



The Homeworker Code Committee Incorporated – application for authorisation A91354-A91357 Interim authorisation decision 8 March 2013

DECISION

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of applications for authorisation lodged by the Homeworker Code Committee Incorporated (HWCC) on 21 February 2013 (A91354 – A91357).

Interim authorisation is granted to HWCC and current and future signatories to permit the ongoing operation of the Homeworker Code of Practice (the Code) in the form previously authorised by the ACCC (A91252 – A91255). The Code is a voluntary mechanism where retailers, manufacturers, wholesalers, warehouses and fashion houses have agreed to ensure compliance with minimum conditions regarding the employment of homeworkers in the fashion industry.¹ The Code and its accompanying accreditation system are overseen by Ethical Clothing Australia (on behalf of the HWCC).

Interim authorisation commences immediately and remains in place until it is revoked or the ACCC's final determination comes into effect.

THE APPLICATION FOR AUTHORISATION

The HWCC lodged an application for revocation of authorisations A91252-A91255 and substitution with A91354-A91357 (reauthorisation) with the ACCC under section 91C(1) of the *Competition and Consumer Act 2010* (the Act). The HWCC has applied for authorisation on the basis that some conduct required under the Code may otherwise contravene provisions of the Act.

Authorisations A91252-A91255 for the current Code are due to expire on 11 March 2013. The HWCC has applied for interim authorisation in order to enable the status quo to be maintained while the ACCC considers the applications for reauthorisation of the Code. The HWCC submits that interim authorisation is required in order to

¹ The Code has been developed by the HWCC and its predecessor organisations. It is not an industry code (voluntary or mandatory) which has been gazetted for the purposes of the *Competition and Consumer Act 2010*.

ensure that the operation of Ethical Clothing Australia's accreditation system continues. In particular, HWCC submits that continuation of the accreditation system is required in order to address instances of non-compliance with the relevant Award and legislation and to ensure that low-paid workers in the textile, clothing and footwear sector receive minimum wages and fair working conditions.

HWCC also submits that interim authorisation will have minimal impact on the market if granted, as it will maintain the status quo. On the contrary, failure to grant interim authorisation is likely to disrupt the operation of the existing Code.

HWCC further submits that the impact on the public of granting interim authorisation is likely to be minimal. In particular, HWCC cites the ACCC's view in its 2011 determination that the public detriments that result from the Code of Practice are likely to be minimal.

An application from HWCC to vary the applications for authorisation has now been received by the ACCC, proposing a revised Code. As part of its formal authorisation process, the ACCC will soon be seeking submissions from interested parties regarding the applications to authorise the revised Code for a further 5 years

THE AUTHORISATION PROCESS

Authorisation provides protection from legal action for conduct that may otherwise breach certain competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

INTERIM AUTHORISATION

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

CONSULTATION

Upon receipt of the applications for authorisation lodged by HWCC, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. The ACCC has received a number of submissions which expressed concerns regarding interim authorisation and the reauthorisation of the current or a revised version of the Code, including public submissions from the Council of Textile and Fashion Industries (TFIA) and industry participants. The ACCC also received submissions on a confidential basis.

The concerns expressed in relation to the application for interim authorisation are:

- the perceived high costs of compliance associated with the Code, in particular the cost of compliance paperwork and the seeking of many statutory declarations for each order in the context of small order runs and short lead times;
- the ramifications that one businesses' application for accreditation may have for all businesses in its supply chain; and
- the involvement of the Textile, Clothing and Footwear Union of Australia's (TCFUA) in the process of accreditation under the Code, including the scope of

the audits performed by the TCFUA extending to assessing the terms and conditions of factory workers, as well as homeworkers.

These submissions also queried the claimed public benefits of the Code, given a potential reduction in the number of homeworkers and the existence of alternative methods which are available to reduce the exploitation of homeworkers and ensure that they are being employed in accordance with the relevant minimum conditions.

