



PARLIAMENT OF NEW SOUTH WALES

MODERN SLAVERY COMMITTEE

Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)



Report 2

August 2024

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Modern Slavery Committee

Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

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Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

"August 2024"

Chair: Dr Joe McGirr MP



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Terms of reference

1. That the Modern Slavery Committee inquire into and report on the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) (the Scheme) and its potential to mitigate the risks of modern slavery in the clothing manufacturing industry in New South Wales, and in particular:
 - (a) the characteristics of the textiles, clothing and footwear (TCF) manufacturing industry in New South Wales, in particular:
 - (i) the size of the TCF industry including numbers of outworkers
 - (ii) the number of workers in the TCF industry and their employment status
 - (iii) the demographic profile of workers in the TCF industry, including their gender, migration status, and the language spoken at home and in their workplace
 - (iv) the lived experience of workers in the TCF industry
 - (v) the nature and complexity of supply chains in the TCF industry
 - (vi) the risks of modern slavery present in the TCF industry
 - (vii) the extent of participation by different parts of the TCF industry in alternative voluntary codes
 - (viii) the nature and pattern of reporting of exploitation, abuse or modern slavery in the TCF industry
 - (b) the current application of the Scheme in New South Wales
 - (c) the conformance of the Scheme with Australia's commitment to relevant international standards and frameworks such as the United Nations Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Business Conduct
 - (d) if changes are required to the current scheme to better mitigate the risks of modern slavery in the TCF industry in New South Wales
 - (e) the enforceability of the Scheme in New South Wales, including methods for promoting compliance, such as incorporation by reference through exercise of the Anti-slavery Commissioner's power under section 27 of the *Modern Slavery Act 2018* (NSW)
 - (f) other industries that are vulnerable to the risks of modern slavery due to their supply chain characteristics, such as primary industries and construction, and the characteristics of those industries in New South Wales
 - (g) the merits of extending the Scheme to other industries that are vulnerable due to their supply chain characteristics to mitigate the risks of modern slavery
 - (h) any other related matters.

The terms of reference for the inquiry were self-referred by the committee on 24 August 2023.¹

¹ Minutes, NSW Legislative Council, 12 September 2023, pp 443-444.

Committee details

Committee members

Dr Joe McGirr MP	Independent	<i>Chair</i>
Ms Jenny Leong MP	The Greens	<i>Deputy Chair</i>
Mrs Tina Ayyad MP	Liberal Party	
Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	
Hon Greg Donnelly MLC	Australian Labor Party	
Hon Dr Sarah Kaine MLC	Australian Labor Party	
Hon Aileen MacDonald MLC	Liberal Party	
Ms Lynda Voltz MP*	Australian Labor Party	

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* Ms Lynda Voltz MP replaced Ms Kylie Wilkinson MP as a substantive member of the committee from 6 June 2024.

Secretariat

Lauren Evans, Principal Council Officer
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Chair's foreword

I am pleased to present the committee's report into the Ethical Clothing Extended Responsibilities Scheme 2005 (the Scheme). This inquiry marks a significant milestone for the committee as it is the first to scrutinise existing regulation specifically for its ongoing effectiveness in preventing and exposing exploitation and modern slavery.

We found that outworkers in the textile, clothing and footwear industry are at a significant risk of workplace exploitation and modern slavery. This is a result of a combination of factors - the complex and often opaque nature of textile, clothing and footwear supply chains; the demographic profile of its workers; and the environment in which this work occurs.

With this in mind, the committee assessed the Scheme's potential to mitigate exploitation and modern slavery in the industry going forward. The committee heard that despite the Scheme falling into disuse in recent decades, it remains a valid legislative instrument. Given its validity as a state instrument and ability to serve as powerful tool in the broader efforts to combat exploitation and modern slavery in the industry, the committee has recommended that the NSW Government revive the Scheme.

The Scheme at the time of its establishment had various benefits that remain relevant in the current regulatory landscape. For example, the Scheme is novel, capturing retailers at the top of complex supply chains with significant economic power and control over the work being performed. The Scheme also works to incentivise participation in the voluntary code of practice – Ethical Clothing Australia's Code of Practice incorporating Homeworkers – which has the benefit of yearly audits.

The Scheme, as it is currently designed, operates to complement and strengthen industrial relations and more recent modern slavery regulation where many textile, clothing and footwear businesses are not captured by the reporting obligations imposed on larger corporations. Therefore, its revival is essential to not only safeguard and empower workers but also enhance regulatory oversight within the industry.

Given the time that has passed since the Scheme's introduction, it is understandable that amendments may be necessary. The committee heard that various amendments are needed to accurately reflect current industrial awards, address the referral of the state's powers to the Commonwealth and align the Scheme with Australia's commitment to various international standards and guidelines that work to identify and manage forced labour and modern slavery risks.

These amendments should be considered by the NSW Government and other relevant stakeholders. In particular, the views of retailers, which we have not heard throughout this inquiry, should be considered before making changes to the Scheme. Consideration must also be given to the role of the Ethical Clothing Trades Council in amending the Scheme and ensuring its operation.

The committee has made other recommendations to support the ongoing operation of the Scheme. These include the establishment of a supply chain database; consideration of funding and resourcing for stakeholders relevant to the operation of the Scheme and Ethical Clothing Australia's Code of Practice incorporating Homeworkers; establishment of culturally and linguistically sensitive programs for outworkers to improve understanding of workplace rights; and assessment of the Scheme's potential to be expanded into other industries with similar risks of modern slavery.

On behalf of the committee, I would like to thank everyone who contributed to this inquiry. I also thank my fellow committee members for the way in which they have engaged with the issues throughout the inquiry. In particular, I would like to thank Dr Sarah Kaine MLC for bringing this issue to the committee's attention.

A handwritten signature in black ink, appearing to read 'Joe McGirr', with a large, stylized flourish extending to the right.

Dr Joe McGirr MP
Committee Chair

Findings

- Finding 1** 18
That outworkers in the textile, clothing and footwear industry are at a significant risk of workplace exploitation and modern slavery.
- Finding 2** 48
That there is ongoing utility in the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) given the significant risk of exploitation and modern slavery that outworkers in the textile, clothing and footwear industry face and its potential to mitigate these risks.
- Finding 3** 51
That unions and workers with direct experience in the textile, clothing and footwear industry, relevant language skills and cultural awareness are best placed to undertake outreach with outworkers.

Recommendations

- Recommendation 1** **48**
That the NSW Government revive the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).
- Recommendation 2** **50**
That the NSW Government, in reviving the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), consider the following issues:
- the evidence, findings and recommendations made in this inquiry
 - the ongoing role of the Ethical Clothing Trades Council and the need for its reconstitution to consider amendments
 - views of retailers within the textile, clothing and footwear industry
 - updates to the Scheme that accurately reflect the views of union and government department stakeholders, industrial awards and instruments and the voluntary code
 - amendments to reflect the operation of the Scheme following referral of the state's powers to the Commonwealth
 - incorporation of anti-slavery objectives and obligations, in particular, those proposed by the NSW Anti-slavery Commissioner in his amendments to the Scheme and the *Industrial Relations (Ethical Clothing Trades) Act 2001*.
- Recommendation 3** **50**
That the NSW Government appoint NSW Industrial Relations as the agency responsible for ensuring the Scheme remains operational.
- Recommendation 4** **51**
That the NSW Government, in reviving the Scheme, develop and implement a supply chain database that is shared with relevant stakeholders, including the relevant unions and the NSW Anti-slavery Commissioner.
- Recommendation 5** **52**
That the NSW Government assess the funding and resourcing requirements of relevant stakeholders to ensure industry compliance with the Ethical Clothing Extended Responsibilities Scheme (NSW). The assessment should include consideration of funding and resourcing for gathering, mapping and sharing supply chain data; ensuring compliance with the Scheme; promoting and aiding compliance with other relevant awards and instruments; and any anti-slavery objectives in the Scheme.
- Recommendation 6** **52**
That the NSW Government:
- consider funding Ethical Clothing Australia's accreditation program to drive participation in the initiative by New South Wales businesses
 - reassess its funding of Ethical Clothing Australia's accreditation program following revival of the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).

Recommendation 7**53**

That the NSW Government establish culturally and linguistically sensitive programs for outworkers to improve their English and literacy skills, financial knowledge, and understanding of their workplace rights and entitlements.

Recommendation 8**53**

That the NSW Government, following the Scheme's revival, assess its potential to be expanded into other industries with similar characteristics and risks of modern slavery. The assessment should focus on the implications of an industry-specific approach like the Scheme, compared to a more generalised approach.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 24 August 2023.

The committee received seven submissions.

The committee held two public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 **Background**

This chapter sets the scene by providing context as to why the Modern Slavery Committee established the inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), including the risks of modern slavery in the textile, clothing and footwear industry and the nature of reporting these risks. It then details the characteristics of the industry that place its workers at risk of modern slavery. Next, it outlines the key developments that led to the establishment of the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) (the Scheme), its objectives, scope, purpose and application. Lastly, the chapter provides a summary of the regulatory framework that the Scheme sits within.

Context surrounding the establishment of the inquiry

- 1.1 This inquiry was established on 24 August 2023 to inquire into and report on the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) (the Scheme) and its potential to mitigate risks of modern slavery in the clothing manufacturing industry, the broader textile, clothing and footwear (TCF) industry and other industries with similar supply chain characteristics and risks of modern slavery in New South Wales.²
- 1.2 The Scheme was established in 2005 to improve the visibility of outworkers in the clothing manufacturing industry and impose obligations across the TCF supply chain to ensure outworkers receive their workplace entitlements.³ Broadly, "outworkers" refer to individuals who perform work for others at home.⁴
- 1.3 Since the establishment of the Scheme, there have been various developments impacting the regulation of the textile, clothing and footwear industry in New South Wales and across Australia. This includes the introduction of modern slavery legislation and Australia's commitment to various international standards and guidelines that focus on due diligence and reporting mechanisms. In this context, this committee sought to examine the ongoing utility of the Scheme (explored in Chapter 2).
- 1.4 The committee was particularly interested in inquiring into the Scheme due to the significant risks of exploitation and modern slavery in the TCF industry, and a possible pattern of underreporting instances of modern slavery.

Risks of modern slavery in the textile, clothing and footwear industry

- 1.5 Modern slavery is an umbrella term encompassing exploitative practices such as forced labour, slavery, servitude, debt bondage, human trafficking, deceptive recruiting, and the worst forms

² See Joint Modern Slavery Committee, Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), Terms of reference, p 1.

³ Submission 3, Office of the NSW Anti-Slavery Commissioner, p 6 and Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, 27 June 2024, p 3. See also Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), cl 3.

⁴ Submission 7, Igor Nossar, John Owen and Luigi Amoresano, p 1.

of child labour and forced marriage.⁵ Stakeholders noted that modern slavery occurs on a spectrum of exploitation, with conditions changing or worsening over time and leading to slavery.⁶

1.6 According to the Office of the NSW Anti-slavery Commissioner, workers in the textile, clothing and footwear (TCF) industry, especially outworkers, face 'significant risks of modern slavery offences' as detailed in Schedule 2 of the *Modern Slavery Act 2018 (NSW)*, namely forced labour and in extreme cases, servitude. Workers' situations in the industry exhibit several of the indicators of forced labour as identified by the International Labour Organisation, including abuse of vulnerability, deception, isolation, intimidation and threats, withholding of wages and excessive overtime.⁷

1.7 The modern slavery risks that these workers face emerge from a combination of the environment in which they work, the prevailing business model in the sector, and the traits of workers that make them more vulnerable to exploitation.⁸ These contributing factors are summarised below, noting that the characteristics of the TCF industry will be discussed in more detail at paragraphs 1.12 to 1.21.

- TCF workers from culturally and linguistically diverse backgrounds are less likely to understand their workplace rights and entitlements and are more likely to be restricted by language and literacy barriers.
- Women, particularly in the clothing manufacturing sub-sector, face gender discrimination and reduced employment opportunities upon re-entering the workforce.
- Age and educational limitations further constrain TCF workers' mobility and ability to leave exploitative conditions.
- Outworkers, who are hidden at the end of the supply chain are triply invisible – they are spatially invisible because they often work in private spaces; politically, because their isolation prevents collective action and voice; and economically, because their work is not adequately captured as employment.
- The prevailing business model in the TCF sector, being that small and midsize enterprises compete on low labour costs, exerts downward pressure on vulnerable workers, like outworkers.
- The industry's reliance on casual workers, frequency of corporate insolvency, and the volatility of work available all contribute to unstable working conditions, loss of entitlements and lack of financial security among workers.⁹

⁵ Submission 3, Office of the NSW Anti-Slavery Commissioner, p 6 and Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, pp 11-12.

⁶ Submission 3, Office of the NSW Anti-Slavery Commissioner, p 6 and Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, pp 11-12.

⁷ Submission 3, Office of the NSW Anti-Slavery Commissioner, p 22. See also *Modern Slavery Act 2018 (NSW)*, Schedule 2.

⁸ Submission 3, Office of the NSW Anti-Slavery Commissioner, p 22.

⁹ Submission 3, Office of the NSW Anti-Slavery Commissioner, pp 22-24.

Nature of reporting abuse, exploitation and modern slavery

- 1.8** Whilst there are significant risks of modern slavery and workplace exploitation in the TCF industry, research conducted by the Office of the NSW Anti-slavery Commissioner did not find any pattern of reports of modern slavery offences. It was noted that this is 'not surprising' given that between 80 and 98 per cent of cases of modern slavery go unreported in New South Wales.¹⁰
- 1.9** The Office of the NSW Anti-Slavery Commissioner suggested that there is a 'possibility of a significant pattern of underreporting of modern slavery in the industry'. Below is a list of key drivers of this pattern.
- It is common for migrant workers to not know their workplace entitlements, and also common for victims not to characterise their treatment as exploitation.
 - Workers may be threatened by their superiors or colleagues that they will be penalised with fewer jobs, hours or told that the factory will close and all workers will lose their jobs if they report.
 - Workers perceive themselves as having limited employment options outside of their current employer or industry more broadly.
 - Workers are unwilling to raise concerns as it may lead to social stigma and trauma in their communities. There may also be reputational implications for their families.
 - Workers who are not familiar with the Australian reporting system may not trust the system and fear complaints will be traced back to them, increasing risks of and from retaliation.
 - Outworkers have limited options for voicing their concerns.¹¹
- 1.10** The Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division) (CFMEU – Manufacturing Division) also noted outworkers are often reluctant to report instances of exploitation or modern slavery because their employer or sub-contractor may be their visa sponsor in Australia, or the employer may own the house where the outworker lives.¹²
- 1.11** Further, the Office of the NSW Anti-slavery Commissioner observed that the absence of reports or findings of modern slavery, including forced labour, may result from a limited understanding and training of frontline staff on identifying modern slavery offences – as opposed to wage theft and violations of industrial awards. To support this view, the Office of the NSW Anti-slavery Commissioner referred to a 2019 Fair Work Ombudsman (FWO) report. The report found that 48 per cent of the 178 TCF businesses investigated were in breach of their obligations. However, the FWO does not appear to have assessed these cases for the presence of forced labour or other forms of modern slavery, nor did it refer them to relevant authorities with expertise in this area.¹³

¹⁰ Submission 3, Office of the NSW Anti-slavery Commissioner, p 28.

