



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

June 12, 2018

Dear Mr Channing,

Homeworker Code Committee's application for authorisation [AA1000418]—Response in relation to various interested party submissions

1. The Homeworker Code Committee (HWCC) acknowledges the high level of support shown from interested parties for the Homeworkers Code of Practice, to be renamed *Ethical Clothing Australia's Code of Practice, incorporating Homeworkers* (the Code), and the operations of Ethical Clothing Australia (ECA®).

Responses from accredited companies

2. The HWCC believes that the high number of responses from accredited companies as part of the interested parties process validates the known support for the Code from participants. This support was acknowledged in the HWCC's application for authorisation [AA1000418] paragraph 100 which detailed a recent internal survey which found that 94 per cent of respondents either strongly agreed or agreed that their business valued its accreditation under the Code. It's the HWCC belief that this process has independently confirmed this support.
3. Further the responses from accredited companies provided numerous examples of how these businesses display the Ethical Clothing Australia licence mark and trade mark, confirming one of the public benefits of the Code in that it leads to efficiencies in signalling compliance with legal obligations for accredited companies. By way of example, the response from accredited company To Barwyn and Back stated: "*I proudly promote my ECA accreditation in social media posts, on swing tags and on my website and know this accreditation is important to my consumers.*" And as included in the response from Blue Gum Clothing Co. which stated: "*We also use the ECA trade mark to promote our accreditation through swing tags, web site, social media and submissions for large projects.*"

4. Further the response from interested parties attested to need to have an accreditation program where businesses are able to demonstrate compliance with Australia law. This was exemplified in the response from the accredited company thinksideways: *"The code expectations are a fair and reasonable level to meet and hopefully exceed in a time where manufacturing standards and workers' rights are often in the shadows. Too many businesses in this industry make claims without any evidence or validation as pure marketing ploy. Despite being in a busy space where the term "Ethical" is used along with many others, it's good to have a certified trademark that differentiates our businesses that have actually taken real steps to be audited and accredited."* This point was also reinforced in the response from Nobody Denim which stated: *"We value this accreditation program because it protects vulnerable workers from mistreatment and provides a mechanism by which reviews of their workplaces ensure they are in a safe environment. The Textile Clothing & Footwear Industry for many years was riddled with dishonest and dubious business operators whom exploited vulnerable and defenceless people"... and that... "Manufacturing in Australia is challenging, and made all the more anti-competitive when businesses follow questionable practices."*

Responses from governments

5. The Victorian Government has repeatedly demonstrated its support for the TCF industry, employees and businesses through its funding support of the Code and ECA, and this is on the public record.
6. The HWCC appreciates the analysis of the industry and the purpose of the Code from the Minister for Education and Minister for Industrial Relations, Grace Grace MP, of the Queensland Government. The HWCC agrees with the point that "The primary public benefit of the Voluntary Code is the protection of vulnerable workers and the support it provides to businesses to engage in ethical supply chains". Further the HWCC appreciates the Minister's recognition of the Voluntary Code as a vital mechanism in protecting vulnerable TCF Workers and the "unreservedly support for its re-authorisation".
7. The HWCC also acknowledges the response from WorkSafe Western Australia Commissioner Ian Munns and the observation that "the Code appears to serve as a mechanism to encourage employers to comply with existing legal obligations". The HWCC agrees with this summation and appreciates the support from the Department of Mines, Industry Regulation and Safety in its application.

Responses from civil society, academics and industry

8. The HWCC acknowledges the supportive responses from civil society groups, including Asian Women at Work Inc, the Australian Council of Trade Unions (ACTU), and independent academics. The HWCC acknowledges the published response from Dr Annie Delaney of RMIT University who outlined a series of benefits delivered from the Code. In particular, Dr Delaney states that the re-authorisation of the Code is beneficial for a number of reasons including *'an ongoing need for measures that curb exploitative labour practices in the Australian TCF Sector; "The Code has been in operation for a considerable time and has contributed substantial benefits to the TCF sector in Australia and garment homeworkers. The Code contributes to having an education and compliance support given the ongoing lack of observance of labour regulation concerning subcontracted garment work. Research shows that homeworkers still experience poor labour conditions and have a weak bargaining position, therefore the Code promotes better employment standards, through ethical practice."* This is in line with the HWCC's belief that one of the public benefits of the Code is that it has led to increased compliance with existing legal obligations, aiding both workers and the industry, and that this need continues.
9. The HWCC acknowledges the supportive response from the national industry body, the Australian Fashion Council (AFC). The HWCC notes the support from the AFC for the removal of the Schedules 1, 2, 3, 4 and 5 from the Code, Part 1 (Manufacturers), as was outlined in paragraphs 26-32 of the application. It is pleasing that no responses during the consultation process raised concerns about the removal of the Schedules 1, 2, 3, 4 and 5 in the Code, Part 1 (Manufacturers). This aligns with the HWCC's belief that this change is a positive one and it will be welcomed by current and future accredited companies.