The ACCC also received submissions (including some submissions received on a confidential basis) expressing support for the Code and the application by HWCC for interim authorisation. Ethical Clothing Australia and the TCFUA provided public responses to the concerns expressed, which submitted that:

- The majority of the compliance paperwork required by the Code is also required in order for the businesses to be fully compliant with their legal obligations under the relevant Award and legislation.
- Suppliers merely need to demonstrate that they are compliant with the Award and their legal obligations in order to continue to supply accredited companies. Suppliers that do not wish to undergo the compliance auditing process may choose to supply an alternative company.
- The Code is a joint union-industry initiative, with the TCFUA being a founding member of the HWCC. The Code has always required transparency and compliance across the entirety of a business's supply chain, including in respect of in house workers (e.g. those that work in factories). This is required in order to provide confidence in the Code and to ensure that homeworkers are reached.

In relation to the public benefits that result or are likely to result from the Code, it has been submitted that the Code has improved the level of compliance with minimum award and legal obligations, and therefore has improved the wages and conditions of workers. In particular, the TCFUA has observed some small changes in the levels of compliance for the conditions of homeworkers.

Further information in relation to the applications for authorisation by HWCC, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

ACCC ASSESSMENT AND CONCLUSION

Having taken into account the submissions received, the ACCC considers it appropriate to grant interim authorisation to permit the continued operation of the existing Code. This is because:

A. Interim authorisation will maintain the status quo

The ACCC considers that interim authorisation will maintain the status quo for the 80 brands and 141 retailers which have existing accreditation or are signatories under the Code.

B. Urgency of the need for interim authorisation

The previous authorisations are due to expire shortly, on 11 March 2013 and interim authorisation is urgently required in order to continue the operation of the Code.

C. The possible harm if interim authorisation is granted or denied

As the Code arrangements are already in place (and have been authorised since 2000), denying interim authorisation may cause unnecessary disruption to the operation of the Code including achievement of the Code's aim to ensure that homeworkers receive minimum entitlements with respect to their working conditions.

To the extent that accredited businesses depend upon their accreditation, for example, to qualify for government procurement contracts, failure to grant interim authorisation is likely to cause disruption to these businesses.

Denial of interim authorisation at this time will also result in additional administrative costs to HWCC and signatories to the Code if authorisation is later granted. In addition, 21 businesses (and their supply chains) that are currently undergoing accreditation are likely to suffer some disruption to this process should the ACCC deny interim authorisation.

Finally, the ACCC notes that the Code continues to be a voluntary code. The ACCC also considers that as the accreditation process requires businesses to comply with their existing legal obligations, this is less likely to be an undue burden upon businesses who are affected by the Code.

D. Any possible benefit or detriment to the public that the ACCC could assess at the time of considering the request for interim authorisation.

The ACCC most recently considered the public benefits and public detriments of the Code when it granted authorisation of the Code in 2011. At that time it found that the Code was likely to produce significant public benefits and that the likely public detriments would be minimal.

Submissions have been received asserting that changes to the market since authorisation was last granted in 2011 may reduce the benefits and increase the detriments of the Code, as discussed above.

The ACCC's view is that the concerns expressed in these submissions are most appropriately investigated and assessed during the next phase of the ACCC's authorisation process. This phase will focus upon the request for reauthorisation of the existing Code or, if the HWCC revises its application, an amended version of the Code.

Conclusion

The ACCC considers that it is appropriate to grant interim authorisation in order to permit the current operation of the Code. The ACCC considers that interim authorisation will maintain the status quo and avoid significant disruption to existing signatories to the Code, accredited businesses and homeworkers in the face of the imminent expiry the current authorisation.

RECONSIDERATION OF INTERIM AUTHORISATION

The ACCC may review the decision to grant interim authorisation at any time, including at the draft determination stage, should the ACCC's assessment indicate that this is appropriate. The ACCC's decision in relation to the interim authorisation

should not be taken to be indicative of whether or not the final authorisation will be granted.