

Blanch, Belinda

From: Jenny Bannister
Sent: Sunday, 3 March 2013 6:15 PM
To: Adjudication
Subject: Homeworker code authorisation A91252-A91255

3 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 (the 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 business that operated for 35 years in the fashion industry I would like to advise that the trade sanctions inherent in the Homeworkers Code of Practice (the code), and the pressure put on my business by the TCFUA (and their associates at ECA) to adopt the code, were contributing factors in deciding to close my business in 2009.

In the lead up to my closure I came under pressure from the TCFUA and the Board of Registration for supposed breaches of the clothing award. With the help of the Workplace Ombudsman, Christopher Wisdom, I was able to implement all necessary changes to my documentation to become award compliant. After speaking to a number of my contractors, the Ombudsman also gave me written advice that the relationship I had with them was a contractual relationship and not one of employment (subsequent amendments to the regulatory framework, if applied to my then situation, might well have produced a different outcome). Despite this my registration was withdrawn for reasons that have never been adequately explained to me.

In the lead up to my closure I also had been approached by the ECA to adopt the code. Given the substantial influence of the TCFUA on the conduct of the ECA, it has not been uncommon for businesses like mine to have paid the membership fees and sought certification as a form of insurance to help keep the union off our backs, even if already compliant with the award. Given the extra cost and rigmarole involved, and that I was award compliant, I declined. But it seems, I may well have paid a price (deregistration by the union dominated Board of Registration).

The reissue of the the authorisation needed to underpin the code requires that the public benefit outweighs any possible public detriment, that is there must be a net public benefit, broadly defined. I would contend that this has not been adequately demonstrated and tender the closure of my business, partly brought on by pressure to adopt the code, as evidence of a public detriment. At the time I employed four people in my workroom and used the services of anywhere between 6 and 14 contractors, depending on the demand for my clothes. My closure therefore had a non trivial impact on employment and the maintenance of skills in the industry.

I understand also that the 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 if any employees.

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 had difficulty understanding and interpreting complex legislation. We simply cannot afford to pay for independent legal advice to understand the full implications of the legislation. And yet in doing so firms like mine trading today leave themselves open to huge fines of up to \$33,000 per breach from the Fair Work Commission. I seriously wonder how any small business can afford that risk or being part of this industry anymore, and am relieved that I no longer have to contend with the regulatory morass that is drowning the industry.

With these examples of the impacts on my businesses competitiveness and the restraints placed on the way in which I was able to operate, I do not support the interim extension or authorisation by the ACCC of the Code. 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 (NES, The Award, FW Act, Enterprise Agreement and any other legal legitimate employment arrangement); or indeed whether the Code is an effective way of improving this situation.

Yours sincerely,

Jenny Bannister
Director
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PS A more formal version of this letter will follow with my masthead and ABN on it.

Sent from my iPad