¹¹ Submission 3, Office of the NSW Anti-slavery Commissioner, pp 28-29.

¹² Submission 2, Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division) (CFMEU – Manufacturing Division), p 6.

¹³ Submission 3, Office of the NSW Anti-slavery Commissioner, p 28.

Characteristics of the textile, clothing and footwear industry

1.12 As noted above, workers in the TCF industry, particularly outworkers, are at a significant risk of modern slavery due to a combination of factors. This includes the demographic profile of its workers, the environment in which they work and the nature and complexity of supply chains. The following section outlines these characteristics.

Demographic profile of workers and their work conditions

1.13 Many inquiry stakeholders acknowledged that there is limited reliable data available for the TCF industry in New South Wales and more broadly, Australia. The CFMEU – Manufacturing Division noted that traditional data sets used in the Australian Bureau of Statistics Census mischaracterise outworkers as not being employees.¹⁴ The Office of the NSW Anti-slavery Commissioner also highlighted that as outworkers often operate 'off the books' this data may significantly understate employment levels.¹⁵

1.14 Noting the limitations mentioned above, several stakeholders made the following observations about the size and characteristics of the TCF industry in New South Wales and Australia:

- the majority of employees in the TCF industry are women
- the TCF industry is ethnically and linguistically diverse, with a significant percentage of workers of Vietnamese, Chinese, Timorese and Korean origin, and more recently from various African nations
- a language other than English is spoken at home by a significant number of TCF industry employees
- there are low levels of year 12 school education attainment amongst employees in the TCF industry
- the TCF industry workforce is ageing, with nearly half of the workforce over the age of 50
- the great majority of employees in the TCF industry (who work for an employing business) work for small and medium businesses
- there is a significant number of part-time and casual employees in the TCF industry
- the domestic TCF industry in Australia is a relatively small component of the Australian manufacturing industry
- New South Wales has the second largest TCF industry in size and scale after Victoria.¹⁶

1.15 With regard to working conditions, stakeholders shared that TCF workers, and more specifically outworkers, endure precarious work, receive low wages and are often improperly paid. It is

¹⁴ Submission 2, Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division), p 3.

¹⁵ Submission 3, Office of the NSW Anti-slavery Commissioner, p 13.

¹⁶ See for example: Submission 2, CFMEU - Manufacturing Division, p 4; Submission 5, Associate Professor Martijn Boersma and Associate Professor Chris F. Wright, p 1; Submission 3, Office of the NSW Anti-slavery Commissioner, pp 13-17.

common to be paid per piece of clothing sewed rather than per hour. TCF workers work significant unpaid overtime, in cramped and sometimes poorly ventilated conditions.¹⁷ According to the Office of the NSW Anti-slavery Commissioner, outworkers suffer three times as many injuries as factory workers.¹⁸

Nature and complexity of supply chains in the TCF industry

- 1.16** Traditionally, Australian TCF production involved principal clothing suppliers distributing work to onsite workforces. However, over the last 40 years the TCF industry in Australia has undergone significant changes since the removal of import tariffs. The Office of the NSW Anti-slavery Commissioner explained that as a result of competition from overseas suppliers with lower labour costs, Australian retailers have increasingly relied on a complex pyramid of sub-contracting. This pyramid involves retailers contracting with primary manufacturers and fashion houses, who then subcontract to numerous manufacturers, who then pass the work to low-cost manufacturers abroad and/or outworkers.¹⁹
- 1.17** The diverse set of skills required to complete orders also means that part of the work will be sub-contracted to different manufacturers and/or outworkers. For example, two t-shirts within the same purchase order may have partially different supply chains where, one requires an embroidered design and the other a screen-printed design.²⁰
- 1.18** A supply chain mapping example prepared by Ethical Clothing Australia demonstrates this complexity:

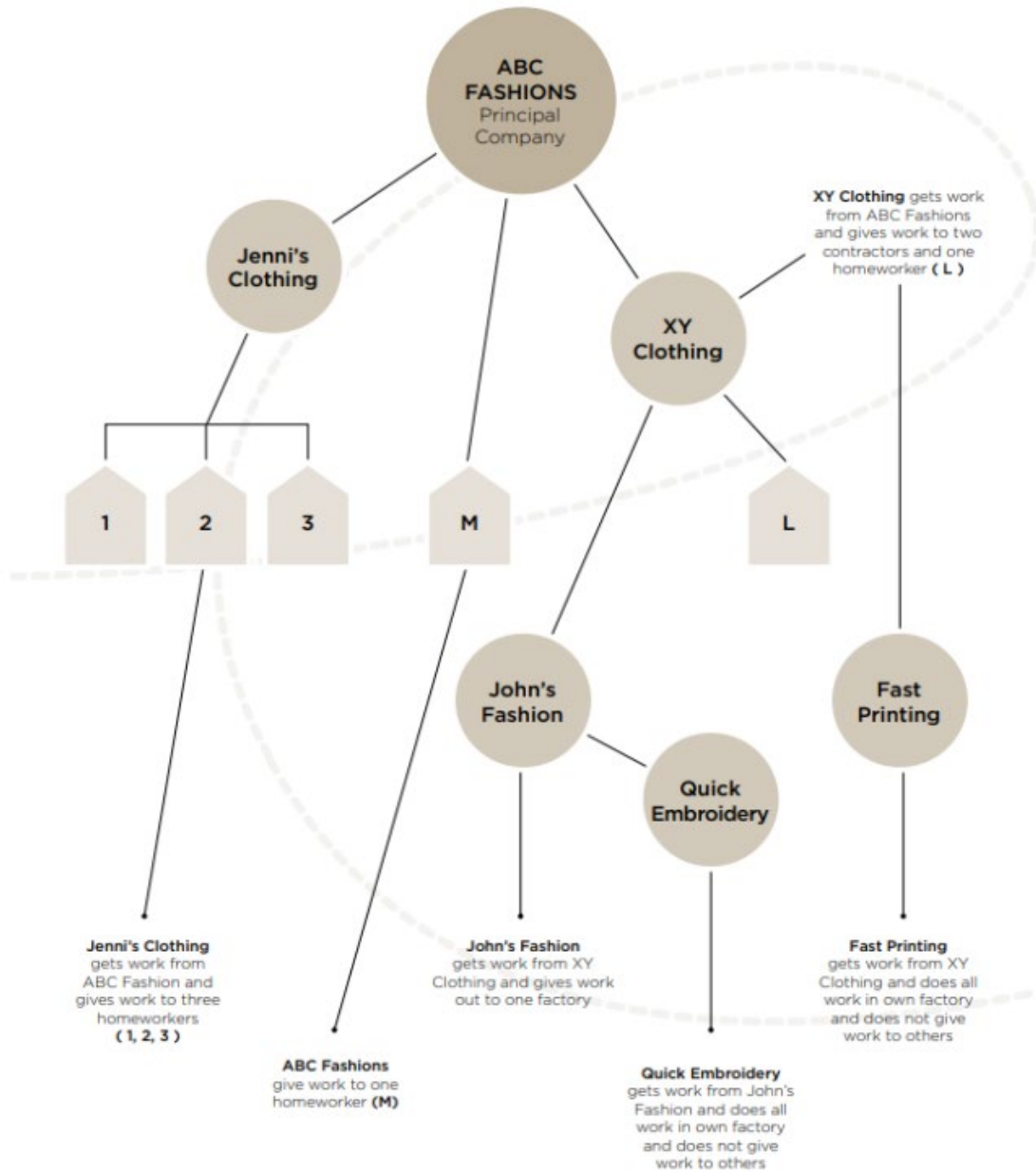
¹⁷ Submission 3, Office of the NSW Anti-Slavery Commissioner, p 6; Submission 6, Ethical Clothing Australia, p 8 and Submission 2, Construction, Forestry and Maritime Employees Union – Manufacturing Division, p 5.

¹⁸ Nossar, I., Johnstone, R., Macklin, A., and Rawling, M. (2015) 57(4), Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains, *Journal of Industrial Relations*, pp 585-603 as referenced in Submission 3, Office of the NSW Anti-Slavery Commissioner, p 6.

¹⁹ Submission 3, Office of the NSW Anti-Slavery Commissioner, p 6.

²⁰ Submission 3, Office of the NSW Anti-Slavery Commissioner, p 20.

Table 1 Supply chain mapping example



Source: Submission 3, Ethical Clothing Australia, p 9.

1.19 Dr Martijn Boersma and Dr Chris F. Wright, Associate Professors at the University of Sydney noted that this business structure in the TCF industry is often described as 'fissured work'. They explained at the top of this structure is a few lead firms (retailers) that hold significant commercial power and are able to use their dominant position to negotiate advantageous terms, such as pricing, quality assurance, and swift production times.²¹

²¹ Submission 5, Associate Professor Martijn Boersma and Associate Professor Chris F. Wright, pp 2 and 5 and Evidence, Dr Chris Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 27 June 2024, p 11.

- 1.20** Dr Boersma and Dr Wright stated that this in turn, allows for high profit margins by producing quality garments quickly at the cost of outworkers, who are legally distanced enough from the retailers to limit their liability for ensuring outworkers receive their workplace entitlements and conditions. Essentially, as the business or entity that employs the outworker is not the one who controls how the work is performed, it is harder for legally compliant working conditions to be upheld.²²
- 1.21** According to the Office of the NSW Anti-slavery Commissioner, retailers may not exert this leverage routinely, often because they have limited visibility over the supply chain. It was also noted that whilst the TCF industry in Australia has been in decline, there is anticipation of a 'resurgence of re-shoring' production back to Australia as demand grows for simplified supply chains and greater control over labour conditions.²³

Overview of the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

- 1.22** The following section details the key developments that led to the establishment of the Scheme, its objectives, scope, purpose and application following its establishment.

Key developments in the Scheme's establishment

- 1.23** In the late 1980's, changes were made to the federal clothing award following union and community campaigns to establish legal mechanisms for minimum hours and rates of pay, safe working conditions and compensation entitlements for outworkers.²⁴ At the time, TCF working conditions were predominately regulated by federal and state industry-specific award provisions.²⁵
- 1.24** The change in the federal award required manufacturers to provide supplier and work location lists to the Textile, Clothing, Footwear Union of Australia (TCFUA) (now known as the CFMEU – Manufacturing Division)²⁶ and government agencies bi-annually. This enabled oversight of the sub-contracting process from the principal supplier down to the outworker. In 1995, the federal award was supplemented to allow regulatory agencies access to contract pricing information. These changes were incorporated into state clothing awards.²⁷
- 1.25** Mr Igor Nossar and Mr John Owen, who were both central to the development of the Scheme, and research officer Mr Luigi Amoresano, detailed the issues that limited the effectiveness of

²² Evidence, Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 11; Submission 5, Associate Professor Martijn Boersma and Associate Professor Chris F. Wright, p 2.

²³ Submission 3, Office of the NSW Anti-slavery Commissioner, p 20.

²⁴ Submission 7, Igor Nossar, John Owen and Luigi Amoresano, p 1.

²⁵ Submission 7, Igor Nossar, John Owen and Luigi Amoresano, p 1. See also Submission 3, Office of the NSW Anti-slavery Commissioner, pp 10-11.

²⁶ In March 2018, the Textile, Clothing and Footwear Union of Australia (TCFUA) amalgamated with the Construction, Forestry and Maritime Employees Union (CFMEU) as part of its newly formed Manufacturing Division (Submission 2, CFMEU (Manufacturing Division), p 1).

²⁷ Submission 7, Igor Nossar, John Owen, Luigi Amoresano, p 1. Submission 3, Office of the NSW Anti-slavery Commissioner, p 11.

the abovementioned award provisions. Mr Nossar, Mr Owen and Mr Amoresano argued for example, that issues of industrial legal jurisdiction enabled major retailers' responsibilities to 'escape the scope' of the new award provisions and insufficient resourcing for enforcement ensured that compliance of the award was 'sporadic at best'.²⁸

1.26 Subsequently, further pressure from unions and community organisations led to the adoption of a voluntary code of practice and accreditation program, the Homeworkers Code of Practice (HWCP), imploring retailers and manufacturers to ensure outworkers receive their workplace entitlements.²⁹

1.27 According to the Office of the NSW Anti-slavery Commissioner, the HWCP went 'a step further than the award' by providing for a manufacturer accreditation program. However, the Commissioner's Office noted that the HWCP had 'limited accountability mechanisms for voluntary participants who violated the code or defected from it', and it focused on suppliers as opposed to retailers.³⁰

1.28 During this time, Target, a major retailer in Australia, adopted its own voluntary code akin to the federal award. However, this voluntary code also included disciplinary action for suppliers who failed to remedy breaches of outworker legal protections.³¹

1.29 Later in 1999, a range of integrated proposals, labelled as 'supply chain regulation', were put forward to address deficiencies in the legal system's protection of outworkers in general as opposed to the TCF industry specifically. New South Wales was the first Australian jurisdiction to act in response to these proposals, implementing aspects of the supply chain regulatory model with the introduction of the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW), which amended the *Industrial Relations Act 1996*.³² These statutory provisions were confined to the TCF industry as follows:

- outworkers in relevant supply-chains are deemed employees³³
- outworkers can seek restitution for unpaid remuneration from principal contractors and other suppliers in the supply chain³⁴
- established the Ethical Clothing Trades Council consisting of union and industry representatives, which has various functions, including but not limited to: advising and making recommendations to the Minister on the clothing industry generally; level of compliance; means by which compliance might be enforced; and any amendment to or revocation of the mandatory code.³⁵

²⁸ Submission 7, Igor Nossar, John Owen, Luigi Amoresano, p 1.

²⁹ Submission 3, Office of the NSW Anti-slavery Commissioner, p 11. See also, Submission 7, Igor Nossar, John Owen, Luigi Amoresano, p 1.

³⁰ Submission 3, Office of the NSW Anti-slavery Commissioner, p 11.

³¹ Submission 3, Office of the NSW Anti-slavery Commissioner, p 11.

³² Submission 7, Igor Nossar, John Owen, Luigi Amoresano, p 7 – Appendix 9, p 7.

