

Markit Apparel Online ABN 94 806 225 831

4th March 2013

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Email: adjudication@accc.gov.au

Dear Mr Chadwick,

Re: Homeworker Code Committee Incorporated - Revocation & Substitution - A91252 - A91255

I make this submission in relation to the application lodged with the ACCC by the Homeworker Code Committee Incorporated (HCCI) for Ethical Clothing Australia (ECA) on 21 February 2013. I note the Code is currently under review and would also like this letter to be considered in regard to any subsequent amendments proposed or submitted to that application.

It is my understanding that the Homeworkers Code of Practice (Code) has received authorisation from the ACCC, every 2 years, in order to operate with ACCC protection to ensure legislative compliance of minimum pay and conditions for homeworkers in the TCF sector. This presumes that the substantial (statistical) evidence based case is proven therefore “the public benefit of the Code outweighs any possible public detriment, which may arise from trading sanctions on suppliers who do not comply with statutory requirements”.

As a Pattern and Marker Making business operating in the Textile Clothing and Footwear Sector in Australia since 1998, I would like to advise that the trade sanctions continue to have a detrimental effect on my business. My annual turnover has been reduced and my business growth limited. In particular we believe that the negative impacts are escalating due to the following:

- In 2008 when Ethical Clothing Australia received \$1mil in annual funding, which enabled ECA to scale up the compliance audit conducted by the TCFUA (Union).
- In 2009 legislation was passed that required applications for procurement contracts and some government programs for the TCF sector, to provide evidence of ECA accreditation or pending accreditation.
- In 2010 when the FWAct 2009 came into effect and the transition arrangements for the TCFAI Award ended, a new TCF regime reduced the flexible in engaging home based workers

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- In 2011 the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 was introduced which further tightened the TCF Regime

The combined effect of the above has been devastating and had flow on effects along the supply chain. As a sole trader I have had to rent premises at a cost of approx \$15,000 per year plus additional travel expenses and travel time. I had worked very comfortably from my home until these changes took place.

The current Home workers Code of Practice (HWCP) is a joint union and employer initiative, and supposed to be a voluntary mechanism for retailers, TCF manufacturers and fashion houses to ensure compliance, across their supply chains, with minimum award and legislative conditions for homeworkers.

I would like to point out that this mechanism is not voluntary in all instances and has been made a mandatory requirement for all Federal Procurement contracts in the TCF sector, when the goods are made in Australia. This level of compliance locally, with no counter compliance requirements off-shore means that my goods are less competitive by comparison to off-shore options/competitors. Of course, this is not the only factor, but is certainly a contributing one. I have seen clients moving their production offshore as a result the services I provide (patterns and markers) for local production has dwindled. Opportunity for small scale businesses to grow has put larger businesses at competitive advantage.

Ethical Clothing Australia and the TCFUA (who hold the compliance audit service level agreement with ECA) have also been conducting factory compliance audits, when the HWCC current Rules of Association and the HWCP clearly mandates them to focus on supply chains that engage Homeworkers. Because of the close relationship between ECA and the Union the lines are blurred between a compliance audit and the conduct of normal Union membership activity. I have been visited by the Union as I supplied a company patterns and markers. I was told by the officer from the Union that my type of business was not what they were concerned about. Application of the Home Workers Code of practice being at the discretion of the Union is not acceptable. Some of my clients I only do one or two hours work a month, others I do work for every day.

The HWCP aims to reduce the exploitation of homeworkers, as evidenced by the HWCP and the Rule of Association governing the HWCC, which state that the HWCC *“(m) to act as Trustee of Trusts and funds established or received for achieving or attaining any of the purposes of the association.”* It is my opinion that TCFUA have been working beyond their mandate, where they are auditing TCF factories as well as homeworkers, under their service level agreement with ECA and the HWCC. According to the current authorisation of the HWCP by the ACCC, the HWCC only have the authority to audit homeworkers, not factories. Nowhere in either HWCP or their Rules of Association is the exploitation of factory workers documented. I have been visited by a Union official while operating my business in Collingwood, which is a commercial building, not a private home.

