



15 May 2018

Mr Darrell Channing
Director, Adjudication Branch
Australian Competition & Consumer Commission
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Dear Mr Channing

INTERESTED PARTY CONSULTATION SUBMISSION – HOMEWORKER CODE COMMITTEE'S APPLICATION FOR AUTHORISATION [AA1000418]

Thank you for providing an opportunity to review and comment on the Homeworker Code Committee's Application for Authorisation, to be named Ethical Clothing Australia's Code of Practice, Incorporating Homeworkers' (the Code). Please find below the Department of Mines, Industry Regulation and Safety's (DMIRS) feedback.

The Code is written for "homeworkers" or "outworkers" who are defined as a person who performs work on, or in relation to, products in the textile, clothing and footwear industry, at residential premises or at other premises that would not conventionally be regarded as business premises. Products mean the whole, or part of any garment; any article of wearing apparel; any article of footwear; or any textile product.

From an Occupational Safety and Health (OSH) perspective, an industry code working towards improved conditions may be beneficial, and does not reduce the minimum standards of applicable laws including OSH laws. The Code appears to be voluntary for workers working from home undertaking sewing related tasks as well as parts of the supply chain that services the industry. It includes OSH, but also has a broader focus such as hours of work and pay.

The Western Australian *Occupational Safety and Health Act 1984* (OSH Act) sets objectives to promote and improve occupational safety and health standards. General duties are laid down in the OSH Act, and are supported by other requirements in the OSH Act and regulations. The OSH Act defines a workplace as meaning a place, whether or not at home, in an aircraft, ship, vehicle, building, or other structure, where employees or self-employed persons work or are likely to be in the course of their work. This includes those people undertaking occupational duties in a home environment which is a workplace under the OSH Act.

The OSH Act imposes a general duty of care to protect persons at work from hazards and maintain safe and healthy workplaces. Division 2, Section 19 of the OSH Act relates to general duties of care by employers and employees, and ensures that an employer shall, so far as is practicable, provide and maintain a working environment in which the employees of the employer are not exposed to hazards. This includes maintaining the workplace, providing necessary information, instruction, training, and supervision of the employees.

The general duty of care and other requirements of the OSH Act apply in all workplaces, regardless of the application of the Occupational Safety and Health Regulations 1996 (OSH Regulations). As a consequence, where a risk to safety is identified, there is a responsibility to eliminate or control it. There is limited mention of OSH legislation and OSH in general in the Code, with only a brief reference on page 31. There is also brief information provided about worker's compensation on page 53. The Code of Practice's value relating to OSH is considered limited, although employees being guided by the Code on their Federal Award or relevant State Award would contribute to a safer work place. It does not appear that any amendments to legislation would be required by reauthorising this Code.

From a labour relations perspective, the Code is a mechanism within the textile, clothing and footwear industry designed to assist businesses to ensure that they and their outsourced supply chains (if any) comply with relevant Awards and workplace laws. To the extent that the Code contains content as to workers' entitlements, this content is largely for information and replicates existing legal obligations in the TCF Award and the Fair Work Act. The ACCC considers that, with the exception of clause 9.4(d) of Part 1 of the Code, this clause will ensure that the Code will not extend participating businesses' existing legal obligations to workers, including if those legal obligations change in the future.

On the basis that the Code appears to serve as a mechanism to encourage employers to comply with existing legal obligations, DMIRS supports the present application.

If you would like to discuss this submission further, please contact either Sally North (Acting Director, WorkSafe WA Service Industries & Specialists Directorate) by phone on 08 6251 2311 or by email at sally.north@dmirs.wa.gov.au, or Lorraine Field (Executive Director, Labour Relations Private Sector) by phone on 08 6552 9322 or via email at lorraine.field@dmirs.wa.gov.au.

Yours sincerely



Ian Munns

WORKSAFE WESTERN AUSTRALIA COMMISSIONER