³³ See *Industrial Relations Act 1996*, Schedule 1, s 1(f).

³⁴ Submission 3, Office of the NSW Anti-slavery Commissioner, p 11.

³⁵ Submission 3, Office of the NSW Anti-slavery Commissioner, p 11. See also, *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW), s 7.

- allowed for the creation a mandatory code of practice for outworkers in clothing trades.³⁶

1.30 Once established, the Ethical Clothing Trades Council implemented a new voluntary code of practice, (now known at the ECA Code), and recommended a mandatory code of practice for outworkers, be implemented. This recommendation was accepted by the relevant minister and as a result, the mandatory code - the Ethical Clothing Extended Responsibilities Scheme (the Scheme) - came into effect on 1 July 2005.³⁷

Objectives, scope and purpose of the Scheme

1.31 The objectives of the Scheme are to:

- aid in monitoring the use of outworkers in the manufacture of clothing products for retail sale within New South Wales; and
- prescribe practices and standards that will aid in compliance with, and prevent avoidance of, the Clothing Trades (State) Award and other industrial instruments with respect to the engagement and performance of work by outworkers in the supply of clothing products for retail sale within New South Wales; and
- prescribe reporting practices and conduct to prevent the use of legal structures and other commercial arrangements as a means of avoiding the payment of remuneration and other lawful entitlements to outworkers in the clothing trades; and
- facilitate and complement initiatives by the Government of New South Wales to prevent circumvention and contraventions of laws regarding the employment conditions of outworkers in the clothing trades; and
- complement and encourage compliance with the Homeworkers Code of Practice by signatories to that code.³⁸

1.32 The Scheme defines "outworker" as 'any person (not being the occupier of a factory) who performs outside a factory any work in the clothing trades or in the manufacture of clothing products, whether directly or indirectly, for the occupier of a factory or a trader who sells clothing by wholesale or retail'.³⁹

1.33 Part 2, clause 7 states that the mandatory obligations and responsibilities in the Scheme apply to persons engaged in the manufacture of clothing products in Australia including but not limited to retailers, suppliers, subcontractors, contractors, continuing entities of suppliers and transferees.⁴⁰

³⁶ Submission 3, Office of the NSW Anti-slavery Commissioner, p 11.

³⁷ Additional information, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, 9 July 2024, p 6 and Submission 7, Igor Nossar, John Owen, Luigi Amoresano, p 3.

³⁸ Ethical Clothing Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), Part 1, cl 3.

³⁹ Ethical Clothing Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), Part 1, cl 3.

⁴⁰ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), Part 2, cl 7.

1.34 The definition retailer and supplier in the Scheme are as follows:

- "Retailers" are:
 - a. any person, wherever domiciled, who sells clothing products by retail within the State; and
 - b. any person, wherever domiciled, who:
 - i. is an associate of; and
 - ii. has a commercial relationship with, a person referred to in paragraph (a) as to the retail sale of clothing products within the State.
- "Suppliers" are any person, wherever domiciled, who enters into an agreement with a retailer for the supply of clothing products within the State.⁴¹

1.35 These broad definitions have cross-jurisdictional effect whereby the Scheme applies to any retailer and supplier domiciled in any state or territory in Australia, and in theory overseas, who is engaged in the manufacture of clothing products that is sold in New South Wales.⁴²

1.36 The Scheme mandates retailers and suppliers to comply with the following obligations and responsibilities:

- Retailers:
 - Must include contract provisions within their supplier arrangements to affirm that workers will receive their entitlements and that non-compliance with the Scheme is a ground for contract termination.
 - Must report if a supplier or sub-contractor is intending to engage an outworker in less favourable conditions than any relevant award or instrument.
 - Keep records of certain details when entering into an agreement with a supplier. This includes but is not limited to:
 - the name and address of where the work will be undertaken by the supplier and, if applicable, contractor
 - date of agreement and date of delivery of the completed order
 - description of the clothing products to be supplied
 - number of clothing products to be supplied
 - wholesale price or cost paid by retailer.
 - Must report records of agreements at least twice a year.
- Suppliers:
 - Must advise retailers if a clothing product has or will be manufactured in Australia and indicate on the invoice which of the clothing products have been manufactured in Australia

⁴¹ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), Part 1, cl 5. See definitions of subcontractors, contractors, continuing entities of suppliers and transferees engaged in the manufacture of clothing in Australia.

⁴² Submission 7, Igor Nossar, John Owen, Luigi Amoresano - Appendix 13, Michael Rawling, *Cross-jurisdictional and other implications of mandatory clothing retailer obligations*, Australian Journal of Labour Law, (2014) pp 201-202.

- Provide sufficient information to the retailer to enable their compliance with the code, including any changes to details provided to the retailer
- Provide a contractor with details of the agreement at the time of engagement and keep a record of the details the provided for a period of six years.⁴³

1.37 The reporting provisions explicitly require retailers to report to the Textile Clothing and Footwear Union of Australia (now known as the CFMEU – Manufacturing Division) and the then NSW Department of Commerce, records of their agreements and any instances where conditions for an outworker are less favourable than any industrial instrument or award.⁴⁴

1.38 There are also specific obligations for subcontractors, contractors, continuing entities of suppliers and transferees in the Scheme, in a similar vein to those prescribed to suppliers.⁴⁵

1.39 The Scheme provides the Textile Clothing and Footwear Union of Australia (now known as the CFMEU – Manufacturing Division) and inspectors appointed under the *Industrial Relations Act 1996* with powers to enforce compliance with the Scheme. For example:

- clause 8 provides that proceedings for contravention of the Scheme may be instituted by an inspector appointed under the IR Act or an authorised officer of the TCFUA
- clause 20 provides that an authorised officer of the TCFUA can also commence proceedings if a retailer fails to produce records. The maximum penalty for contravention of the Scheme is 100 penalty units (\$11,000).⁴⁶

1.40 Other important provisions of the Scheme, which will be examined in more detail in this report, are as follows:

- Compliance with the voluntary code of practice, known as the Homeworkers Code of Practice at the time, is deemed as a reasonable excuse for non-compliance with Scheme.⁴⁷
- Reference to "relevant industrial instrument" in the Scheme includes any 'relevant award and any federal or interstate award or industrial instrument that that regulates the conditions of employment of outworkers and applies to the performance of work by an outworker'. By effect, obligations under the Scheme that ensure compliance with a 'relevant industrial instrument' include those made federally.⁴⁸

1.41 Inquiry participants noted that the Scheme's purpose at the time of its establishment was to ensure transparency across the entire TCF supply chain and capture retailers who are at the top of the supply chain with significant commercial power.⁴⁹ Ms Vivienne Wiles, Senior National

⁴³ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), Part 2, cl 7.

⁴⁴ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), cls 11 and 12.

⁴⁵ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), Part 3 and 4.

⁴⁶ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), cls 7, 8 and 20.

⁴⁷ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), cl 8(1)(e).

⁴⁸ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), cl 5 – Definitions 'relevant industrial instrument'.

⁴⁹ See for example: Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, 7 June 2024, p 5; Evidence, Dr Chris Wright, Associate Professor, Work and Organisational Studies,

Industrial Officer at the CFMEU – Manufacturing Division, commented that the Scheme was 'novel because it captured all retailers, including those who did not directly manufacture TCF goods and did not otherwise consider themselves bound by standard employment and TCF industry regulation'. Ms Wiles explained that the inclusion of retailers was not 'found in any other form of TCF award or legislative regulation at the time, either at the state or federal level'.⁵⁰

1.42 Further, Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department highlighted that the Scheme was put in place in recognition of the exploitative nature of outworker work arrangements and the often migrant, ethnically diverse and scattered workforce.⁵¹

1.43 Mr Igor Nossar, former Chief Advocate for the TCFUA, along with other inquiry stakeholders, agreed that the Scheme was largely intended to incentivise participation in the voluntary code – Homeworkers Code of Practice (now known as the Ethical Clothing Australia's Code of Practice incorporating Homeworkers).⁵² This objective of the Scheme will be discussed in more detail in Chapter 2.

Application of the Scheme

1.44 Examples of the Scheme's application in the years following its establishment are as follows:

- A New South Wales retailer, with the assistance of a regulator, used knowledge gained by the imposition of retailer obligations to compel other commercial entities to comply with industrial obligations owed to workers within their supply chain.
- A major retailer, working with a regulator, found that a particular supplier was not in compliance with industrial obligations owed to workers within their chain. The retailer reportedly cancelled clothing supply orders until the supplier addressed non-compliance issues.
- Regulators followed cross-jurisdictional supply chains to track down many sites of clothing production performed for retailers throughout Australia. In one instance, the original number of workers (identified by traditional means by a NSW regulator visiting workplaces) grew to four times the original number of workers.⁵³

University of Sydney, p 11; Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, 27 June 2024, p 4.

⁵⁰ Evidence, Ms Vivienne Wiles, Senior National Industrial Officer, CFMEU – Manufacturing Division, 7 June 2024, p 24.

⁵¹ Evidence, Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department, 7 June 2024, p 31.

⁵² See for example: Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, 7 June 2024, p 4; Submission 2, Office of the NSW Anti-slavery Commissioner, p 6; Submission 2, CFMEU – Manufacturing Division, p 10; Submission 6, Ethical Clothing Australia, p 4 and 15.

⁵³ Submission 7, Igor Nossar, John Owen and Luigi Amoresano - Appendix 13, Michael Rawling, *Cross-jurisdictional and other implications of mandatory clothing retailer obligations*, Australian Journal of Labour Law (2014) p 206.

- 1.45 However, in the past decade or so the Scheme has fallen into disuse or non-operationality.⁵⁴ Inquiry stakeholders expressed various views on why this has occurred. Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department, observed that a range of factors may have contributed to the 'lack of compliance action' with it being probable that a significant reason was the 'creation and implementation of the national workplace relations framework which provides industrial protections for TCF outworkers'. In addition, changes in organisational structures, industry dynamics and the passage of time have resulted in compliance activities being focused on employers and employees that remain in the New South Wales jurisdiction.⁵⁵
- 1.46 Ms Rizzo also agreed that it could have been due to a misunderstanding of the Scheme's application following the referral of powers to the Commonwealth.⁵⁶
- 1.47 Mr Igor Nossar, former Chief Advocate for the TCFUA, who finished work with the union in 2008, reflected that its disuse was a result of the people who were centrally involved in the Scheme's establishment 'having moved on' for various reasons.⁵⁷

Current regulation of outworkers in the textile, clothing and footwear industry

- 1.48 The following section provides an overview of the regulatory framework governing the TCF industry, with a specific focus on outworkers. It examines various components of this framework, such as federal and state legislation, relevant industrial awards, and Ethical Clothing Australia's voluntary code. Additionally, it highlights relevant international standards and guidelines.

Interaction between state and federal legislation

- 1.49 As noted above at paragraphs 1.29 to 1.30, the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW), allowed for the establishment of the Scheme and amended the *Industrial Relations Act 1996* (IR Act) to explicitly deem an outworker to be an employee for the purposes of the IR Act. This amendment of the IR Act ensured outworkers in the New South Wales jurisdiction were afforded the protection of the Clothing Trades (State) Award.⁵⁸
- 1.50 In 2006, in an effort to avoid federal regulation, namely the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) (Work Choices Act), the IR Act was amended to convert conditions of

⁵⁴ See for example: Submission 2, CFMEU – Manufacturing Division, p 10-12; Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, 7 June 2024, p 4.

⁵⁵ Evidence, Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department, 7 June 2024, p 31.

⁵⁶ Evidence, Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department, 7 June 2024, p 37.

⁵⁷ Evidence, Mr Igor Nossar, Former Chief Advocate, Textile, Clothing and Footwear Union of Australia NSW Branch, Former Advisor to the International Transport Workers' Federation, Independent Scholar, p 4.

⁵⁸ Submission 4, NSW Industrial Relations, p 1.

employment in the Clothing Trades (State) Award into the IR Act, in so far that it was applicable to outworkers employed by constitutional corporations and their employers.⁵⁹

- 1.51** Section 51 (xx.) of the *Commonwealth of Australia Constitution Act* defines "constitutional corporations" as 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'.⁶⁰
- 1.52** Later in 2009, NSW Parliament passed the *Industrial Relations (Commonwealth Powers) Act 2009 (NSW)*, formally referring the state's industrial relations powers for private sector employees to the Commonwealth under the *Fair Work Act 2009* (Cth). This included powers to regulate outworkers and outworker entities.⁶¹
- 1.53** Both the *Work Choices Act* and the *Fair Work Act 2009* provide that state outworker laws can continue to operate. Today, state laws in relation to outworkers operate in addition to and not in conflict with the federal legislation.⁶²
- 1.54** However, NSW Industrial Relations, Premier's Department noted that in practice, 'most persons operating in the clothing trades would consider the *Fair Work Act* and the relevant modern award as being the source of conditions and obligations in this industry'.⁶³

NSW legislation and awards

- 1.55** As noted previously, New South Wales regulates TCF outwork through the *Industrial Relations Act 1996* (NSW) and *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW) (IR ECT Act) and the Clothing Trades (State) Award 2021. This includes deeming provisions for outworkers, unpaid remuneration recovery, the establishment of the Ethical Clothing Trades Council and the making of a mandatory code (the Scheme).
- 1.56** The Ethical Clothing Trades Council (the Council), as established under the IR ECT Act, consists of seven members representing industry, union, business and community stakeholders in the TCF industry. It has various functions, for example, to report on the implementation of ethical clothing industry practices and make recommendations to the Minister on whether a mandatory code of practice will improve compliance. Additionally, under the IR ECT Act the Minister must consult with the Council before amending or revoking the mandatory code (the Scheme).⁶⁴
- 1.57** Members are appointed onto the Council for a fixed term of no more than 3 years. Since the expiry of this term after its constitution in 2001, the Council has not been reconvened.⁶⁵ According to Mr Igor Nossar, who attended the meetings of the Council as a representative for

⁵⁹ Submission 4, NSW Industrial Relations, p 2. See also: *Industrial Relations Act 1996* (NSW), s129B.

⁶⁰ *Commonwealth of Australia Constitution Act*, s 51(xx).

⁶¹ The *Workplace Relations Act 1996*, which was amended by the *Workplace Relations Amendment (Work Choices) Act 2005*, has been repealed by the introduction of the *Fair Work Act 2009*.

⁶² Submission 4, NSW Industrial Relations, Premier's Department, pp 2-3.

⁶³ Submission 4, NSW Industrial Relations, Premier's Department, pp 3.

⁶⁴ *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW), Part 2. See also, Additional information, Mr Igor Nossar, 9 July 2024, pp 4-8.

⁶⁵ Additional information, Mr Igor Nossar, 9 July 2024, pp 4-8.

