirement

- 5.5.3 In addition to all other general Fair Work Principles requirements, Commonwealth Entities must require Clothing and Footwear Manufacturers who tender to provide goods to Commonwealth Entities to be accredited with the HWCP or seeking accreditation prior to signing the contract.

Notes for section 5.5:

- The requirement to be accredited with the HWCP does not apply to Clothing and Footwear Manufacturers who do not have a commercial presence in Australia.
- Commonwealth Entities must include in their contracts provisions which provide that relevant suppliers who lose, or fail to gain, accreditation with the HWCP while contracted to a Commonwealth Entity will be considered to be in breach of contract.

SECTION 6—MODEL STATEMENTS AND CLAUSES

6.1 Request for Tender and Request for Expressions of Interest Documentation

Commonwealth Entities are required to include the following statements and declaration (or statements and clauses which have the same effect) in all documentation for RFTs and RFEOLs for procurements where the Fair Work Principles apply:

- X.1 *Tenderers should note that the Australian Government Fair Work Principles apply to this procurement. More information on the Fair Work Principles and their associated User Guide can be found at www.deewr.gov.au/fairworkprinciples.*
- X.2 *In particular Tenderers should note that in accordance with the Fair Work Principles Commonwealth Entities will not enter into a contract with a Tenderer who:*
- (a) fails, when required by the Commonwealth, to confirm it understands and complies with all relevant workplace relations law, occupational health and safety law, or workers' compensation law;*
 - (b) is subject to an order from any Court or Tribunal decisions relating to a breach of workplace relations law, occupational health and safety law, or workers' compensation law with which the Tenderer has not fully complied or is not fully complying;*
 - (c) has a Fair Work Act 2009 agreement that was made on or after 1 January 2010 that does not include genuine dispute resolution procedures;*
 - (d) fails to provide information when requested by [Agency] relevant to their compliance with the Fair Work Principles;*

[Additional dot point for textile, clothing and footwear procurements only]

- (e) is a Clothing or Footwear Manufacturer with a commercial presence in Australia who is not accredited with the Homeworkers' Code of Practice, or not seeking such accreditation.*

[Additional dot point for cleaning services procurements only]

- (f) is a supplier of cleaning services that employs cleaning staff in Australia who does not undertake to:*
 - provide their employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;*
 - provide their employees with a written duty schedule at each site listing specific tasks to be completed;*
 - set fair and reasonable workloads for all employees and provide adequate staff to achieve the required performance levels; and*
 - acknowledge and support freedom of association and representation of employees.*
- X.3 *For the purposes of clause X.2:*
- (a) a genuine dispute resolution procedure is one which provides each of the following processes to resolve workplace disputes:*
 - the ability for employees to appoint a representative in relation to the dispute;*
 - in the first instance procedures to resolve the dispute at the workplace level;*
 - if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and*

– if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.

(b) a decision or order with which the Tenderer has not fully complied or is not fully complying includes any relevant penalty or order of a Court or Tribunal, but It does not extend to infringement notices issued by workplace inspectors or a provisional improvement notice issued by an occupational health and safety inspector, or those instances where a penalty or a requirement has been imposed but the period for payment/compliance has not expired.

X.4 To enable [Agency] to confirm the Tenderer's compliance with the relevant requirements of the Fair Work Principles the Tenderer must complete the attached Statutory Declaration in the form it is provided and include it as part of their tender or expression of interest response.

Note to Agencies: Where an Agency's RFT/RFEOI documentation already includes a declaration or undertaking from Tenderers, Agencies can include the provisions in X.4 and the Statutory Declaration below in that document rather than including a separate Statutory Declaration.

X.5 Clause X.4 is a minimum content and format requirement for the purposes of the [RFT/REOI]. Failure to comply with these clauses will result in a [Submission] being excluded from further consideration.

Statutory Declaration for compliance with the Fair Work Principles

THIS STATUTORY DECLARATION is made on the _____ day of _____ 20_____

Name of Tenderer, ABN and ACN: _____

(the Tenderer)

WHEREAS

A. The Tenderer has submitted, or intends to submit, a **[Submission]** for the _____
_____ procurement (the Procurement)

B. The Tenderer has read and understood the Fair Work Principles User Guide and understands that the Fair Work Principles will apply to the Procurement.

NOW THIS STATUTORY DECLARATION WITNESSES as follows:

1. Compliance with Fair Work Principles

1.1 The Tenderer declares the following:

1.1.1 The Tenderer has had _____ [NIL OR SPECIFY NUMBER] adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law in the two years preceding the date of this request for [tender/expression of interest].
[If response is nil adverse decisions go to 1.1.3 below]

Note to Tenderers: Strike through whichever option does not apply.