The newly proposed “**DRAFT TCF (Workers & homeworkers) Code of Practice**” to replace the current **Home Workers Code of Practice** has been presented to industry as simply updating the HWCP to reflect what is currently being undertaken by ECA’s auditors, i.e. the TCFUA. My reading of the documents is that the new draft goes well beyond the

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original remit and that there has been insufficient consultation with the broader TCF industry. I first became aware of the changes about the middle of February. Where is the consultation with independent small business that has been affected by these committees and Union organisations? ECA have reported helping 6,000 homeworkers since 2008. I would like to see evidence on how many of those homeworkers are still working in the TCF industry from home. It is my understanding that for those companies who have become ECA accredited those who had a substantial number of homeworkers before accreditation now have very few or none.

- Impacts of ECA compliance audit of many homeworkers (mainly immigrant women with carers responsibilities for children or ageing parents) e.g. restricted in their ability to work from home, lack of privacy/consent in nomination of others in supply chain; not allowed to have any arrangement other than employer / employee restricting choice and discriminating against women who want to run their own businesses from home; loss of skill base which reduces of the capability; creates a “catch all” for many young designers and home based contractors; lack of flexibility with minimum 20 hours part time work; over burden of paperwork (illegality of Statutory Declaration because it refers to future tense) as there is a requirement to continually update every time there is a change in supply chain which could be as frequent as with each order and to be kept for 6 years; cost of compliance e.g. Qld study identified individual businesses incurred an additional \$43,360 cost annually of compliance.

The ACCC application made by ECA on 21st February 2013 is false and misleading, where they stated: “reauthorisation’... sought [is] unlikely to have any adverse effect on competition in any market in the future and public benefits have significantly outweighed any adverse effect on competition (if any) that might arise from the arrangements, and will continue to do so”. ECA are well aware of the impacts the current compliance regime is having on industry and if they were in any doubt, after Simon McRae’s (National Manager, ECA) attendance at the Industry Roundtable on 27th February 2013, he would have clearly heard the wide spread impacts detailed by those present representing the textile and clothing manufacturing sector. This should have been disclosed in the application. As should have been listed the broader industry consultation that did or rather did not take place.

Overall I am concerned that my views and that of the TCF industry have not been properly canvassed in relation to the Homeworkers Code of Practice. As the local industry has contracted so has the attention paid to the TCF industry voice particularly the large number of Small to Medium Enterprises (SMEs), like me, who have difficulty understanding and interpreting complex legislation? I simply cannot afford to pay for independent legal advice to understand the full implications of the legislation (even the Department of Employment and Workplace officials at the Senate Hearing February 2012 into the FW TCF Amendment Bill 2011 had difficulty). My clients by providing me work left themselves open to huge fines of up to \$33,000 per breach from the Fair Work Commission. I seriously wonder why they should afford that risk.

With these examples of the impacts on my businesses competitiveness and the restraints placed on the way in which I can operate, I do not support the interim extension or authorisation by the ACCC of the HWCP. No substantial (statistical) evidence is provided that there continues to be exploitation to the degree that requires an ACCC exemption under the grounds of public benefit that cannot be addressed by the current TCF legislative regime;

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NES, TCFAI Award, FW Act, Enterprise Agreement and any other legal legitimate employment arrangement); or indeed whether the HWCP is an effective way of improving this situation.

It is my considered opinion that the reason the HWCC are seeking to increase the scope of the HWCP as per the attached revised TCF Code of Practice is that the number of homeworkers in our sector has dwindled to the point that there is little need for the current HWCP, as it stands, and that the TCFUA need to broaden their scope to maintain their current federal government funding.

I want to work from home and not have my clients threatened by such legislation. The legislation should be more about fair work not where you work.

Yours sincerely,

William Stanley

Business Owner