Unions NSW, the Council was 'never intended to be a permanent ongoing multi stakeholder representative body'. Rather, Mr Nossar argued that its central objective was the delivery (to the relevant Minister) of a 12 month report – with recommendations as to whether, if a mandatory code were made, it would improve compliance with obligations to ensure outworkers receive their lawful entitlements.⁶⁶ This will be discussed in more detail in Chapter 2.

1.58 In addition, the *Modern Slavery Act 2018* (NSW) provides for the appointment of a NSW Anti-slavery Commissioner. The Commissioner's functions include, but are not limited to, identifying and providing assistance to victims of modern slavery; and providing advice and training about preventing, detecting and investigating offences involving modern slavery.⁶⁷

1.59 The *Modern Slavery Act 2018* (NSW) also requires:

- government agencies and councils to include in their annual reports a statement about steps they are taking to ensure goods and services procured by their agency during the relevant financial year were not the product of modern slavery and where relevant, a statement must also be included addressing any significant issues raised by the Commissioner.
- state owned corporations (not covered by the *Modern Slavery Act 2018* (Cth)) to make voluntary modern slavery statements.⁶⁸

Federal legislation and awards

1.60 Federally, the *Fair Work Act 2009* (Cth) (Fair Work Act) and the Textile, Clothing, Footwear and Associated Industries Award 2020 (federal award) regulate TCF work and conditions and include specific provisions in relation to outworkers.

1.61 In 2012, the *Fair Work Act* was amended to include many of the outworker provisions that exist in state law, in particular:

- textile, clothing, and footwear outworkers are deemed employees
- unpaid entitlements can be recovered from entities further up the contract chain
- additional capacity for effective compliance targeting
- provision for the making of a mandatory code of practice.⁶⁹

1.62 Ms Vivienne Wiles, Senior National Industrial Officer, Construction, Forestry and Maritime Employees Union - Manufacturing Division informed the committee that whilst legislative capacity for a federal mandatory code of practice exists, it has not been enacted.⁷⁰

⁶⁶ Additional information, Mr Igor Nossar, 9 July 2024, pp 5-6.

⁶⁷ *Modern Slavery Act 2018* (NSW), s 9.

⁶⁸ *Modern Slavery Act 2018* (NSW), ss 25A and 31; *Local Government Act 1993* (NSW), s 428.

⁶⁹ Submission 4, NSW Industrial Relations, Premier's Department, p 3. Amendments to the *Fair Work Act 2009* were made through the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2012.

⁷⁰ Evidence, Ms Vivienne Wiles, Senior National Industrial Officer, Construction, Forestry and Maritime Employees Union - Manufacturing Division, 7 June 2024, p 25.

- 1.63** The federal award regulates the pay and conditions of outworkers, irrespective of the corporate or otherwise nature of the employer, and worker status of the outworker. It also provides an avenue for individual outworkers to enforce their rights and their employer's obligations through the Fair Work Ombudsman or union, as necessary or appropriate.⁷¹
- 1.64** The *Modern Slavery Act 2018* (Cth) places obligations on businesses with a consolidated revenue of at least \$100 million to report on the risks of modern slavery in their operations and supply chains as well as the actions taken to address those risks.⁷²

Ethical Clothing Australia's Code of Practice incorporating Homeworkers

- 1.65** Ethical Clothing Australia's Code of Practice incorporating Homeworkers (ECA Code) is the primary voluntary code for the TCF industry in Australia. The ECA Code was previously known as the Homeworkers Code of Practice as referenced in the objectives of the Scheme.⁷³
- 1.66** The ECA Code is administered by Ethical Clothing Australia and governed by the Homeworkers Code Committee Inc (HWCC). The HWCC has equal 50 per cent union and industry representation. The Australian Competition and Consumer Commission has authorised the ECA code (and its previous iterations) consistently since 2001.⁷⁴
- 1.67** According to Ethical Clothing Australia, the ECA Code is designed to ensure that businesses, and all their outsourced supply chain comply with the industry specific Textile Clothing Footwear and Associated Industries Award 2020 as well as the Fair Work Act and other relevant workplace laws.⁷⁵
- 1.68** Business can opt into Ethical Clothing Australia's accreditation program and by doing so, comply with the ECA Code. The accreditation program requires businesses to go through a yearly annual audit. Businesses with ECA accreditation can use the Ethical Clothing trademark to promote their compliance to consumers.⁷⁶
- 1.69** In Australia, there are 113 businesses with ECA accreditation, with 17 of those businesses located in New South Wales.⁷⁷ Currently, Ethical Clothing Australia receives funding from the Victorian and federal governments and fees from participating businesses to resource the program.⁷⁸

⁷¹ Submission 4, NSW Industrial Relations, Premier's Department, p 3.

⁷² *Modern Slavery Act 2018* (Cth), s 5 and Part 2.

⁷³ Submission 2, CFMEU - Manufacturing Division, p 8.

⁷⁴ Submission 2, CFMEU - Manufacturing Division, pp 8-9.

⁷⁵ Submission 6, Ethical Clothing Australia, p 12.

⁷⁶ Submission 6, Ethical Clothing Australia, pp 12-13.

⁷⁷ The number of businesses with ECA accreditation as of June 2024. See: Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 20.

⁷⁸ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, pp 18-19.

- 1.70 Through a service level agreement with Ethical Clothing Australia, the CFMEU – Manufacturing Division is responsible for ensuring compliance with the ECA Code.⁷⁹ In New South Wales, there is one officer responsible for this work at the CFMEU – Manufacturing Division, and another officer is responsible for engaging with outworkers directly.⁸⁰

Commitment to international standards, principles and guidelines

- 1.71 Alongside the above regulation of the TCF industry in New South Wales, is Australia's commitment to the following three international regimes: the United Nations Guiding Principles on Business and Human Rights; the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct, and associated guidance including the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector; and the International Labour Organization (ILO) Protocol of 2014 to Forced Labour Convention 1930 (No. 29).⁸¹
- 1.72 According to the Office of the NSW Anti-slavery Commissioner, these three regimes are substantially aligned around a 'set of common due diligence expectations that cover not only transparency and sharing information between actors along value-chains, but also active cooperation by those actors to identify and manage forced labour and modern slavery risks, and take defined steps to remedy harms where they occur'.⁸²
- 1.73 These expectations are reflected in the guidance issued by both the federal government to assist businesses with compliance under the *Modern Slavery Act 2018* (Cth) and by the NSW Anti-slavery Commissioner in December 2023, to guide the efforts of over 400 public entities in New South Wales with modern slavery due diligence (Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains).⁸³

Committee comment

- 1.74 The committee acknowledges the evidence of stakeholders demonstrating the complexities of the textile, clothing and footwear industry and the various efforts made to ensure that the workers in this industry who are most vulnerable to exploitation and modern slavery are empowered. The historical context of the Scheme, including the regulatory landscape, highlights the significant efforts made to prevent, expose and end exploitation of workers.
- 1.75 The committee notes the consensus amongst stakeholders that outworkers in this industry are at a significant risk of exploitation and modern slavery due to a combination of vulnerability factors, including the environment in which this work occurs, the complex supply chain that prevails in the industry and the demographic profile of the workers.

⁷⁹ See: Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, 27 June 2024, p 2 and Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 18.

⁸⁰ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, 27 June 2024, p 2.

⁸¹ Submission 3, Office of the Anti-slavery Commissioner, p 31.

⁸² Submission 3, Office of the Anti-slavery Commissioner, p 31.

⁸³ Submission 3, Office of the Anti-slavery Commissioner, p 31.

- 1.76** The committee also notes the invisibility of this workforce, being that they are triply invisible to regulators – spatially, because they often work in private spaces; politically, because their isolation prevents collective action and voice; and economically, because their work is not adequately captured as employment. The invisibility of the workforce can also be demonstrated by the limited data available to the committee that accurately depicts the size and characteristics of the workforce. It is on that basis, the committee finds that outworkers in the textile, clothing and footwear industry are at a significant risk of workplace exploitation and modern slavery.

Finding 1

That outworkers in the textile, clothing and footwear industry are at a significant risk of workplace exploitation and modern slavery.

- 1.77** The Scheme at the time of its establishment was novel, capturing retailers, suppliers and subcontractors across Australia to ensure outworkers in the textile, clothing and footwear industry received their lawful workplace entitlements. The committee acknowledges that since that time the regulatory landscape has changed. This includes the various legal mechanisms put in place to combat modern slavery. The evidence provided to the committee suggest that there remains a critical need for robust regulatory mechanisms and monitoring. There is merit in the committee examining all possible legal mechanisms available to the NSW Government to mitigate modern slavery in the textile, clothing and footwear industry. The following chapter will delve deeper into the ongoing utility of the Scheme, proposing various recommendations as to whether the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) can and should be revived to better protect outworkers in the textile, clothing and footwear industry from exploitation and modern slavery.

Chapter 2 Ongoing utility of the Scheme

This chapter begins by examining the key benefits of the Scheme. This includes its relevance to modern slavery; incentivising participation in the ECA Code; improving transparency and accountability in the TCF supply chain; and encouraging and rewarding ethical conduct in the TCF industry. It then examines stakeholders' views on the operation of the Scheme and the ECA Code, including the Scheme's relevance to current regulation, challenges with compliance and enforcement of industrial entitlements, and the need for funding and resources to ensure compliance and protect outworkers.

Next, it discusses possible amendments to the Scheme that would strengthen its ability to mitigate modern slavery and explores the views on who should be responsible for ensuring the Scheme is operational, including an examination of the Ethical Clothing Trades Council and its functions going forward. Lastly, it examines other key issues raised throughout the inquiry, including the potential for the Scheme to be applied to other industries with high risks of modern slavery, and other programs and assistance that could be provided to better protect outworkers.

Benefits of resuscitating the Scheme

2.1 The following section explores inquiry stakeholders' views on the key benefits of resuscitating the Scheme, noting some of the benefits are interrelated. These include:

- relevance of the Scheme to modern slavery
- incentivising participation in the ECA Code
- improving transparency and accountability in the TCF supply chain
- encouraging and rewarding ethical conduct in the TCF industry and reducing commercial risks in the supply chain.

Relevance of the Scheme to modern slavery

2.2 As noted in Chapter 1, the nature of the TCF industry places outworkers at significant risk of workplace exploitation and modern slavery. In this context, stakeholders spoke to the Scheme's relevance to mitigating risks of modern slavery in the TCF industry.

2.3 Inquiry stakeholders acknowledged the Scheme's potential to complement current modern slavery legislation and work done with NSW Government agencies on procurement.⁸⁴ In particular, Dr Martijn Boersma and Dr Chris F. Wright, Associate Professors in Work and Organisational Studies at the University of Sydney commented that the Scheme contributes to a layered approach to combat exploitation and unethical clothing practices. They highlighted that the Scheme focuses on responsibilities across the supply chain including smaller entities that are not covered by the reporting mechanisms in the *Modern Slavery Act 2018* (Cth) but are prevalent within the TCF industry.⁸⁵

⁸⁴ Submission 3, Office of the NSW Anti-slavery Commissioner, pp 33-34; Answers to questions on notice, NSW Anti-slavery Commissioner and Dr Justine Coneybeer, p 5 and Submission 5, Associate Professor Martijn Boersma and Associate Professor Chris F. Wright, p 4.

⁸⁵ Submission 5, Associate Professor Martijn Boersma and Associate Professor Chris F. Wright, p 4.

- 2.4** Dr Boersma confirmed that the Scheme, if revived, could deal with instances of exploitation or simple forms of noncompliance with labour standards 'before they escalate into worse types of exploitation' (i.e. a modern slavery offence). Dr Boersma stated the Scheme would achieve this by creating a fairer market and preventing unethical practices driven by the pressure to cut costs.⁸⁶
- 2.5** Similarly, Ms Rachel Reilly, National Manager, Ethical Clothing Australia expressed that the voluntary code (ECA Code), together with the Scheme, work as a 'preventative' and 'protective' factor against the more extreme forms of exploitative labour practices. Ms Reilly was therefore of the view that there should be sustained efforts to retain and enhance both the ECA Code and the Scheme.⁸⁷
- 2.6** The NSW Anti-slavery Commissioner, Dr James Cockayne, also acknowledged that the Scheme as it is currently designed has the effect of preventing modern slavery by addressing TCF outworker exploitation. However, the Commissioner reflected that this anti-slavery impact was a 'by-product' of the Scheme and not an explicit objective. For example, the information retailers are required to share narrowly focuses on workplace awards and entitlements, and not on other factors relevant to assessing the presence of forced labour and modern slavery:

It doesn't go to some of the other factors relevant to assessing the presence of forced labour and modern slavery, such as the recruitment process, the charging of fees for equipment, restrictions on mobility out of the home and so forth. The regulators here are not regulating for modern-slavery risk per se but for enforcement of the award, which is a narrower set of issues.⁸⁸

- 2.7** The Commissioner put forward amendments to the Scheme to address these gaps, which are examined in more detail throughout this chapter.

Incentivising participation in the ECA Code

- 2.8** Many inquiry stakeholders argued that a key benefit of reviving the Scheme is that it incentivises business participation in the voluntary code (ECA Code).
- 2.9** As mentioned in Chapter 1, the Scheme's objectives include encouraging compliance with the Homeworkers Code of Practice (now known as the ECA Code) by its signatories. Specifically, clause 8 of the Scheme, states that a reasonable excuse for failing to comply with the Scheme is if a person is 'signatory to, or accredited under, the Homeworkers Code of Practice and acting in compliance with that Code'.⁸⁹

⁸⁶ Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 12.

⁸⁷ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 7. See also, Answers to questions on notice, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, p 10 and Submission 6, Ethical Clothing Australia, p 4.

⁸⁸ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 11.

⁸⁹ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), cls 3 and 8.

