



**Australian
Competition &
Consumer
Commission**

Our Ref: C2005/1252
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26 October 2005

Ms Helena Spyrou
Project Officer
Homeworkers Code of Practice Committee
359 Exhibition Street
Melbourne VIC 3000

Dear Ms Spyrou

**Homeworkers Code of Practice Committee Inc. applications for re-authorisation
A90975, A90976, A90977, and A90978 – draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the applications for re-authorisation lodged by the Homeworkers Code of Practice Committee on 22 July 2005.

A copy of the ACCC's draft determination is attached. For the reasons set out in its draft determination, the ACCC proposes to grant authorisation for a period of five years.

The ACCC notes that the Suppliers Agreement prescribes that re-accreditation may be denied on the basis of an unsatisfactory compliance record but does not define what constitutes 'unsatisfactory compliance'. At the time of granting authorisation in 2000, the ACCC imposed a condition of authorisation that the Code be amended to clarify what constitutes an unsatisfactory compliance record for the purposes of re-accreditation. On the information before us, it does not appear that this condition has been complied with.

While the ACCC has been able to rely on information provided in 2000 for the purposes of the current draft determination, it is expected that the Homeworkers Code of Practice Committee will demonstrate its compliance with the past condition in a more formal manner prior to the ACCC issuing its final determination.

Interim authorisation

On 17 August 2005, the ACCC granted interim authorisation to the proposed arrangements. Interim authorisation will continue to protect the proposed arrangements from action under the *Trade Practices Act 1974* (the Act) until the date the ACCC's final determination comes into effect or until a decision to revoke interim authorisation is made.



Next steps

Once the ACCC issues a draft determination, the Applicant or any interested party who may be dissatisfied with the ACCC's draft determination may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the Act, the ACCC must set a date within 14 days of which any pre-decision conference must be requested.

Accordingly, if you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by close of business on **11 November 2005**. Conferences are conducted informally, without the participation of legal or other professional advisers.

Alternatively, you are also invited to make a written submission in response to the ACCC's draft determination. Written submissions should be lodged by close of business on **16 November 2005** at the following address:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

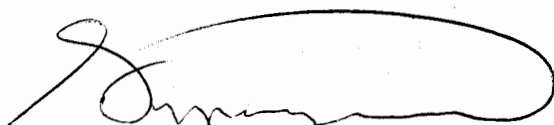
Submissions can also be lodged by e-mail to adjudication@acc.gov.au or by facsimile on 02 6243 1211.

Any submission you make will be placed on the ACCC's Public Register. You may request that information you provide in a submission to the ACCC be treated as confidential and not placed on the Public Register. Information excluded from the Public Register for reasons of confidentiality will still be considered by the ACCC when reaching its decision. Guidelines for seeking confidentiality are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-determination conference be called, and will then release a final determination in relation to these applications.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Hew Atkin on (02) 6243 1235.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the ACCC assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (TPA) requires the ACCC to maintain a public register in respect of authorisation applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register. The ACCC is required under the TPA to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the ACCC may still grant confidentiality where, in the ACCC view, it is desirable to do so.

The ACCC also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The ACCC expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the ACCC:

- (a) where the request is that a whole document be excluded, the words “**Restriction of Publication Claimed**” should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words “**Restriction of Publication of Part Claimed**” should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming “confidential communication” from all Emails and otherwise, unless they have a particular piece of information that they justify to the ACCC deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the ACCC denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the ACCC will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the ACCC will return the original material and destroy all associated copies. The ACCC will not consider this material when reaching its decision. If the ACCC does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the ACCC pursuant to its powers generally under the *Trade Practices Act 1974*.