

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
Level 35 | 360 Elizabeth Street
Melbourne Victoria 3000

17 May 2013

Dear Richard,

Homeworker Code Committee response to ACCC issues

Please see below the response of the Homeworker Code Committee (HWCC) regarding correspondence from ACCC received on 10 May 2013 regarding the Homeworker Code of Practice (Code).

Q 1: Potential inconsistencies between TCF Award and the Code

- We concur with the suggestion of ACCC (i.e. that the obligations under the Textile, Clothing, Footwear & Allied Industries Award (TCF Award) 2010 will prevail over the obligations of the Code to the extent of any inconsistency).
- We are happy to amend the Code to reflect this.
- Could the ACCC clarify if it would be sufficient to insert the above clause as a general rule under Clause 9 – Obligations of accredited manufacturers?

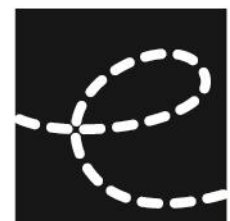
Q 2: Inclusion of term 'work agreement' in the Code

- The ACCC correspondence makes reference to provisions in 'Schedule D' of the TCF Award. This was in an old version of the TCF Award and it was varied to 'Schedule F' with effect from 1 Jan 2010. The most recent version of the TCF Award 2010 is (21 December 2012) [PR532628].
- The ACCC is correct in that the term 'work agreement' in the Code (Cl. 4.19) is analogous to the term 'Written Agreement' in clause F.3.2;
- One option is that clause 4.19 could be amended to read (changes underlined):

4.19 "Work Agreement" or "Written Agreement" means a 'written agreement' as defined under the TCF Award (outworker provisions) applicable to home workers and all contractors (regardless of whether the contractor employs home workers).

Q 3: Extended liability of accredited businesses to unpaid home workers

- The ACCC again refers to Schedule D of the TCF Award. Should be Schedule F of the current TCF Award, in particular, F.7 (Recovery of Unpaid Remuneration);
- There is also a (different) recovery mechanism under the Fair Work Act 2009 relating to unpaid monies owed to outworkers;
- Clause 9.4(d) of Part 1 is intended to supplement the mechanism in clause F.7 of the TCF Award, and is a long standing reflection of the commitment accredited companies make in respect to home workers.



ethical
clothing
AUSTRALIA

T : (03) 9419 0222
F : (03) 8415 0818

Postal Address :
PO Box 2087,
Fitzroy, VIC 3065

Street Address :
Suite A, Level 1,
205 Johnston St,
Fitzroy, VIC 3065

Q 4(a): Ethical Clothing Trades Council

- The Ethical Clothing Trades Council no longer exists so should be removed from Part 2 of the Code;
- Leave reference to agreed mediator (but amend to include 'independent')

(b): Dispute resolution mechanism

The HWCC does not believe that an additional dispute resolution process is necessary for the effective operation of Part (Manufacturers).

The HWCP is a voluntary code, which amongst other objectives, aims to assist businesses (via the process of accreditation) to become compliant with minimum award and legal requirements operating in the TCF industry.

The current Part 1 (Manufacturers) contains provisions which clearly outline the roles and responsibilities of the relevant parties, including ECA, the TCFUA, accredited companies and those seeking accreditation. For example, **sub-clauses 8.1 Accreditation & 8.2 Re-accreditation** set out the process involved in the process of accreditation and re-accreditation. This includes the key obligations required to become accredited and re-accredited to maintain your accreditation status.

Sub-clause 8.3 De-accreditation sets out the steps involved in respect to de-accreditation, in circumstances where the accredited business or its supply chain either becomes

- non-compliant with the requirements of this Agreement or
- if the manufacturing circumstances of the accredited business changes.

Under De-accreditation the Code clearly set out timelines, notice and processes provided when an accredited business is non-compliant so that it is clear what is required of the respective parties. There is an opportunity for an accredited company to provide material to the HWCC which satisfies the Committee that the accredited manufacturer has complied with the Code Agreement.

In practice accredited businesses and applicants are often given additional time, depending on their circumstances (e.g. moved to new premises), along with assistance to enable them to comply with the Code.

There has been a vocal minority of applicants and sometimes accredited businesses who have manipulated the accreditation process and refuse to co-operate, which has diverted our limited resources away from helping those businesses who genuinely want to be accredited. Under the direction of the HWCC, as part of the Code Review, these processes have been strengthened in the current Part 1 to ensure that the Code operates efficiently and we are able to make best use of our limited resources.

In addition **clause 9 – Obligations of accredited manufacturers** outlines in some detail the obligations of accredited manufacturers including in relation to in-house workers, their supply chain and home workers.

5. Annual reports

As requested, see attached separately the past five annual reports which have made to the Department of Education, Employment and Workplace Relations.

If you have any queries regarding the above please contact us

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a wavy line extending to the right.

Simon McRae
National Manager
Ethical Clothing Australia