- 2.10** According to Ethical Clothing Australia, the purpose of the voluntary code is to 'require compliance with existing legal obligations rather than to extend' their obligations.⁹⁰ Ethical Clothing Australia informed the committee that of the 113 businesses with ECA accreditation in Australia, 'there are 17 currently accredited businesses in New South Wales (protecting 175 individual workers) and within these supply chains are an additional 107 participating suppliers (protecting an additional 47 workers) in New South Wales' being audited under the ECA accreditation program but have 'opted to not be accredited in their own right'.⁹¹
- 2.11** Ethical Clothing Australia stated that if 'businesses had more of an incentive to become accredited, their local supply chains would also be audited, meaning that there would be a cascading effect of more workers being protected'.⁹²
- 2.12** The NSW Anti-slavery Commissioner remarked that the combination of mandatory due diligence and reporting (the Scheme) with a voluntary code (the ECA Code) was 'ahead of its time'. This approach, now recognised in the business and human rights space as a 'regulatory smart mix', combines different forms of regulatory leverage to incentivise responsible business conduct.⁹³ Enforcement mechanisms in this 'regulatory smart mix' will be examined in more detail at paragraphs 2.55 to 2.75.
- 2.13** Mr Igor Nossar, former Chief Advocate of the TCFUA, illustrated the effectiveness of these provisions in the Scheme by pointing to the increase in businesses accredited to the ECA Code following its establishment:

...[T]he numbers [of businesses] being accredited to the voluntary code, which was then the Homeworkers Code of Practice, shot up after the mandatory code was imposed in New South Wales because all national retailers by definition operate in New South Wales. They found themselves in a situation where the provisions of the mandatory code gave them a good incentive to become signatory to—or accredited to in the case of manufacturers—and compliant with that voluntary code. They did so and they decided, "Well, if we're doing it in New South Wales, we might as well do it around the whole country. It just makes commercial sense."⁹⁴

- 2.14** Further, Mr Nossar expressed that the Scheme's effectiveness as an incentive to encourage compliance with the ECA Code cannot be assessed by solely referring to the number of ECA accredited businesses in New South Wales due to its cross-jurisdictional application:

It is most important to note the highly significant cross jurisdictional application of the [Scheme]. ... the benefit provided by the [Scheme] as an incentive in favour of the ECA Code ... cannot be simply assessed by solely referring to the number of ECA accredited manufacturers in NSW. In other words, the [Scheme] has operated in such a way that

⁹⁰ Submission 6, Ethical Clothing Australia, p 12. See also, clause 19 9.4 (d) of Part 1 of the Ethical Clothing Australia Code of Practice incorporating Homeworkers.

⁹¹ Answers to questions on notice, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 5 July 2024, p 7.

⁹² Answers to questions on notice, Ethical Clothing Australia, 5, July 2024, p 7.

⁹³ Evidence, Dr James Cockayne, Anti-slavery Commissioner, 27 June 2024, p 10.

⁹⁴ Evidence, Mr Igor Nossar, Former Chief Advocate, Textile, Clothing and Footwear Union of Australia NSW Branch, Former Adviser to the International Transport Workers' Federation, Independent Scholar, 7 June 2024, p 4.

interstate suppliers of clothing products to NSW retailers have also been induced into ECA accreditation in order to avoid the operation of the [Scheme].⁹⁵

- 2.15** Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, also noted an increase in the number of businesses accredited to the voluntary code following the Scheme's establishment. She added that through the voluntary code, the union was able to 'report back to the principal company or the retailer to be able to get [issues of noncompliance] fixed a lot ... quicker'.⁹⁶
- 2.16** In their submission, the CFMEU – Manufacturing Division expressed the view that the Scheme's explicit reference to incentivise compliance with the ECA Code should remain if the Scheme was revived (see clauses 3 and 8). The union asserted that this provision 'sends a clear signal to the TCF industry ... to take initiative and direct responsibility for ensuring that TCF supply chains are transparent and ethically based'.⁹⁷
- 2.17** For completeness, the CFMEU – Manufacturing Division recommended that references to the Homeworkers Code of Practice in the Scheme be amended to reflect the most recent iteration of the voluntary code, being the 'Ethical Clothing Australia's Code of Practice, incorporating Homeworkers'.⁹⁸

Improving transparency and accountability in the TCF supply chain

- 2.18** Many stakeholders viewed improved transparency and accountability in TCF supply chains as another benefit for reviving the Scheme. In particular, this includes how the Scheme:
- improves transparency in the TCF industry by capturing supply chain data currently difficult to ascertain and in turn, strengthens the regulator's ability to enforce compliance with industrial awards and other legal entitlements
 - provides accountability in enforcement of industrial instruments and awards by explicitly capturing retailers.

Capacity for improved TCF supply chain mapping and data collection

- 2.19** Under the Scheme, retailers are required to report to the then NSW Department of Commerce and TCFUA (now known as the CFMEU – Manufacturing Division) records of agreements entered into with a supplier. For example, this includes, the name and address of the supplier or contractor, number of clothing products to be supplied and wholesale price or cost paid by the retailer. It also places obligations on retailers to report conditions of workers in their supply chain that are less favourable than those in the relevant industrial award.⁹⁹

⁹⁵ Answers to questions on notice and additional information, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar and Mr Luigi Amoresano, National Research Officer, Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU), 11 July 2024, p 10.

⁹⁶ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, 27 June 2024, p 4.

⁹⁷ Submission 2, CFMEU – Manufacturing Division, p 10.

⁹⁸ Submission 2, CFMEU – Manufacturing Division, p 13.

⁹⁹ Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), cls 11 and 12.

- 2.20** Many inquiry stakeholders, in their support for reviving the Scheme, expressed that these provisions allow regulators to capture and map supply chain data that is currently unavailable or difficult to ascertain.¹⁰⁰
- 2.21** Stakeholders argued that this aspect of the Scheme improves the visibility of outworkers in the TCF industry and allows regulators to ensure outworkers receive their workplace entitlements.¹⁰¹ For example, Mr Igor Nossar, former Chief Advocate for the TCFUA, highlighted that the number of workers recorded significantly increased, in some instances up to six times as many the number of workers previously recorded, meaning more workers were 'required to be paid their minimum entitlements, often for the first time in their life'.¹⁰²
- 2.22** Mr Nossar, Mr John Owen and Mr Luigi Amoresano further argued that the Scheme, together with relevant awards, allows the union access to the price paid per piece and volume of clothing products. The union uses this information to complete a 'value and volume' analysis of the flow of clothing work orders throughout the supply chain. According to their submission, such analysis is a 'key tool' in the operation of the TCF regulation. From this information, the union can 'estimate the total minimum labour time required for clothing production at any level in that supply chain' and the 'equivalent minimum number of full-time employees required to complete any particular production order'.¹⁰³
- 2.23** Mr Nossar, Mr Owen and Mr Amoresano explained that the union regulator is then able to 'utilise their legislative and contractually based powers to inspect all production sites without notice to check the accuracy of workplace records and locate the entire workforce'.¹⁰⁴
- 2.24** In addition, Ms Vivienne Wiles, Senior National Industrial Officer, CFMEU – Manufacturing Division highlighted that supply chain mapping is not only beneficial for the union in identifying and ensuring workers in the industry receive their lawful workplace entitlements and conditions, but also for ethical retailers and fashion houses who do not have 'real line of sight as to what's happening in their own supply chain'.¹⁰⁵
- 2.25** Dr Martijn Boersma and Dr Chris F. Wright, Associate Professors in Work and Organisational Studies at the University of Sydney, also emphasised that the Scheme has the potential to

¹⁰⁰ See for example: Submission 7, Mr Igor Nossar, Mr John Owen and Mr Luigi Amoresano, pp 4-5; Evidence, Ms Vivienne Wiles, Senior National Compliance Officer, CFMEU – Manufacturing Division, 7 June 2024, pp 24 - 26; Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, p 4.

¹⁰¹ See for example: Submission 3, Office of the NSW Anti-slavery Commissioner, p 6 and 30; Submission 5, Associate Professor Martijn Boersma and Associate Professor Chris F. Wright, pp 3-4; Submission 7, Mr Igor Nossar, Mr John Owen, Mr Luigi Amoresano, pp 4-5.

¹⁰² Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, 7 June 2024, p 4.

¹⁰³ Submission 7, Igor Nossar, John Owen and Luigi Amoresano, p 5. See also, Additional Information, Mr Igor Nossar, 9 July 2024, p 8.

¹⁰⁴ Submission 7, Igor Nossar, John Owen and Luigi Amoresano, p 5.

¹⁰⁵ Evidence, Ms Vivienne Wiles, Senior National Industrial Officer, CFMEU – Manufacturing Division, 7 June 2024, p 27.

complement and strengthen existing modern slavery legislation by gathering and sharing supply chain data that is helpful in assessing whether exploitation is taking place.¹⁰⁶

2.26 In particular, Dr Boersma pointed to the reporting obligations under the *Modern Slavery Act 2018* (Cth) that require businesses with a consolidated revenue of at least \$100 million to report on the risks of modern slavery in their supply chain and the action being taken to mitigate these risks. Dr Boersma asserted that many entities in the TCF industry would not meet this threshold, meaning there is a 'large blind spot' if the Scheme is not used.¹⁰⁷

2.27 The Office of the NSW Anti-slavery Commissioner made a similar point, noting that ABS data indicates that these provisions apply to '113 firms in the TCF sector – 2 per cent of the businesses in the sector'.¹⁰⁸

2.28 Dr Boersma also highlighted the Scheme's potential to gather and share TCF data in a much more strategic way than what is currently prescribed under current modern slavery legislation:

In effect, the current modern slavery legislation relies on transparency, but this transparency is not necessarily very strategic. What happens is that entities that are required to—and some do so voluntarily—report on the risks in their supply chains with regards to modern slavery and the measures they are taking to address those risks, but it's a bit unclear who exactly the conferring public is. Who is it exactly that's reading these statements and acting on these statements? What legislation and the guidelines accompanying legislation tell us is that businesses themselves, as well as consumers and investors, are taking note and, I suppose, are adjusting their behaviour accordingly, choosing to do business with the ones that produce better modern slavery statements and avoiding those that don't. From the evidence that we've seen federally, but also in the UK, there's limited empirical data that supports those stakeholders or those conferring publics are acting on that basis.¹⁰⁹

2.29 In this regard, Dr Boersma expressed that the Scheme provides transparency on 'very select data points which are helpful in assessing whether exploitation is taking place and whether legal entitlements are being paid'. He added that the Scheme 'provides that data to a very select group of stakeholders...who have a very direct interest and capacity to act on that information—and to leverage that information in order to get better outcomes for workers'. In addition to the union and relevant government department, Dr Boersma noted the NSW Anti-slavery Commissioner could be provided with the information gathered.¹¹⁰

¹⁰⁶ Submission 5, Associate Professor Martijn Boersma and Associate Professor Chris F. Wright, p 5. See also, Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney, 27 June 2024, p 10.

¹⁰⁷ Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney 27 June 2024, p 11.

¹⁰⁸ Submission 6, Office of the NSW Anti-slavery Commissioner, p 37.

¹⁰⁹ Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney, 27 June 2024, p 10.

¹¹⁰ Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney 27 June 2024, p 10.

- 2.30** Moreover, Dr Boersma and Dr Wright suggested a comprehensive supply chain database from the information gathered in the Scheme 'be developed that captures detailed supply chain information and makes this information readily accessible' to relevant parties.¹¹¹
- 2.31** Dr Boersma suggested that resourcing and managing such a database would best sit with NSW Industrial Relations who would also be responsible for establishing standard operating procedures for the database and appropriately managing information of a commercially sensitive nature. This function could include establishing templates, an online portal or an email address that this information could be sent to.¹¹²
- 2.32** Ms Marina Rizzo, Executive Director, Industrial Relations, Premier's Department, agreed that the Scheme provides an important mechanism to mandate the collection of 'really important data about high-risk supply chains, the numbers and locations of outworkers, and other related issues'. Ms Rizzo noted this is particularly important given there 'aren't any powers under [the *Modern Slavery Act 2018*] to compel the production of such critical information'.¹¹³
- 2.33** Ms Rizzo advised that an inspectorate team within NSW Industrial Relations is 'actively considering' how to commence collecting and sharing this information under the Scheme and that work of the inspectorate team in this regard 'can be undertaken within existing allocated resources'.¹¹⁴ To ensure retailers are complying with their reporting obligations without increasing the regulatory burden, Ms Rizzo commented that the department will 'look at streamlining' and making the forms that businesses have to fill out 'accessible and easy to fill out'.¹¹⁵
- 2.34** The NSW Anti-slavery Commissioner also gave evidence about his office's role in the reporting obligations under the Scheme, noting that his office could assist NSW Industrial Relations in the analysis of information.¹¹⁶ The Commissioner's views on how the Scheme could be amended to better align with anti-slavery objectives, including the information gathered under its reporting obligations, is explored later in this chapter at paragraphs 2.83 to 2.116.

Need to capture retailers and reflect modern work arrangements

- 2.35** Some stakeholders highlighted there was a need to capture retailers in modern work arrangements due to the significant commercial power and control they have over work in their supply chains. It was argued that a key benefit of the Scheme is that it explicitly includes retailers and ensures they are accountable in the enforcement of industrial awards.

¹¹¹ Submission 5, Associate Professor Martijn Boersma and Associate Professor Chris F. Wright, p 5.

¹¹² Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 14.

¹¹³ Evidence, Ms Marina Rizzo, Executive Director, Industrial Relations, Premier's Department, 7 June 2024, p 32.

¹¹⁴ Evidence, Ms Marina Rizzo, Executive Director, Industrial Relations, Premier's Department, 7 June 2024, p 32.

¹¹⁵ Evidence, Ms Marina Rizzo, Executive Director, Industrial Relations, Premier's Department, 7 June 2024, p 37.

¹¹⁶ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 15.

- 2.36** For example, Dr Chris F. Wright, Associate Professor at the University of Sydney, emphasised there is a need for the Scheme in modern work arrangements like those in the TCF industry to complement traditional employment law and make awards 'work more effectively'.¹¹⁷
- 2.37** Dr Wright highlighted that awards only provide minimum standards, which employers may struggle to meet due to commercial pressures from contracts with retailers or contractors, thus limiting their control to meet these obligations. Dr Wright argued the Scheme which explicitly includes the lead firm (the retailer) is 'necessary' to provide accountability to retailers to monitor, enforce and work with empowered independent agents to uphold minimum standards and 'ensure labour law reflects the realities of work and business in 2024'.¹¹⁸
- 2.38** In a similar vein, Ms Vivienne Wiles, Senior National Industrial Officer at the CFMEU – Manufacturing Division, emphasised the significance of the Scheme within the current regulatory framework in holding retailers accountable for workers within their supply chains:

Why that [Scheme] was important is because of the issue about retailers. The thing with retailers is that, from the union's experience, some of them are also manufacturers and consider that they are bound by the modern award and the legislative provisions that deal with outwork, but some consider basically that they are a retailer—that they're not in the TCF industry but they're in the retail industry and don't consider themselves bound as a principal. That is unfortunate, because these are the people with the economic power who drive what happens in supply chains.¹¹⁹

Encouraging and rewarding ethical conduct in the TCF industry and reducing commercial risks in the supply chain

- 2.39** Inquiry stakeholders discussed the tension between ethical businesses and those benefiting from exploitative practices in the TCF industry. They emphasised the Scheme's potential to encourage and reward ethical conduct in the industry by disincentivising unethical behaviour, in turn, preventing a culture of non-compliance with workplace entitlements. Stakeholders also highlighted how the Scheme could be utilised to reduce commercial risks for businesses.
- 2.40** Some stakeholders highlighted that ethical retailers in the industry were supportive of the Scheme when it was established as it allowed them to commercially compete against other businesses profiting from exploiting workers.¹²⁰ Further, Ms Vivienne Wiles, Senior Industrial Officer, CFMEU – Manufacturing Division, expressed that mechanisms like the Scheme are

¹¹⁷ Evidence, Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 13.