1.1.2 The Tenderer has fully complied or is fully complying with all penalties or orders arising from the Court or Tribunal decisions declared above.

OR

The Tenderer has not fully complied with, or is currently not fully complying with _____ [NUMBER] of the penalties or orders arising from the Court or Tribunal decisions declared above and has provided as part of its [Submission] information about each of these penalties or orders in the form required in Appendix A to the Fair Work Principles User Guide.

Tenderers must provide additional information about each decision declared above as specified in Appendix A to the Fair Work Principles User Guide. Tenderers should note that they will not be eligible for further consideration for this procurement if they have not fully complied with, or are not fully complying with, any Court or Tribunal decision, or have not appealed the decision prior to the end of the appeal period.

1.1.3 The Tenderer understands its obligations under all applicable workplace relations, occupational health and safety, and workers' compensation laws. The Tenderer undertakes that it complies, with all of these obligations.

1.1.4 The Tenderer confirms that (except where it is an overseas based supplier to which these requirements do not apply in accordance with the Fair Work Principles User Guide) it:

- has consultation arrangements which encourage cooperation and engagement of employees and management; and
- understands and respects their employees' rights in relation to freedom of association and the right to representation at work, including that the Tenderer allows its employees to be able to make a free and informed choice about whether to join a union and be represented at work.

1.1.5 Where the Tenderer has a *Fair Work Act 2009* enterprise agreement that was approved on or after 1 January 2010 that enterprise agreement includes a genuine dispute resolution procedure that includes the following:

- the ability for employees to appoint a representative in relation to the dispute;
- in the first instance procedures to resolve the dispute at the workplace level;
- if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
- if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.

1.1.6 If at any time prior to entry into a contract with the preferred Tenderer, any information provided in this declaration changes, the Tenderer agrees to advise [Agency] of that change within 7 calendar days.

[Additional declaration for cleaning services procurements only]

1.1.7 In relation to the provision of cleaning services by Australian employees, the Tenderer undertakes that it:

- provides employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;
- provides employees with a written duty schedule at each site listing specific tasks to be completed;
- sets fair and reasonable workloads for all employees and provide adequate staff to achieve the required performance levels; and
- acknowledge and support freedom of association and representation of employees.

[Additional declaration for Clothing and Footwear procurements only]

1.1.8 The Tenderer confirms that, except where it is a Clothing and Footwear Manufacturer with no commercial presence in Australia, it is accredited with the Homeworkers' Code of Practice, or is seeking such accreditation.

1.1.9 The Tenderer agrees [Agency] may provide any information collected, or provided to it by the Tenderer during the course of this [RFT/REOI] process (including regarding breaches of the Fair Work Principles) to other Commonwealth agencies or regulatory bodies including the Department of Education, Employment and Workplace Relations, Australian National Audit Office, Fair Work Ombudsman and Fair Work Australia.

EXECUTED as a Statutory Declaration for and on behalf of:

_____ by:

(insert Tenderer legal name)

(Printed Name) (Signature)

(Title) (Date)

In the presence of:

(Printed Name) (Signature)

(Date)

6.2 Contract Clauses: Contracts with Suppliers

Commonwealth Entities are required to include the following clauses, or clauses which have the same effect as the following clauses, in all contracts with suppliers where the Fair Work Principles apply:

- X.1. The Supplier must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at www.deewr.gov.au/fairworkprinciples), including by:
- (a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
 - (b) informing [Agency] of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of the Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
 - (c) providing [Agency] any information the [Agency] reasonably requires to confirm that the Supplier (and any subcontractor) is complying with the Fair Work Principles; and
 - (d) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

[For Clothing and Footwear procurements]

- (e) for Clothing and Footwear Manufacturers with a commercial presence in Australia maintaining, or where relevant obtaining, accreditation with the Homeworkers' Code of Practice, and advising [Agency] if the manufacturer loses or fails to obtain accreditation with the Homeworkers' Code of Practice during the term of the Contract.

- X.2. Compliance with the Fair Work Principles shall not relieve the Supplier from its responsibility to comply with its other obligations under the Contract.
- X.3. If the [Supplier] does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Commonwealth, the Commonwealth shall be entitled to publish details of the Supplier's failure to comply (including the Supplier's name) and to otherwise provide those details to other Commonwealth agencies.