Confidential Submission

10. In response to the confidential submission, the HWCC provides the following details.
 - a) The statement in paragraph 1 is incorrect. The changes proposed to the Code, Part 1 (Manufacturers) are limited to a name change; the removal of Schedules 1-5, and some minor word edits to Clause 12, "Code Funds" and none of these amendments seek to change the remit of the Code. A range of changes have been proposed for the Code, Part 2 (Retailers), but again none of the proposed changes in Part 2 extend or change the remit of the Code.
 - b) In line with above, the HWCC notes that statement in paragraph 2 [*"The amended code extends the audits performed by the Applicant to businesses who do not employ homeworkers and outworkers, not just to businesses who are signatories to the code. Applying audits along the supply chain is unfair and potentially unlawful."*] is also incorrect as no amendments are proposed to extend the operations of the Code. The Code has covered textile, clothing and footwear (TCF) workers whether they are employed directly on premises and/or

as homeworkers since its inception. Further, the strength and integrity of the accreditation program is that it has always sought to ensure compliance throughout the entire supply chain, not just with the principal company. This is important due to the complexity of supply chains in the industry and because of the vulnerabilities of the TCF workforce. This matter was inadvertently addressed in the response from The Ark Clothing Co which included the statement: *"We value this accreditation program because it ensures our local accredited manufacturers provide the same level of employment conditions to their employees as we do at The Ark."* This demonstrates that principal companies appreciate the fact that the accreditation program covers the entire supply chain and the fact that it applies equally to all workers in the supply chain, regardless of whether their employer is the principal company or another or if they are a homeworker.

- c) Paragraph 2 of the confidential submission also raises the matter of the privacy of the individuals in supply chains. The Code only seeks to ensure compliance with Australia workplace laws, and it does not seek any other additional information about individual employees other than what is required to demonstrate compliance. Further, information that is collected as part of the compliance or auditing process is protected as confidential and is not shared with any other parties.
- d) Paragraph 2 of the confidential submission also raises the role of the Union as auditor. The HWCC is confident that it has addressed the role of the Union as auditor under the Code in paragraphs 193-194 of its application. Further, the HWCC considers the work undertaken by the Union as value for money. It should also be noted that the Union is just one of the applicants in this process, and it would be misleading to have it seen that the Union is the only applicant. As stated in the application for authorisation [AA1000418], the HWCC is a joint employer and union initiative. In addition to Union representatives, the HWCC membership includes representatives of the NSW Business Chamber, Ai Group and accredited company representatives. The collaborative nature and multi-stakeholder approach of the HWCC is seen a strength.
- e) In paragraph 3 of the confidential submission, it states *"Auditing should be kept separate from the administration of the code and should not be undertaken by the Applicant, but by an independent body."* The auditing and compliance process is in fact kept separate from the administration of the Code. The administration of the Code is overseen by staff employed at Ethical Clothing Australia, who carry out their work and duties under the Code independently from the compliance and auditing work undertaken by the Union. The staff employed at Ethical Clothing Australia are not privy to a range of information that is ascertained during the independent compliance process.