¹¹⁸ Evidence, Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 13.

¹¹⁹ Evidence, Ms Vivienne Wiles, Senior National Industrial Officer, CFMEU – Manufacturing Division, 7 June 2024, p 25.

¹²⁰ Evidence, Ms Vivienne Wiles, Senior National Industrial Officer, Construction, Forestry and Maritime Employees Union - Manufacturing Division, p 24 and Evidence, Mr Igor Nossar, Former Chief Advocate, Textile, Clothing and Footwear Union of Australia NSW Branch, Former Adviser to the International Transport Workers' Federation, Independent Scholar, 7 June 2024, p 5.

needed to reward ethical businesses and advantage them in some way 'to enable them to manufacture ethically in Australia and to be supported to do that'.¹²¹

2.41 Similarly, Mr Igor Nossar, former Chief Advocate of the TCFUA, added that without a regulatory mandate, like the Scheme, ethical businesses 'are forced against their will to start to benefit from those exploitative and illegal practices just in order to survive against those competitors' driving the market into a culture of noncompliance.¹²²

2.42 Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, suggested that the Scheme, with its focus on retailer accountability and union involvement, helps to reduce commercial risk for lead firms (retailers). To demonstrate the Scheme's potential in this regard, Dr Wright referred to the Rana Plaza factory collapse in Bangladesh in 2013:

...[M]any of the retailers and clothing brands that were sourcing directly or indirectly from contractors in that building had no measure to provide oversight or to ensure that the health and safety practices that contributed to that disaster were avoided. Consequently, many of those businesses were either under pressure from unions and community organisations or from governments or from investors. They were compelled to up their game. With a measure like the [Scheme]...those sorts of risks would have been minimised for the Australian businesses that were associated.¹²³

The operation of the Scheme and the ECA Code

2.43 As discussed above, the Scheme operates alongside the ECA Code to create a 'regulatory smart-mix' that combines different forms of regulatory leverage to incentivise responsible business conduct in the TCF industry. This section considers the Scheme's ongoing relevance to current regulation, compliance and enforcement of the Scheme, the ECA Code and federal award, and the need for funding and resources going forward.

Relevance of the Scheme to current regulation

2.44 Inquiry stakeholders discussed the Scheme's relevance within the current regulatory framework, including in particular, its ongoing validity following the state's referral of their industrial relations powers for outworkers to the Commonwealth in 2009.

2.45 Mr Igor Nossar, former Chief Advocate of the TCFUA and key figure in establishing the Scheme, argued that the Scheme's objective to 'aid compliance with, and prevent avoidance of,

¹²¹ Evidence, Ms Vivienne Wiles, Senior National Industrial Officer, CFMEU – Manufacturing Division, 7 June 2024, p 27.

¹²² Evidence, Mr Igor Nossar, Former Chief Advocate, Textile, Clothing and Footwear Union of Australia NSW Branch, Former Adviser to the International Transport Workers' Federation, Independent Scholar, 7 June 2024, p 7.

¹²³ Evidence, Dr Chris Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 12.

the Clothing Trades (State) Award and other industrial instruments' includes the federal award.¹²⁴

- 2.46** To support this view, Mr Nossar referred to the definition "relevant industrial instrument" in clause 5, as the state award and 'any federal or interstate award or industrial instrument regulating the 'conditions of employment of outworkers' and 'the performance of work by an outworker'.¹²⁵ Mr Nossar argued that the effect of this definition was that from the 'very beginning and very explicitly, this [Scheme] was designed to act against avoidance of the federal award and defined broadly, without a specific name for the award' recognising that award names would change through successive formats.¹²⁶
- 2.47** Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department acknowledged that the creation of a single industrial system in Australia and the transfer of powers to the Commonwealth around the time of the code's implementation could have led to misunderstandings about the Scheme's application.¹²⁷
- 2.48** Considering the definition of "relevant industrial instrument" in clause 5 and reference to "other industrial instrument" in the objective, Ms Rizzo agreed there remains a role for the state under the Scheme to promote and aid compliance with the federal award. Ms Rizzo also confirmed that other objectives under clause 3(2) remain relevant.¹²⁸
- 2.49** To ensure its continued relevance, the CFMEU – Manufacturing Division recommended that the Scheme be amended to explicitly reference the federal award, that being the Textile, Clothing, Footwear and Associated Industries Award 2020.¹²⁹
- 2.50** In addition to the federal award, Mr Igor Nossar, Mr John Owen and Mr Luigi Amoresano, also highlighted that the Scheme permits the relevant trade union to ensure compliance with workers compensation (as well as work, health and safety) legal obligations, in addition to compliance with industrial relations legal obligations.¹³⁰
- 2.51** Further, inquiry stakeholders emphasised that the Scheme is designed to complement and ensure compliance with industrial relations regulation and the voluntary code (ECA Code). It was argued that this ensures that all relevant parties in the TCF supply chain, particularly

¹²⁴ Evidence, Mr Igor Nossar, Former Chief Advocate, Textile, Clothing and Footwear Union of Australia NSW Branch, Former Adviser to the International Transport Workers' Federation, Independent Scholar, 7 June 2024, pp 3-4.

¹²⁵ Evidence, Mr Igor Nossar, Former Chief Advocate, Textile, Clothing and Footwear Union of Australia NSW Branch, Former Adviser to the International Transport Workers' Federation, Independent Scholar, 7 June 2024, p 3.

¹²⁶ Evidence, Mr Igor Nossar, Former Chief Advocate, Textile, Clothing and Footwear Union of Australia NSW Branch, Former Adviser to the International Transport Workers' Federation, Independent Scholar, 7 June 2024, p 3.

¹²⁷ Evidence, Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department, 7 June 2024, p 37.

¹²⁸ Evidence, Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department, 7 June 2024, p 33.

¹²⁹ Submission 2, CFMEU – Manufacturing Division, p 14.

¹³⁰ Submission 7, Igor Nossar, John Owen and Luigi Amoresano, p 4.

retailers, are accountable for outworkers receiving their lawful workplace entitlements and conditions and exploitation of outworkers is prevented.¹³¹

2.52 For example, CFMEU – Manufacturing Division highlighted that as a result of the lack of a mandatory code at a national level 'the strength, enforceability and existence of [the Scheme] which seeks to protect outworkers from exploitation becomes deeply necessary'.¹³²

2.53 Similarly, Ms Elizabeth Macpherson, National Compliance Officer at the CFMEU – Manufacturing Division, explained that many retailers 'fall through the cracks' due to the 'category of "manufacturer"' under the Textile, Clothing, Footwear and Associated Industries Award 2020. According to Ms Macpherson, these instruments do not explicitly capture retailers, making it more difficult and resource-intensive to ensure their compliance with federal legislation and awards:

[retailers] say they are a retailer and don't fall under the category of manufacturer under the TCF award. They fall under the TCF award just like any other manufacturer, but we get challenged about that. It's not that all of a sudden they say, "Oh, I understand. I'm a manufacturer." They don't do that. So there are a lot more resources, processes and hoops we've got to jump through to make them identify that they fall under schedule F of the TCF award, which is the outwork provisions. It's a lot harder.¹³³

2.54 Ms Macpherson commented that the Scheme and its interaction with the ECA Code, provides another 'lever of pressure' for the unions in ensuring compliance with relevant instruments and awards.¹³⁴

Compliance and enforcement of the Scheme, the ECA Code and the federal award

2.55 The following section explores stakeholders' perspectives on enforcing and ensuring compliance with the Scheme, if it were to be revived, the federal award and the ECA Code. In particular, it details the challenges with enforcement and compliance and highlights the importance of having a multi-stakeholder approach or strategic co-enforcement to ensure outworkers are adequately protected.

The NSW Government's role in ensuring compliance with the Scheme

2.56 As explored above, there remains a state role in relation to objectives of the Scheme found in clause 3(2). Further, under clause 8 of the Scheme, the TCFUA (now known as the CFMEU – Manufacturing Division) and inspectors appointed under the *Industrial Relations Act 1996* (NSW) have certain functions to aid, encourage and enforce compliance with the Scheme and relevant

¹³¹ See for example: Submission 5, Associate Professor Martijn Boersma and Associate Professor Chris F. Wright, pp 4-5; Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney, p 12; Submission 2, CFMEU – Manufacturing Division, p 11; Submission 7, Mr Igor Nossar, Mr John Owen and Mr Luigi Amoresano, pp 4-5.

¹³² Submission 2, CFMEU – Manufacturing Division, p 11.

¹³³ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, p 4.

¹³⁴ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, p 4.

industrial instruments and awards (referred to by some inquiry stakeholders as a 'strategic co-enforcement regulatory model').¹³⁵

2.57 In particular, the committee explored the enforcement of the Scheme in the context of the state's referral of their powers to the Commonwealth in 2009 and the state's remaining powers to ensure compliance with the Scheme.

2.58 Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department advised that the state no longer has the capacity to enforce compliance with industrial entitlements. Notwithstanding this, the committee examined the state's remaining powers to ensure compliance with the Scheme as prescribed under clause 8.¹³⁶

2.59 Ms Rizzo explained that for inspectors under the Scheme their compliance powers would be 'multifaceted', including:

- engaging with relevant stakeholders (retailers, employee representatives and business representatives) to educate and inform them about the Scheme
- publishing on the NSW Industrial Relations website the obligations for relevant stakeholders
- collating, through sophisticated programs, data under the Scheme
- engaging with the NSW Anti-slavery Commissioner
- engaging with the Fair Work Ombudsman so that enforcement action can be taken.¹³⁷

Challenges with enforcement and compliance of the federal award

2.60 The committee also explored the challenges of enforcing compliance with the federal award. As noted in Chapter 1, federal instruments and awards provide an avenue for individual outworkers to enforce their rights and their employer's obligations through the Fair Work Ombudsman or union, as necessary or appropriate.¹³⁸ It also provides the union and federal regulator certain powers to ensure compliance with the federal instruments, including right-of-entry provisions and remuneration recovery mechanisms within the TCF supply chain.¹³⁹ However, stakeholders shared the challenges with enforcing compliance with these awards.

¹³⁵ Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, 7 June 2024, p 3.

¹³⁶ Evidence, Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department, 7 June 2024, p 33. See also, Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), cls 3 and 8.

¹³⁷ Evidence, Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department, 7 June 2024, p 34.

¹³⁸ Submission 4, NSW Industrial Relations, Premier's Department, p 3.

¹³⁹ Evidence, Ms Vivienne Wiles, CFMEU – Manufacturing Division, 7 June 2024, p 26. See also, *Fair Work Act 2009 (Cth)* and Textile, Clothing, Footwear and Associated Industries Award 2020.

- 2.61** For example, stakeholders highlighted that ensuring compliance with relevant awards is difficult due to the complexity of the TCF supply chain and challenges in engaging with outworkers.¹⁴⁰ To demonstrate, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division referred to a 2019 report of the Fair Work Ombudsman (FWO) into TCF compliance. The report found that FWO 'had real difficulties in identifying outworkers in the supply chains ... they found compliance with outsourcing regulation was low. Supply chain mapping and outworker engagement was not easy for them to navigate'.¹⁴¹
- 2.62** In this regard, the CFMEU – Manufacturing Division shared the importance of the industry-specific work being done by the Compliance and Outwork Outreach Team at the union to ensure compliance with TCF industrial awards and protect vulnerable workers in the industry.¹⁴² Outwork Outreach Officers engage directly with outworkers to ensure they are aware of their legal entitlements and bring outworker concerns to the attention of the compliance part of the team who will work to rectify the issue. In New South Wales, there is one officer who conducts this work.¹⁴³ The case study below provides insight into the work performed by the Outwork Outreach Officer at the union.

Case study: Ms Nguyet Nguyen, Outwork Outreach Officer, CFMEU – Manufacturing Division

Ms Nguyet Nguyen, is a refugee from Vietnam, who migrated to Australia in 1987. Once in Australia, she worked as an outworker in the TCF industry. In 2009, she became the first outworker to hold the position of Outwork Outreach Officer at the CFMEU – Manufacturing Division.

As an outworker, Ms Nguyen was unaware that she had the right to be treated fairly, telling the committee: 'I was too afraid about losing the work. I was threatened with harassment to get more work, facing tough rules if jobs could not meet the deadline. Any mistake would have to be compensated out of own pocket and at retail price, which is enormous...I made complex garments for big brands' labels. Getting paid from \$5 to \$7 per garment, each took me about an hour to complete—and hourly average of \$7 at best'.

Ms Nguyen reflected on her feelings of isolation and stress as an outworker: 'Most of the time, I had to hide the work stress from my kids. This was not easy, as they soon discovered the different lifestyles from their school friends ... Sitting alone in the corner of my garage, I felt isolated'.

Ms Nguyen joined the union after becoming aware of their work while listening to the radio. She expressed that 'joining the union was a big risk for me, but then I had big support'.

¹⁴⁰ See for example: Evidence, Ms Vivienne Wiles, CFMEU – Manufacturing Division, 7 June 2024, p 26; Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, 27 June 2024, p 2-3 and 5; Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 19; Evidence, Ms Nguyet Nguyen, Outwork Outreach Officer, CFMEU – Manufacturing Division, pp 3-5.

¹⁴¹ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, 27 June 2024, p 2.

¹⁴² Tabled document, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, *WEIGO Organising brief: Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector*, pp 9-10.

¹⁴³ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, p 2 and 5.

As an Outwork Outreach Officer, Ms Nguyen highlighted the challenges she faces when trying to engage with outworkers: 'The hardest thing for me to engage with outworkers is that a lot of people are very fearful. They talk to each other and say, "If you talk to union, then you'll be in trouble." We have to make sure that we keep our promise. We don't tell anyone. We have to help them instead of making it worse. We're here to help them. We're very patient. We have to work with them. ... But really patiently listening—not a lot of talking but listening to them first—about what they want and then also we discuss and help them. Sometimes I have to take my manager with me. Slowly, once they trust us, then it's a lot easier for us to resolve the problem'.

Ms Nguyen told the committee that this process takes time involving 'a lot of visits and a lot of communication'.

