



TEXTILE CLOTHING & FOOTWEAR UNION OF AUSTRALIA (VIC. BRANCH)

State Secretary
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17 November 2010

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
(ACCC)
GPO Box 3131
Canberra ACT 2601

By facsimile: (02) 6243 1199

Dear Mr Chadwick,

Re: The Homeworker Code Committee Incorporated applications for revocation of authorisations A90975 – A90978 and substitution of new authorisations A91252 – A91255 – interested party consultation

The Textile, Clothing and Footwear Union of Australia ('TCFUA') makes this brief submission in relation to the application lodged with the ACCC by the Homeworker Code Committee Incorporated ('HCC') for Ethical Clothing Australia ('ECA') on 14 October 2010.

The TCFUA wishes to record its strong support for the applications made by the HCC. The TCFUA was a founding member of, and is a signatory to the joint union/industry initiative, the Homeworker's Code of Practice ('HCOP') established in 1995 and is a current and ongoing member of the HCC.

Historically, the development of the HCOP occurred in the context of widespread exploitation of workers in the clothing industry, both in the formal (factory based) and informal sectors (outwork). It was designed, amongst other things:

- to complement existing outwork and contracting out provisions in the former federal *Clothing Trades Award 1982* (later replaced by the *Clothing Trades Award 1999*); and
- to encourage, in the form of a voluntary code, the development of ethical production and manufacture in the clothing and fashion industries, including by manufacturers/principals, fashion houses/labels and retailers;

In the 15 years since the inception of the HCOP, the high rate of exploitation in the clothing industry in Australia, (particularly in relation to home workers or outworkers) has been consistently documented. There have been a significant number of reports and inquiries, both government, academic, and union which have highlighted the high rates

*Submission of the TCFUA (17 November 2010) in relation to:
Homeworker Code Committee Incorporated applications (A91252 – A91255)*

of exploitation amongst workers in the clothing industry and the particular difficulties in regulating clothing contract/supply chains.¹

Because typical clothing supply chains tend to be long and complex, with multiple cascading tiers, the potential for workers within such supply chains to be exploited is high. Such exploitation typically takes the form of workers not receiving minimum wages and terms and conditions of employment under the relevant award and other industrial relations legislation. Poor, and substandard health and safety conditions are unfortunately, also a common and pervasive feature of the industry.

Legal and Award Framework

Fair Work Australia ('FWA'), and its predecessor, the Australian Industrial Relations Commission ('AIRC') have for many years accepted the need for a particular regulatory framework for the clothing and associated industries.² On 1 January 2010, a new modern award for the TCF industry commenced operation. The Textile, Clothing, Footwear and Associated Industries Award 2010 ('TCF Award 2010') will apply across Australia to the great majority of businesses (constitutional and non constitutional corporations) operating in the textile, clothing, footwear and associated industries.³

The TCF Award 2010 contains an enhanced set of provisions (Schedule F) regulating businesses and persons entering into arrangements to have work in the TCF industry performed on their behalf.⁴ One of the key principles underpinning the provisions is the creation of transparency within TCF supply/contracting chains. This aids compliance, as it enhances the capacity to check at each level in the chain whether workers (in-house and home based) are receiving their correct TCF Award pay and conditions and other minimum statutory entitlements (e.g. National Employment Standards).

¹ For example see:

- Senate Economics Reference Committee, *Report on Outworkers in the Garment Industry* (1996)
- Cregan, C, *Home Sweet Home: Preliminary Findings of the First Stage of two-part study of textile workers in Melbourne, Victoria*, Department of Management, University of Melbourne, (November 2001)
- Ethical Clothing Trades Council, *Outworkers Lawful Entitlements Compliance Report* (November 2004)
- Brotherhood of St Lawrence, *Ethical Threads* (2007).

² Key decisions of the AIRC relating to the need to provide specific regulation for the clothing industry include:

- *Re Clothing Trades Award 1982* [1987] 19 IR 416;
- *Re Clothing Trades Award 1982* (M Print 3574, 12 June 1995)
- *Re Clothing Trades Award 1982* (S Print R2749, 12 March 1999)
- *Request from the Minister for Employment and Workplace Relations – Award Modernisation* ([2008] AIRCFB 550, PR062008)
- *Award Modernisation (AM2008/1-12)* [2008] AIRCFB 1000

³ Note: the exception to this is in Western Australia where the state government has to date, not referred its powers to the Commonwealth government in relation to businesses which are not constitutional corporations. Consequently, WA state awards continue to operate in relation to these businesses.

⁴ See Schedule F (Outwork and Related Provisions) of the TCF Award 2010

Functions of the Homeworkers Code of Practice

In the experience of the TCFUA, the development and operation of the HCOP has complemented, and advanced the efforts to ensure compliance with minimum award and statutory conditions in the TCF industry. This has occurred, and continues to occur on both a micro and macro level. The public benefits arising from the HCOP process are significant. On a micro level, the HCOP operates:

- To provide for a business/principal to enter into a voluntary process whereby they make application to, and become accredited to the HCOP over a period of time;
- Businesses/principals are provided information, training and support to ensure they are both compliant with the HCOP and the TCF Award;
- With the assistance of ECA, the process effectively requires a business/principal seeking accreditation to actively map their own supply chains in detail and thus, identify where, and under what conditions work is performed on their behalf;
- In doing so, a business/principal is then able to better determine whether the TCF Award and other minimum statutory entitlements are being provided to workers at each level of their own supply chain/s, including in relation to home workers/outworkers;
- As a consequence, the HCOP promotes improved health and safety for workers, particularly in relation to poor physical working environments and the combined pressures of very low rates of pay together with long and excessive working hours;
- To retain accreditation, a business/principal is required to provide updated information annually regarding their supply chains, encouraging a longer term pattern of Award and legislative compliance i.e. ethical production and manufacture becomes the accepted and normalised business model of the accredited principal;

On a macro level, the HCOP:

- Assists in the cultural and practical shift to a sustainable, innovative and ethical domestic TCF industry.
- Increasingly, this is reflected in accredited businesses actively promoting themselves as ethical as a point of distinction within the market i.e. ethical business models are beginning to be seen as more 'competitive' and sustainable than those based primarily on unit price alone;
- Enhances the retention of a critical mass of worker skills within the TCF industry as businesses develop a growing consumer market for garments and products made and produced under ethical labour conditions;
- Contrary to any suggestion that the HCOP might inadvertently produce anti-competitive outcomes, in our experience, the HCOP has operated to encourage

a fairer 'playing field' within the industry as it works against a low wage/skill/margin 'race to the bottom' model.

- It is now commonly acknowledged amongst key industry and government stakeholders that a TCF industry model based on ethical manufacture and production, linked to initiatives which enhance innovation, will ultimately be more sustainable into the future. ⁵The HCOP is one of a number of important mechanisms contributing to this necessary shift.

Conclusion

In context of the above comments, the TCFUA reiterates its endorsement of the HCC seeking re-authorisation of the HCOP. We believe that the public benefits arising from re-authorisation of the HCOP far outweigh any perceived anti-competitive effects arising from the operation of the HCOP.

If you wish to discuss any aspect of this submission please do not hesitate to contact me (see contacts below).

Yours Sincerely



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⁵ See Commonwealth of Australia; *Building Innovative Capability (Review of the Australian Textile, Clothing and Footwear Industries (Report – August 2008)*