- f) The assertions made in paragraph 4 again fail to appreciate that the Code only seeks to ensure compliance with existing laws. Any obligations to keep records and to provide a minimum amount of work (for example) is based on the relevant Award and workplace laws. For clarity, specific obligations relating to records are outlined in Appendix 1, *Record Keeping Obligations* attached with this response. The Code does not impose additional requirements or obligations on employers, other than what is required by the law. Rather than damaging the local industry, it is the HWCC's belief that accreditation program has aided the industry considerably and that program is a valuable support in ensuring that their legal obligations, including those to homeworkers and other TCF workers, are met. It is also important to note that any participation in the Code is voluntary.
- g) In regards to paragraph 5 of the confidential submission, the HWCC firmly rejects the view that the existence of the voluntary Code has somehow had an impact on the number of businesses that have moved their manufacturing offshore. There is no evidence to support such a statement. The HWCC's application acknowledges the change in the size and scale of the industry in paragraphs 43 and 44. It is widely known that changes in the TCF industry in Australia are the result of shifts in tariffs and changes to trade policies that have resulted in increased imports and off-shoring. While the size and scale of local manufacturing has declined in Australia, there is still an active local TCF industry and a growing interest in local manufacturing and ethical purchasing.

Thank you for the opportunity to respond. Please do not hesitate in contacting me if you have any questions in regards to the contents of this communication.

Yours sincerely



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Appendix 1

Record Keeping Obligations

The record keeping requirements under the Homeworkers Code of Practice, to be renamed *Ethical Clothing Australia's Code of Practice, incorporating Homeworkers* are contained in Part 1 (Manufacturers), Clause 9 – Obligations of Accredited Manufacturers and Part 2 (Retailers), Clause 3 – Records.

These sections of the Code do not create any additional or more onerous record keeping requirements than those required under employment and industrial laws.

The details below are provided to give insights into the legal obligations in this area.

All Employers must make and keep the following records:

<i>Obligation</i>	<i>Source</i>
<p>Employee Records</p> <ul style="list-style-type: none">- Employer's Name and ABN- Employee Name, Address- Whether full or part-time employment- Whether permanent, temporary or casual employment- Date employment commenced- Pay (including gross and net amounts, deductions, incentive payments, bonuses, loadings, penalty rates and allowances or other entitlements)- Hours, including averaging of hours and overtime hours- Leave taken and balances- Superannuation contributions- Individual Flexibility Agreements	<p><i>Fair Work Act 2009, s. 535</i></p> <p><i>Fair Work Regulations, Div 3, Sub-div 1</i></p>
<p>Payslips</p> <ul style="list-style-type: none">- Detail of payslips contained in Regulations	<p><i>Fair Work Act 2009, s. 536</i></p> <p><i>Fair Work Regulations, Div 3, Sub-div 2</i></p>

Records under OHS laws	For all states and territories except Victoria and Western Australia: <i>Model WHS Regulations</i>
	In Victoria, <i>Occupational Health and Safety Act 2004 (Vic)</i> and the <i>Occupational Health and Safety Regulations 2017 (Vic)</i>
	In Western Australia <i>Occupational Safety and Health Regulations 1996 (WA)</i> .

A Principal as defined in the Textile Clothing Footwear and Associated Industries Award 2010 ("TCF Award"), Schedule F must make and keep the following records:

<i>Obligation</i>	<i>Source</i>
Registration with Board of Reference	<i>TCF Award, F.3.1</i>
Work Records	<i>TCF Award, F.3.2</i>
<ul style="list-style-type: none"> - Principal's name, address, ABN/ACN and/or registered business number - Board of Reference registration number; - name and address of the person to whom the arrangement applies; - address(es) where work is to be performed; - time and date for commencement and completion of the work; - 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); - number of garments, articles or materials of each type; - time (including sewing time) for the work required on each garment, article or material; and - price to be paid for each garment, article or material. 	
<p>Lists</p> <ul style="list-style-type: none"> - name and address of each person with which a Principal makes an arrangement 	<i>TCF Award F.3.3</i>
Written Agreement, which contains the information of a Work Record	<i>TCF Award F.3.4</i>

<p>Written Agreement with an outworker must contain the information of a Work Record and</p> <ul style="list-style-type: none"> - whether work is full time or part time - if part time, the number of hours of work per week - time and date for garments, articles or materials to be provided to and picked up from the worker to facilitate commencement and completion of work - details of the time standard applied to determine the appropriate time - number of working hours necessary to complete the work - number of hours and days within the ordinary working week that will be necessary to complete the work - total amount to be paid 	<p><i>TCF Award F.4.3 and F.4.4</i></p>
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ENDS