During the course of her work, Ms Nguyen has seen 'more and more outworkers ... acknowledged as outworkers; receiving an hourly wage of skill level 3 and a written agreement to secure their work; companies started paying superannuation and all legal entitlements; having proper holidays to spend time with family; and proud to be an outworker'.¹⁴⁴

- 2.63** Ms Elizabeth Macpherson, the National Compliance Officer at the CFMEU – Manufacturing Division, informed the committee that the level of engagement and trust the union currently has with outworkers was achieved over time. Ms Macpherson explained that this was achieved through dedicated resources that have been able to 'build knowledge in the community of the union's existence' and to 'let them know we are a safe space'. Ms Macpherson said this was done through having a presence at community events 'so when we do make direct contact, they already know who we are; it's not as scary for them'.¹⁴⁵
- 2.64** Ms Macpherson reflected that after conducting this work for many years, the union now has a strong network in most states, with outworkers being able to 'tell their story to other outworkers who are really fearful and don't know whether they trust us or not' through online meetings and in-person gatherings or picnics.¹⁴⁶
- 2.65** The CFMEU – Manufacturing Division Compliance Team's enforcement strategy is outlined in a brief prepared for Women in Informal Employment: Globalizing and Organising (WEIGO) titled 'Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector'. A key component of the Compliance Team's enforcement strategy is mapping the supply chain and liaising directly with retailers to remedy any noncompliance.¹⁴⁷
- 2.66** The WEIGO brief notes that part of this supply chain strategy includes the Compliance Officer dealing directly with the top principal and working down the supply chain at the same time as the Outwork Outreach Officers are meeting with outworkers. According to the brief, this

¹⁴⁴ Evidence, Ms Nguyet Nguyen, Outwork Outreach Officer, CFMEU – Manufacturing Division, pp 3-5.

¹⁴⁵ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, 27 June 2024, p 5.

¹⁴⁶ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, 27 June 2024, pp 5-6.

¹⁴⁷ Tabled document, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, *WEIGO Organising brief: Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector*, p 9.

process allows the team to collect information at or around the same time, 'match it up and see whether or not it equals'.¹⁴⁸

- 2.67** In an event of noncompliance, the Compliance Team can initiate court proceedings for contravention, however, as noted in the WEIGO brief, this is 'very expensive' and 'resource intensive'. The brief also highlighted that in a majority of cases the union is able to negotiate a settlement to remedy non-compliance within a particular supply chain.¹⁴⁹

Collaborative approach to enforcement of the ECA Code

- 2.68** Sitting alongside the Scheme is the ECA Code, which inquiry participants described as a 'multi-stakeholder initiative' involving union, industry and businesses.¹⁵⁰ Through a service level agreement between Ethical Clothing Australia and the CFMEU – Manufacturing Division, the union's Compliance and Outwork Outreach Team is responsible for ensuring compliance with the ECA Code. Ethical Clothing Australia provides funding to the union to undertake this work.¹⁵¹
- 2.69** The Compliance Team conducts yearly audits of accredited businesses and their local supply chains. As noted earlier, this includes 17 accredited businesses in New South Wales and 107 additional businesses in their local supply chain. Businesses may be subject to additional audits, should their operations change within the 12-month period from their last audit.¹⁵²
- 2.70** Ms Rachel Reilly, National Manager of Ethical Clothing Australia, commented that the union's powers under the *Fair Work Act 2009* to enter and request documentation, makes it 'one of the more rigorous audits globally, because it's drawing on those existing powers'.¹⁵³ In addition, Ms Reilly argued that the yearly audit undertaken 'ensures that the standards within the businesses themselves and their supply chains doesn't slip over time', preventing exploitative labour practices from returning.¹⁵⁴
- 2.71** In terms of who is audited, Ethical Clothing Australia detailed how certain workers may not be protected by the audits performed on the business supply chain:

While the audit is currently protecting the workers in-house at the participating supply chain, it does not necessarily protect the workers in the participating suppliers own supply chain – i.e. if they are then giving out work to a business not related to the principal business which is accredited, then that new supply chain member is potentially

¹⁴⁸ Tabled document, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, *WEIGO Organising brief: Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector*, p 11.

¹⁴⁹ Tabled document, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, *WEIGO Organising brief: Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector*, p 11.

¹⁵⁰ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 17.

¹⁵¹ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 17.

¹⁵² Submission 3, Ethical Clothing Australia, p 13 and Answers to questions on notice, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 5 July 2024, p 7.

¹⁵³ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 18.

¹⁵⁴ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 19.

not audited. (this is all dependent on who else they are receiving work from and if they are accredited or not).¹⁵⁵

2.72 Ethical Clothing Australia outlined the consequence for businesses who are in breach of the code:

When a business or a member of their supply chain are found to be in breach of the Code, the compliance officers will work with the businesses to rectify the issue. In doing so, local TCF workers are remedied for loss of entitlements or underpayments in a timely manner. If the breach cannot be rectified, then the business must be de-accredited.¹⁵⁶

2.73 In evidence, Ms Rachel Reilly, National Manager at Ethical Clothing Australia, stated that this collaborative approach between the union and business to rectify noncompliance is where 'the real power in the program lies in that it's only in an instance where a business refuses to remediate breaches that they will be cut off'.¹⁵⁷

2.74 When this occurs, Ms Reilly, Ethical Clothing Australia, stated that the union as a 'last resort' can use their existing powers under workplace laws to prosecute continued noncompliance with the federal award.¹⁵⁸

2.75 Further, Ms Elizabeth Macpherson, National Compliance Officer at the CFMEU – Manufacturing Division commented that the ECA Code gives the union 'another lever of pressure':

If we're going down the supply chain—because generally outworkers aren't given work from the principal; it is down the supply chain—where we are able to identify it, we can go back to the top of the supply chain, the retailer, and say, "You're aware of this. We need to rectify this." We use that pressure point by the retailer to be able to rectify it. Without that pressure, it takes a lot longer. Because if we haven't got that particular pressure point, we have to go through the legal framework.¹⁵⁹

Need for funding and resourcing

2.76 As explored earlier, the NSW Industrial Relations confirmed their ability within already allocated government resources to perform functions under the Scheme, namely those that relate to gathering and sharing data and undertaking inspections to promote and encourage compliance.¹⁶⁰

¹⁵⁵ Answers to questions on notice, Ethical Clothing Australia, p 7.

¹⁵⁶ Submission 6, Ethical Clothing Australia, p 13.

¹⁵⁷ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 18.

¹⁵⁸ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 21.

¹⁵⁹ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, p 4.

¹⁶⁰ Evidence, Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department, 7 June 2024, p 32.

- 2.77** Nonetheless, some stakeholders called for further funding to drive participation and ensure compliance with the Scheme and the ECA Code.¹⁶¹
- 2.78** For example, CFMEU – Manufacturing Division called for funding of their Compliance and Outreach Team to ensure compliance with the Scheme if it were to be resuscitated, noting the hard work of their workers to engage with outworkers.¹⁶²
- 2.79** Likewise, Ethical Clothing Australia (ECA) made similar recommendations. Currently, ECA receives \$1 million per annum until June 2027 from the Victorian government to deliver the accreditation program and \$2 million per annum for a period of 3 years (until May 2026) from the Federal Government to grow the accreditation in states beyond Victoria.¹⁶³
- 2.80** The ECA emphasised that the low number of businesses with ECA accreditation in New South Wales means there is a significant gap in protecting a high-risk group of workers. The ECA therefore advocated for funding 'to grow the accreditation program in New South Wales to protect more local TCF workers'.¹⁶⁴
- 2.81** The committee questioned whether consideration has been given to funding and resourcing the potential increase in participation in the ECA accreditation program as a result of the Scheme's operation and work done by NSW Industrial Relations. The department responded that 'questions around Government funding is a matter reserved for Government'.¹⁶⁵
- 2.82** Furthermore, the NSW Anti-slavery Commissioner acknowledged that any modern slavery arrangements integrated into the Scheme will require resourcing and capability consideration.¹⁶⁶

Integrating anti-slavery measures into the Scheme

- 2.83** As noted earlier, the NSW Anti-slavery Commissioner was of the view that the Scheme as it is currently designed, has the 'by-product' impact of preventing modern slavery due to its narrow focus on workplace awards and entitlements and not on other factors relevant to assessing the presence of forced labour and modern slavery.¹⁶⁷
- 2.84** The Commissioner shared ways that anti-slavery measures could be integrated into the Scheme, including:
- possible amendments to align the Scheme with Australia's commitments to international standards and strengthen its anti-slavery impact

¹⁶¹ Submission 6, Ethical Clothing Australia, p 15; Submission 2, CFMEU – Manufacturing Division, p 14 and Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 15.

¹⁶² Submission 2, CFMEU - Manufacturing Division, pp 12 and 14.

¹⁶³ Answers to questions on notice, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 5 July 2024, p 2.

¹⁶⁴ Submission 6, Ethical Clothing Australia, pp 4, 15 and 17.

¹⁶⁵ Answers to questions on notice, NSW Industrial Relations, Premier's Department, p 2.

¹⁶⁶ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 15.

¹⁶⁷ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 11.

- proposals for integrating the Scheme and the ECA Code into the NSW Government's procurement of goods in the TCF industry
- the role of the Commissioner in engaging with outworkers.

Aligning the Scheme with relevant international standards and guidelines

- 2.85** Stakeholders shared varying perspectives on whether the Scheme aligns with Australia's commitment to international standards and guidelines (set out in Chapter 1) that provide businesses with a framework to identify and address risks of exploitation and modern slavery in their supply chains. Stakeholders also made suggestions to amend the Scheme to ensure its alignment with these standards.
- 2.86** The NSW Anti-slavery Commissioner argued that while the extension of responsibilities to retailers was 'groundbreaking 20 years ago', the Scheme does not reflect current expectations under Australia's international commitments, such as the UN guiding principles and the OECD Due Diligence Guidance. In particular:
- Current international expectations state that all businesses, not just manufacturers and retailers, are responsible for respecting human rights and international labour standards. This broad responsibility avoids the challenges of demarcation about whether a firm is a retailer or manufacturer.
 - The Scheme does not include positive obligations for businesses to actively create and use leverage with suppliers to address modern slavery risks or to provide access to grievance mechanisms that align with very specific internationally stated effectiveness standards.
 - The Scheme does not cover the retailer's responsibility to provide or enable remedy of harm to which they are directly connected, such as alternative accommodation, psychological counselling, crime victim compensation, or medical treatment for victims of modern slavery.¹⁶⁸
- 2.87** To better align the Scheme, the NSW Anti-slavery Commissioner advocated for it to be expanded to include obligations for TCF retailers in New South Wales to take reasonable steps to ensure that goods and services procured by and for them are not the product of modern slavery. The Commissioner suggested that the question as to what constitutes a reasonable step could be clarified by guidance published by the NSW Anti-slavery Commissioner.¹⁶⁹
- 2.88** The Commissioner provided insight into retailers' views on potentially incorporating anti-slavery obligations into the Scheme. He commented that his guidance provided to public sector actors on the reasonable steps to remove modern slavery risks 'has been really welcomed' by retailers as it provides them 'greater clarity and specificity' as to how to meet their international obligations to mitigate modern slavery risks in their supply chains. Moreover, the Commissioner expressed the view that 'there would be a level of receptivity in the business community in New

¹⁶⁸ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 11.

¹⁶⁹ Submission 3, Office of the NSW Anti-slavery Commissioner, p 35.

South Wales to have this conversation about aligning this arrangement with the broader expectations under Federal modern slavery arrangements'.¹⁷⁰

- 2.89** On the other hand, Mr Igor Nossar, former Chief Advocate for the TCFUA responded to the assertion that the Scheme does not reflect current international standards and guidelines that aim to mitigate modern slavery. Mr Nossar emphasised that discussions about evolving international standards often overlook the 'extent to which these can be practically enforceable as opposed to being merely guiding'. Mr Nossar highlighted that ethical businesses will adhere to international guidance while unethical competitors 'will be happy to benefit from the commercially competitive consequences' of non-compliance.¹⁷¹
- 2.90** The committee explored the practicality of enforcing the NSW Anti-slavery Commissioner's suggested amendment to the Scheme. It was put to the Commissioner that the inclusion of 'reasonable steps' which have not been developed to the same specificity as methods applied in enforcing the federal award, will allow businesses to be 'vague' in their response to what the reasonable steps are and make the Scheme harder to enforce.¹⁷²
- 2.91** In response, the Commissioner argued this would 'complement – not displace ... the existing normative standards by bringing in the expectation of also providing information on ... other additional areas of behaviour' including, for example, whether they're incurring fees outside the workplace and treatment by people outside the workplace.¹⁷³
- 2.92** The Commissioner accepted that current enforcement arrangements under the *Modern Slavery Act 2018* (Cth) are 'not stringent'. However, the Commissioner highlighted that there was nothing preventing other Australian jurisdictions going further in their alignment with international commitments:
- ... [T]here's nothing to prevent this jurisdiction aligning with Australia's international commitments and going further, deeper, in a particular area in implementation. That's what we're seeing internationally. ... [J]urisdictions are, in particular sectors, going much deeper and providing the level of specificity that this scheme already does in a particular area.¹⁷⁴
- 2.93** Furthermore, the Commissioner proposed that enforcement of this particular amendment could be achieved by the inclusion of "anti-slavery" as one of the Scheme's objectives as well as incorporating the NSW Anti-slavery Commissioner into the Ethical Clothing Trades Council.¹⁷⁵
- 2.94** The Commissioner explained his potential role and the impact of these amendments to those currently prescribed to enforce compliance with the Scheme:

¹⁷⁰ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 12.

¹⁷¹ Evidence, Mr Igor Nossar, Former Chief Advocate, Textile, Clothing and Footwear Union of Australia NSW Branch, Former Adviser to the International Transport Workers' Federation, Independent Scholar, 7 June 2024, pp 6-7.

¹⁷² Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 13.

¹⁷³ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 13.

¹⁷⁴ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 13.

¹⁷⁵ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 14.

What that means is that the enforcement actors, whether it's unions or government officials—NSW Industrial Relations—could turn to the Office of the Anti-slavery Commissioner for support and advice. For training, to ensure that when they're doing enforcement they are fully understanding indicators of modern slavery or forced labour that are in front of them. Advice on a case-by-case basis—how does this measure up against the ILO forced labour indicators?