Note to Agencies: you must also ensure that a breach by the Supplier of clauses X.1 and X.5 entitles the Commonwealth to terminate the Contract.

- X.4. As far as practicable, the [Supplier] must:
- (a) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
 - (b) ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under these Contract clauses [X.1] to [X.5].

[For procurements that include cleaning services]

- X.5. In relation to any cleaning services provided under this Contract by employees in Australia, the [Supplier] must:
- (a) provide its employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;
 - (b) provide its employees with a written duty schedule at each site listing specific tasks to be completed;
 - (c) set fair and reasonable workloads for all its employees and provide adequate staff to achieve the performance levels required under this Contract; and
 - (d) acknowledge and support freedom of association and representation of employees.

SECTION 7—ROLES AND RESPONSIBILITIES

7.1 Commonwealth Entities

- 7.1.1 Commonwealth Entities (as defined in section 4.2 above) are required to implement and comply with the Fair Work Principles as outlined in this User Guide. In particular, in procurements where the Fair Work Principles apply Commonwealth Entities are required to:
- i. include in RFT/RFEOI documentation appropriate statements and clauses to implement the policy (model statements and clauses are provided at section 6);
 - ii. seek information and undertakings from Tenderers in relation to the Fair Work Principles;
 - iii. assess Submissions, taking into account the information and undertakings provided by suppliers in relation to the Fair Work Principles, and not enter into contracts with suppliers who are in breach of any relevant requirement of the Fair Work Principles;
 - iv. include in contracts a requirement that their suppliers comply with the Fair Work Principles including complying with all applicable workplace relations laws (includes obligations under awards, industrial instruments and employee superannuation entitlements etc), occupational health and safety laws, and workers' compensation laws;
 - v. provide reports to the DEEWR on the implementation of the Fair Work Principles and any breaches of the Fair Work Principles by their suppliers. This information will be required to provide input to the Procurement Coordinator's annual report; and
 - vi. refer alleged breaches of workplace relations law, occupational health and safety law, or workers' compensation law by suppliers to the relevant regulatory authority for investigation.

7.2 Tenderers and Suppliers

- 7.2.1 Tenderers are required to comply with the RFT/RFEOI documentation that is issued and to which they are responding.
- 7.2.3 Suppliers are required to comply with their contractual requirements including any provisions relating to compliance with the Fair Work Principles.

7.3 Department of Education, Employment and Workplace Relations (DEEWR)

- 7.3.1 DEEWR has responsibility for the following activities related to the Fair Work Principles:
- overall policy responsibility for the Fair Work Principles;
 - providing information and advice to Commonwealth Entities on the ongoing application of the Fair Work Principles;
 - requesting and collating information from all Commonwealth Entities on the implementation of the Fair Work Principles and any breaches of the Fair Work Principles by their Suppliers; and
 - contributing consolidated material on Suppliers' compliance with the Fair Work Principles to the Procurement Coordinator for inclusion in his/her Annual Report.

7.4 Department of Finance and Deregulation (Finance)

7.4.1 Finance have responsibility for the following activities related to the Fair Work Principles:

- overall policy responsibility for procurement (including the CPGs); and
- provision of administrative support and assistance to the Procurement Coordinator and Procurement Consultative Committee.

7.5 Procurement Coordinator and Procurement Consultation Committee

7.5.1 The Procurement Coordinator will seek ongoing input on how government procurement can be enhanced from a Procurement Consultation Committee comprising industry, union and community stakeholders.

7.5.2 The Procurement Coordinator will promote the Australian Government Procurement Statement requirements, including the Fair Work Principles.

7.5.3 The roles and responsibilities of the Procurement Coordinator are currently being determined, however, it is anticipated that the following will be involved:

- providing external parties with an understanding of the Commonwealth Procurement framework;
- handling of certain complaints;
- monitoring issues related to Australian Government procurement; and
- reporting to the Minister for Finance and Deregulation on procurement matters, including any breaches of the Fair Work Principles.

Procurement Consultation Committee

7.5.4 The Procurement Consultation Committee will provide views to the Procurement Coordinator on Australian Government procurement policy. Its members will:

- identify procurement issues and contribute to formulating workable solutions; and
- promote an understanding of the Australian Government financial and procurement framework within their sphere of authority.

