



ethical
clothing
AUSTRALIA

T : (03) 9419 0222
F : (03) 8415 0818

Postal Address :
PO Box 2087,
Fitzroy, VIC 3065

Street Address :
Suite A, Level 1,
205 Johnston St.,
Fitzroy, VIC 3065

Darrell Channing
Director
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street Canberra 2601

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Dear Mr Channing

Homeworker Code Committee's application for revocation of authorisations A91354-A91357 and substitution of new authorisation AA1000418—update in relation to Victorian Government Purchasing Board Guide

The Homeworker Code Committee (HWCC) provides this update, following the release of the "*Guide to procuring Uniforms and Personal Protective Equipment (PPE)*" by the Victorian Government Purchasing Board, on July 29, 2018.

As per the information on the Victorian Government Purchasing Board website, *The Guide mandates all government buyers to procure locally manufactured uniforms and PPE, wherever possible, from 1 August 2018.*

Further, the Guide includes ethical considerations, including being accredited or seeking ECA accreditation to meet the term of contracts with the Victorian Government, as outlined below and reproduced from page 3 of the Guide.

Ethical considerations

The TCF sector globally is considered to be high risk in ethical labour, modern slavery and environmental practices. These risks need to be assessed and mitigated. There are a range of accreditations and international standards that suppliers may adopt to ensure ethical supply chains.

Commitment to the Supplier Code of Conduct is mandatory for suppliers tendering to Victorian Government. Organisations should look for that commitment to be demonstrated in offers through accreditation and international standards. Audit and due diligence processes may need to be implemented.

Ethical Clothing Australia is an accreditation body working collaboratively with Australian TCF suppliers to ensure their Australian supply chains are transparent and legally compliant. Australian manufacturers of TCF goods must be accredited, or in the process of seeking accreditation, with Ethical Clothing Australia and must maintain that accreditation throughout the term of contracts with Victorian Government.

Accreditation by Ethical Clothing Australia is available to Australian TCF manufacturing and brands only. There is currently no equivalent accreditation in New Zealand. To meet the same ethical supply chain standards as Australian suppliers, suppliers from New Zealand must demonstrate compliance with relevant ethical supply chain standards."

Further, model clauses for government contracts were provided at the time of the release of the Guide, as outlined below:

It is the State's policy that, where the Supplier is covered by the Textile, Clothing, Footwear and Associated Industries Award 2010, the Supplier must obtain and maintain accreditation with Ethical Clothing Australia. Suppliers who are not covered by the Textile, Clothing, Footwear and Associated Industries Award 2010 must demonstrate compliance with relevant ethical supply chain standards.

Note that if a Supplier lost accreditation (or ceased complying with relevant ethical supply chain standards), this would constitute a breach of the relevant VGPB agreement, which would give the purchaser the right (but not the obligation) to terminate the agreement (subject to the termination provisions, which allow for opportunities to remedy breaches if they are capable of remedy).

Full details are available via <http://www.procurement.vic.gov.au/About-the-VGPB/News>.

The HWCC submits the details below in relation to the release of the Guide and the committee's original application for revocation of authorisations A91354-A91357 and substitution of new authorisation AA1000418.

- i. Paragraph 160a (should have been f) of the original application noted that "there are presently no government (State or Federal) policies which require businesses to be accredited under the Code in order to apply for State or Federal Government grants or participation in procurement tenders. The release of the Guide changes this information.
- ii. Further, Paragraph 175 noted that while there were currently no government procurement policies requiring accreditation under the Code that Ethical Clothing Australia *continues to advocate for accredited companies to be recognised in procurement policies and remains willing and able to resume the service should similar guidelines be enacted at either a federal or state level.*
- iii. The inclusion of ECA accreditation as part of the Guide is welcomed by the HWCC as a show of support for the local textile, clothing and footwear industry and that ethical production is important in this sector.
- iv. The introduction of the Guide does not change the fact that the Code remains voluntary and that it remains an important instrument for both manufacturers seeking contracts and for businesses that are consumer facing to demonstrate their compliance with the relevant Australian workplace laws. It is an efficient and independent way of signalling compliance with legal obligations.
- v. It was also noted in the original application, paragraph 159 that in its 2013 determination, the ACCC referred to concerns by parties which (at that time) opposed the Code on the basis that it restricted competition between suppliers. This was because the Code was perceived as not being voluntary in all circumstances on the basis that: a. accreditation was a

condition of some Australian government industry grants and participation in procurement tenders; and b. if a business becomes accredited, every supplier in its supply chain must undergo compliance auditing.

- vi. The previous Commonwealth Government procurement requirements were considered in the previous determination.
- vii. In the previous determination, it was also noted that the then Textile Clothing and Footwear Union of Australia (TCFUA) responded to concerns about the Commonwealth procurement and grants policy by noting that; a. if a business considers the obligations imposed by government in its tender and grant processes are excessively onerous and/or the business will not be adequately compensated for participating in government tenders or grant programs, then the business can choose to not participate and b. in practice the accreditation requirement imposed by government is just one of a large number of requirements and obligations imposed on government suppliers. [See paragraph 191 of the previous determination].
- viii. Further, the HWCC submits that the introduction of the Guide does not limit the ability of companies to compete for contracts; instead it improves the integrity of the process as it includes ethical requirements.
- ix. In the summary of its final determination in 2013 the decision stated:

The ACCC understands that the Commonwealth Government requires the accreditation, under its tendering and grant programs, as a means by which it can ensure that its Australia TCF contractors have complied with workplace laws. The ACCC considers that businesses seeking accreditation in order to qualify for a grant or tender will do so on the basis that the business expects that it will be commercially beneficial to the business.

Similarly, the ACCC considers that the costs to a supplier of undergoing auditing in order to remain in the outsourced supply chain of an accredited business are part of the cost of doing business with an accredited business. Any method used by a business in order to audit its outsourcing arrangements is likely to impose some costs on the businesses being audited.

The ACCC accepts that some public detriment is likely to arise from increased business costs. However, the ACCC considers that these detriments are limited by the following factors:

- a) the Code is a voluntary Code, although the ACCC acknowledges that businesses in the outsourced supply chains of accredited manufacturers or which are seeking accreditation to meet the Commonwealth Procurement Rules may regard it as involuntary;*
- b) retail signatories and accredited manufacturers are only able to agree to boycott other businesses who are not compliant with their legal obligations;*
- c) the Code contains safeguards against inappropriate accreditation or boycott decisions; and*
- d) the Code now includes a dispute resolution mechanism.*

- x. The HWCC believes the ACCC should again accept that any potential public detriment with the release of the Guide from the Victorian Government Purchasing Board is limited.
- xi. Further, this Guide is State based and its impacts are likely to be less reaching than the Commonwealth Government procurement rules from previous years.
- xii. In addition, the HWCC has proposed changes to the Code to reduce the paperwork required from businesses as part of the accreditation process with the removal of schedules 1 to 5 in Part 1 of the Code of Practice.
- xiii. The HWCC does not believe the release of this Guide should impact on the draft determination to grant authorisation for five years to permit the continued operation of the Code and the acceptance of the changes, as varied.

Please do not hesitate in contacting me if the ACCC requires any further information or clarification.

Yours sincerely



Angela Bell
National Manager
Ethical Clothing Australia (ECA®)
ethicalclothingaustralia.org.au