

**Australian Government****Department of Education, Employment and Workplace Relations**

Our Ref 13872

Mr M Coats  
Manufacturing And Site Improvement Officer  
Accent Garage Doors Pty Ltd  
51 Perivale Street  
DARRA QLD 4076

Dear Mr Coats

I refer to your submission of 3 August 2009 in which you requested the Department's advice about whether the industrial arrangements, as noted in your request, are compliant with the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines, reissued June 2006 (the Guidelines). A new set of Guidelines comes into effect on 1 August 2009 which apply to all projects that were the subject of an expression of interest or tender let for the first time on or after 1 August 2009.

The *Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (T&C Act) now govern the operation of your industrial instruments. The T&C Act preserves many of the current arrangements for agreements made before 1 July 2009, including the provisions concerning prohibited content. The T&C Act also preserves the current arrangements for federal awards (including the rules about what is allowable), pending the replacement of these awards by modern awards from 1 January 2010.

**Your Industrial Instruments as detailed below are Code Compliant.**

Please refer to the individual assessment of each instrument below.

Please note that some agreements contain terms and conditions which are prohibited content. Similarly, some federal awards may contain terms and conditions which are now non-allowable matters. Clauses containing prohibited content or non-allowable matters are void and unenforceable. It is important you note the on-site application of clauses containing prohibited content is not permitted under the Fair Work Legislation and is non-compliant with the Code and Guidelines. I have not examined your industrial instruments for all void and unenforceable terms. You may therefore wish to seek legal advice, contact your industry association, or to ensure your agreement does not contain prohibited content, the Fair Work Infoline on 13 13 94 or their website at [www.fairwork.gov.au](http://www.fairwork.gov.au).

Although it is important agreements and awards comply with the Code and Guidelines, it is equally important the practical, on-site application of any award or agreement also be compliant with the Code and Guidelines. The Office of the Australian Building and Construction Commissioner monitors behaviour on sites to which the Code and Guidelines apply, and investigates any alleged breaches of them.

**The Employment Agreement**

I have examined the Employment Agreement and consider it to be compliant with the requirements of the Code and Guidelines.

I would advise you that the practical on-site application of the agreement should also be compliant with the Code and Guidelines.

**The Metal, Engineering And Associated Industries Award 1998**

I have examined the Metal, Engineering And Associated Industries Award 1998 as at 27 April 2007 and consider it to be compliant with the requirements of the Code and Guidelines as, in my view, clauses of the Award which would otherwise not be compliant with the Code and Guidelines contain non-allowable matter and are therefore unenforceable and have ceased to have effect. A detailed assessment is set out at **Attachment A**.

I would advise you that the practical on-site application of the award should also be compliant with the Code and Guidelines.

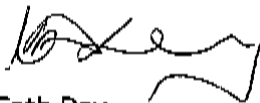
Please note this assessment may not apply should the workplace arrangements vary from those set out above.

As mentioned, this assessment relates to the Guidelines, reissued June 2006. You may obtain a copy of the Guidelines from [www.deewr.gov.au/building](http://www.deewr.gov.au/building).

For general information regarding the implications of the workplace reforms for your industrial arrangements you can contact the Fair Work Infoline on 13 13 94.

If you have any further questions please feel free to contact the National Code Assessment Hotline on 1300 731 293 or email: ([building@deewr.gov.au](mailto:building@deewr.gov.au)).

Yours sincerely



Cath Day  
Director  
Building Industry Branch  
Workplace Relations Implementation Group

5 August 2009

## Attachment A

<b>Business Name: Accent Garage Doors Pty Ltd</b>	
<b>Award Name:</b>	Metal, Engineering And Associated Industries Award 1998

**Non-allowable Matters**

A number of matters dealt with in the award are, in fact, not allowable and are not enforceable as part of the award. These include: conversion from casual employment to another type of employment; restrictions on the range and duration of training arrangements, restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement, union picnic days and trade union training leave.

Prior to the commencement of the reforms the following clauses were non-compliant with the Code and Guidelines:

<b>Award clauses that are non-compliant with the Code and Guidelines which have ceased to have effect as they may contain non-allowable matter</b>				
<b>Clause Number &amp; Title</b>		<b>Issue</b>	<b>Guidelines Number &amp; Title</b>	
4.2.3 (B) (I) To (B) (Vi)	Casual Employment	Industrial instruments must not contain provisions that restrict an employer's short or long term labour requirements	8.10.4.4	Workplace reform - Restriction on labour

In my view, elements of these clauses contain matter which are most likely not allowable and are of no effect and unenforceable. As noted above, the rules about content of awards have been preserved by the T&C Act.

To the extent that the relevant elements of those clauses are unenforceable because they are not allowable, those clauses of the award are compliant with the requirements of the Code and Guidelines. It should be noted that it would be non-compliant with Code and Guidelines to apply the non-allowable content in these clauses on-site.

While these comments represent the views of the Department, it is not appropriate for the Department to provide formal legal advice about the operation or status of terms of the award. If you require legal advice, you might like to consider consulting an independent legal adviser.