7.5.5 The Procurement Consultation Committee comprises:

- the Procurement Coordinator (Chair);
- two union representatives (Members)
As at December 2009 the representatives were from the Australian Council of Trade Unions and the Liquor, Hospitality and Miscellaneous Workers' Union;
- two industry representatives (Members)
As at December 2009 the representatives were from the Australian Industry Group and the Australian Chamber of Commerce and Industry;
- one community representative;
- one Senior Executive Service level officer of the Department of Innovation, Industry, Science and Research (Observer); and
- one Senior Executive Service level officer of DEEWR (Observer).

SECTION 8—FURTHER INFORMATION

Further information in relation to the following matters can be obtained from the following sources.

Fair Work Principles

Internet www.deewr.gov.au/fairworkprinciples
Email fairworkprinciples@deewr.gov.au
Telephone 1800 064 516

The Commonwealth Procurement Guidelines:

Internet www.finance.gov.au/publications/fmg-series/procurement-guidelines/index.html

Commonwealth's procurement policies:

Internet www.finance.gov.au/procurement/index.html

The Procurement Coordinator and/or the Procurement Complaints Unit:

Internet <http://www.finance.gov.au/publications/procurement-coordinator/index.html>
Email procure.coord@finance.gov.au

Tenderers can obtain advice on their applicable industrial instruments from the Fair Work Ombudsman via:

Internet www.fairwork.gov.au
Email <http://www.fairwork.gov.au/Footer/Pages/Contact-us.aspx>
Telephone 13 13 94

Tenderers can obtain advice on consultation and cooperation in the workplace via:

Internet www.fwo.gov.au/Best-Practice-Guides/Pages/default.aspx

The Clean Start campaign:

Internet <http://www.lhmu.org.au/tender>

The Homeworkers' Code of Practice Committee:

In the first instance questions on the Homeworkers' Code of Practice should be referred to the Fair Work Principles contact details above.

SECTION 9—ABBREVIATIONS AND DEFINED TERMS

CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
Clothing and Footwear Manufacturer	includes manufacturers of the whole or part of any male or female (including children's) garment or any article of wearing apparel.
Commonwealth Entities	includes relevant FMA Agencies and CAC Act bodies as outlined in section 4.2 of this User Guide.
Court or Tribunal	includes all courts, tribunals and commissions etc, howsoever named that are empowered by law to adjudicate and issue binding decisions or orders in respect of workplace relations law, occupational health and safety law, or workers' compensation law.
Covered Procurement	a procurement, other than one that is specifically exempt, where the value of the property or services being procured exceeds the relevant procurement threshold. Covered procurements must comply with the Mandatory Procurement Procedures.
CPGs	Commonwealth Procurement Guidelines
DEEWR	The Department of Education, Employment and Workplace Relations
EOI	Expression of Interest
Finance	The Department of Finance and Deregulation
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMA Agencies	all Departments of State, Departments of the Parliament and prescribed agencies named in the <i>Financial Management and Accountability Regulations 1997</i>
Minimum content and format of submissions	criteria that a submission must meet to be eligible for further consideration in a procurement process. These include conditions for participation where relevant.
PCC	Procurement Consultation Committee
RFEOI	request for expression of interest
RFT	request for tender
Submission	includes any formally submitted response from a Tenderer to an RFT or RFEOI.
Tenderer	The entity responding, or considering responding to, an RFT/RFEOI.

APPENDIX A

Australian Government Fair Work Principles

Additional Information from Tenderers in relation to non compliance with court and tribunal decisions

Where a Tenderer is responding to a request for tender or request for expressions of interest by the Australian Government to which the Fair Work Principles apply the following information is required about any adverse order or penalty the Tenderer has not fully complied with, or is not fully complying with, in relation to a breach of workplace relations law, occupational health and safety law, or workers' compensation law.

Name of the court, tribunal, or commission who made the decision/issued this order:

Reference number for the decision/order: _____

Date of the decision/order: _____

Brief summary of the order:

(eg '\$25 000 fine for breach of freedom of association', OR 'Reinstatement order in relation to a terminated employee by DATE' etc)

Explanation of why the Tenderer has not complied with the decision. That is, why has this decision not been complied with, or is not being complied with?:

(eg 'We are currently appealing this decision and our appeal hearing has been set for DATE' OR 'This decision was handed down on DATE and we have until DATE to pay the fine')

Any other information that the Tenderer believes is relevant with respect to the decision:

(eg any relevant expiry dates for lodging an appeal or complying with the decision/order that has not passed.)

Tenderers should note that they will not be eligible for further consideration for this procurement if they have not complied with any adverse Court or Tribunal decision (within the time allowed for compliance), or have not appealed the decision prior to the end of the relevant appeal period.