You would, in a sense, be mandating the person holding my role and their office to be that additional supplemental capability in the overall governance and implementation of the scheme, not to displace what's there but to add on this extra wraparound layer of antislavery knowledge and capability.¹⁷⁶

- 2.95** More generally, the Commissioner noted that implementation of the proposed anti-slavery component of the Scheme could be done by government officials through NSW Industrial Relations, the unions, or his office.¹⁷⁷
- 2.96** The Commissioner agreed that it could be included in the information reported to NSW Industrial Relations, with a role for Office of the NSW Anti-slavery Commissioner to upskill the inspectorate team on a continuous basis to be able inspect effectively.¹⁷⁸
- 2.97** On the other hand, Mr Nossar argued that the Scheme can be effectively implemented by the TCFUA's successor union organisation [CFMEU – Manufacturing Division] and the relevant NSW Government Department by means of exercise of their respective powers pursuant to the provisions of the Scheme. Mr Nossar suggested that serious government consideration of a service level agreement with the CFMEU – Manufacturing Division was needed, alongside necessary funding. According to Mr Nossar, this ensures the NSW Government access to 'the cooperation and expertise of this union in relation to the future operation of the [Scheme]'.¹⁷⁹
- 2.98** With regard to what amendments to the Scheme should be considered, Mr Nossar endorsed those put forward by the CFMEU – Manufacturing Division in their submission and evidence to the inquiry.¹⁸⁰ These recommendations, discussed throughout the chapter, include for example, amendments to the Scheme that update references to the union (CFMEU – Manufacturing Division), the federal award and the ECA Code and funding to the CFMEU – Manufacturing Division to ensure compliance with the Scheme.
- 2.99** In answers to questions taken on notice, the NSW Anti-slavery Commissioner and Dr Justine Coneybeer provided further detail on their proposed amendments to the Ethical Clothing

¹⁷⁶ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 14.

¹⁷⁷ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, pp 14-15.

¹⁷⁸ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 15.

¹⁷⁹ Additional Information, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, 9 July 2024, p 9.

¹⁸⁰ Additional Information, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, 9 July 2024, p 9.

Extended Responsibilities Scheme 2005 (NSW) and the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW).¹⁸¹

- 2.100** According to the Commissioner and Dr Coneybeer, these amendments 'taken together, would have the effect of integrating the Scheme with the contemporary anti-slavery infrastructure in NSW, while taking a light-touch approach intended to minimally alter the structure and operation of the Scheme'. The amendments include:
- amendment of the objectives of the Scheme
 - incorporating the Anti-slavery Commissioner into the Ethical Clothing Trades Council as an ex officio member
 - making the Anti-slavery Commissioner or her/his delegates an 'authorised person' for the purpose of the Scheme
 - providing for reporting of suspected incidents of modern slavery to the Anti-slavery Commissioner
 - expanding the supplier undertaking in Schedule 2 to include undertakings relating to cooperation with retailers' reasonable steps to tackle modern slavery
 - allowing the Minister to recognise as a mandatory code under Part 3 of the *Industrial Relations Ethical Clothing Trades Act 2001*, a Code of Practice issued by the Anti-slavery Commissioner under section 27 of the *Modern Slavery Act 2018* (NSW), addressing anti-slavery matters in TCF supply-chains.¹⁸²
- 2.101** With regard to the Commissioner's powers under section 27 of the *Modern Slavery Act 2018* (NSW) to issue a Code of Practice, NSW Anti-slavery Commissioner argued that such a code could 'complement the [ECA Code] by addressing those areas of responsible business conduct expected under Australia's international commitments and not currently covered'.¹⁸³
- 2.102** The Commissioner suggested that the relevant Minister and the Attorney-General work with the NSW Anti-slavery Commissioner to develop a Code of Practice, in consultation with relevant TCF stakeholders.¹⁸⁴
- 2.103** The Commissioner emphasised his powers under the *Modern Slavery Act 2018* (NSW) and the amendments proposed allow any Code issued with this power to be recognised as the mandatory code:

¹⁸¹ Answers to questions on notice, Dr James Cockayne, NSW Anti-slavery Commissioner and Ms Justine Coneybeer, 9 July 2024, pp 3-4.

¹⁸² Answers to questions on notice, Dr James Cockayne, NSW Anti-slavery Commissioner and Ms Justine Coneybeer, 9 July 2024, pp 3-4. See also: Annex 1 and 2 for the specific amendments to the Scheme and IR ECT Act proposed. The amendments proposed rest in part on use of s 27 of the *Modern Slavery Act 2018* (NSW).

¹⁸³ Answers to questions on notice, Dr James Cockayne, NSW Anti-slavery Commissioner and Ms Justine Coneybeer, NSW Anti-slavery Commissioner, 9 July 2024, p 4.

¹⁸⁴ Answers to questions on notice, Dr James Cockayne, NSW Anti-slavery Commissioner and Ms Justine Coneybeer, 9 July 2024, p 4.

In the absence of TCF sector engagement with such a code development process, the Commissioner is already entitled, under the [*Modern Slavery Act 2018 (NSW)*], to issue such a Code. The amendments proposed ... would give the Minister the power to recognise that [Code of Practice] as a mandatory code under Part 3 of the [*Industrial Relations (Ethical Clothing Trades) Act 2001 (NSW)*].¹⁸⁵

Public procurement

- 2.104** Some stakeholders suggested that measures in place to mitigate risks of modern slavery and exploitation in the NSW Government's procurement of goods from the textile, clothing and footwear industry could be aligned with the Scheme and the ECA Code.
- 2.105** The NSW Anti-slavery Commissioner referred to his guidance to public buyers on the reasonable steps to manage modern slavery risks in operations and supply-chains issued in December 2023. According to the Commissioner, the guidance 'does not prohibit public buyers from purchasing high-risk products but sets a standard for the due diligence steps needed to be taken to effectively manage the modern slavery risk'.¹⁸⁶
- 2.106** The Commissioner proposed establishing a 'crosswalk' between the guidance provided to public buyers and the existence of the Scheme. This could involve the Anti-slavery Commissioner indicating in his guidance that it is open to the buyer to 'give preference to retailers or suppliers that are somehow participating in the ECA code or compliant in some way with the Scheme'. The Commissioner reflected that it would be in the NSW Procurement Board's powers to mandate such a policy as he does not have this capacity under the *Modern Slavery Act 2018 (NSW)*.¹⁸⁷
- 2.107** The Commissioner agreed that such a policy would provide an additional incentive to businesses to participate in the ECA Code.¹⁸⁸
- 2.108** In answers to questions on notice, the Commissioner provided further detail on this matter. He noted that the guidance on reasonable steps, 'includes an indication that covered entities should consider any Code of Practice issued by the Commissioner when procuring goods and services, especially those identified as attracting high modern slavery risks'.¹⁸⁹
- 2.109** Therefore, the NSW Anti-slavery Commissioner highlighted that the amendments proposed 'would have the effect of, in time, generating a Code of Practice relevant to NSW Government procurement from TCF supply-chains'. The Commissioner detailed the effect such a Code would have on public procurement:

This would mean that NSW Government agencies must, at a minimum, consider whether suppliers meet the Code of Practice standard, when planning, sourcing and

¹⁸⁵ Answers to questions on notice, Dr James Cockayne, NSW Anti-slavery Commissioner and Ms Justine Coneybeer, 9 July 2024, p 4.

¹⁸⁶ Evidence, Dr James Cockayne, Anti-slavery Commissioner, 27 June 2024, p 16.

¹⁸⁷ Evidence, Dr James Cockayne, Anti-slavery Commissioner, 27 June 2024, p 16.

¹⁸⁸ Evidence, Dr James Cockayne, Anti-slavery Commissioner, 27 June 2024, p 17.

¹⁸⁹ Answers to questions on notice, Dr James Cockayne, NSW Anti-slavery Commissioner and Ms Justine Coneybeer, 9 July 2024, p 6.

managing procurement from this supply-chain – for example, when procuring uniforms. Covered entities would have discretion how to take this conformance into account in their procurement decisions. One option open to them, for example, would be to factor conformance with this Code, or with equivalent standards elsewhere, into tendering processes.¹⁹⁰

- 2.110** More broadly, Ethical Clothing Australia commented that the NSW Government has an opportunity to adopt a much more rigorous public procurement policy compared to other states because of the due diligence mechanisms provided under the *Modern Slavery Act 2018* (NSW) for government agencies. Ethical Clothing Australia advocated for the NSW Government to adopt a policy that mandates accreditation under the ECA Code as a requirement to tender for public procurement.¹⁹¹
- 2.111** Furthermore, the Australian Fashion Council (AFC), referred to the recommendation they made to the Legislative Council's inquiry into procurement practices of government agencies, calling for the establishment of a social framework specific to TCF manufacturing. AFC, noting there is a critical need for the Scheme, suggested that it should be incorporated into this social framework as a requirement for government procurement.¹⁹²
- 2.112** Similarly, Mr Igor Nossar and Mr Luigi Amoresano referred to their submission to that inquiry and their recommendation that a 'strategic co-enforcement regulatory oversight model', like that found in the Scheme, be applied to NSW government procurement arrangements, whereby relevant unions are offered a suite of investigative opportunities (empowered by appropriate NSW Government procurement contractual provisions).¹⁹³

Mandating the Anti-slavery Commissioner to visit worker locations and speaking confidentially with outworkers

- 2.113** The Office of the NSW Anti-slavery Commissioner recommended that the Commissioner be mandated to visit locations where outworkers may be located to speak confidentially with outworkers in relation to their risks of modern slavery. The Office of the NSW Anti-slavery Commissioner referred to the resource constraints that the union faces as grounds for integrating the Commissioner into the Scheme in this capacity. The Office of the NSW Anti-slavery Commissioner also highlighted that it has the ability to engage with people with lived experience, which could facilitate their engagement in the redevelopment of the Scheme and its enforcement going forward.¹⁹⁴
- 2.114** Other stakeholders opposed recommendations to this effect. For example, Ms Vivienne Wiles, Senior National Industrial Officer, CFMEU – Manufacturing Division, highlighted the work of

¹⁹⁰ Answers to questions on notice, Dr James Cockayne, NSW Anti-slavery Commissioner and Ms Justine Coneybeer, 9 July 2024, p 6.

¹⁹¹ Submission 6, Ethical Clothing Australia, p 17.

¹⁹² Submission 8, Australian Fashion Council, p 6.

¹⁹³ Answers to questions on notice and additional information, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar and Mr Luigi Amoresano, National Research Officer, Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU), 11 July 2024, p 12.

¹⁹⁴ Submission 3, Office of the NSW Anti-slavery Commissioner, pp 33-34.

the union over many years to ensure that engagement with outworkers is done 'in a way that is not counterproductive'. Ms Wiles argued that the proposals that the NSW Anti-slavery Commissioner be mandated to engage with vulnerable workers are 'ill considered and not reflective of the difficulties involved'.¹⁹⁵

- 2.115** Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division echoed this sentiment stressing the importance of officers performing this work to speak the language of the relevant workers and to have cultural understanding:

We have previously had people that could speak Vietnamese but were Australian born. It didn't work. You have to understand the actual culture. It's very hierarchical, so you have to understand that and be able to navigate those difficulties. They also understand, within the family unit, how that operates. It's very different to the white culture, so to be able to understand that and navigate that without putting the worker themselves at risk—the majority of them are women, so that can put them at risk with their partners or elder sons in particular.¹⁹⁶

- 2.116** Similarly, Ethical Clothing Australia expressed the view that this recommendation 'misunderstand[s] the complexities of the intersecting forms of discrimination outworkers face and the risks they face in their work and community. Further, ECA argued that this 'may in fact increase risks they face, as the people engaging in exploitative labour practices find new ways to execute this exploitation'.¹⁹⁷

Who is responsible for ensuring the Scheme remains operational?

- 2.117** Many inquiry stakeholders highlighted the importance of union, business and industry involvement to ensure effective regulation of work in the TCF industry.¹⁹⁸
- 2.118** For example, Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, acknowledged that while the state-led model of regulation has its benefits, the most effective model of regulation is 'those that proactively involve both business and workers and their representatives in this process'. Dr Wright commented that this model balances the needs of workers for fairness and business for certainty.¹⁹⁹
- 2.119** Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney echoed this sentiment. He highlighted the importance of multi-stakeholder involvement in regulation of industries that have complex supply chains, and significant risks of exploitation and modern slavery, like the TCF industry:

¹⁹⁵ Evidence, Ms Vivienne Wiles, Senior National Industrial Officer, Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division), 7 June 2024, p 25.

¹⁹⁶ Evidence, Ms Elizabeth Macpherson, National Compliance Officer, CFMEU – Manufacturing Division, 27 June 2024, p 5.

¹⁹⁷ Answers to questions on notice, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 5 July 2024, p 9.

¹⁹⁸ See for example: Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 20.

¹⁹⁹ Evidence, Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 13.

...the more opaque parts of supply chains—and we've seen, both globally as well as within Australia's borders, that you have so-called governance gaps, little parts of supply chains that become so obscure that we're not really sure what's going on. ... there has been more of a move towards multi-stakeholder initiatives and strategic co-regulation, where there was recognition that, if you put all the stakeholders together to try and address the issue, then you get various very valuable insights into what the problem is, and you can, together, put a finger on the sore spot.²⁰⁰

- 2.120** On the other hand, stakeholders also acknowledged the difficulties of this approach. For example, Dr Boersma accepted that 'for all the benefits and virtues that have been sung about multi-stakeholder initiatives, it is true that progress can be glacial and some stakeholders might be dragging their feet'.²⁰¹
- 2.121** To ensure the Scheme remains operational in this regard, Dr Wright suggested that the Ethical Clothing Trades Council may perform this function, noting that this governance model 'is a very good one' and has worked internationally. For example, Dr Wright referred to National Agreement for the Engineering Construction Industry in the United Kingdom which has a 'National Joint Council for the Engineering Construction Industry, without which that agreement would not have achieved the success that it has throughout its 43-year existence'.²⁰²
- 2.122** However, Dr Wright also agreed that without state support or having a department responsible for ensuring its operational, the Scheme fails to be useful, beyond the work that the union and the CFMEU – Manufacturing Division is currently undertaking to ensure ethical conduct in the TCF industry and protect vulnerable workers.²⁰³
- 2.123** In a similar vein, Ms Wiles emphasised the importance of continued multi-stakeholder involvement, in particular, the inclusion of businesses who want to be part of the process to ensure the TCF industry can operate on an ethical basis. However, Ms Wiles commented that 'if you really want to drive participation in that Scheme then ... it's open for the New South Wales Government to fund it'.²⁰⁴
- 2.124** Furthermore, Dr Boersma suggested that the responsibility to ensure the Scheme remains operational sits with NSW Industrial Relations.²⁰⁵

²⁰⁰ Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 13.

²⁰¹ Evidence, Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 15.

²⁰² Evidence, Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 15.

²⁰³ Evidence, Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 15.

²⁰⁴ Evidence, Ms Vivienne Wiles, Senior National Industrial Officer, CFMEU – Manufacturing Division, 7 June 2024, p 28.

²⁰⁵ Evidence, Dr Martijn Boersma. Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 15.

Reconstitution of the Ethical Clothing Trades Council

- 2.125** As noted above, some stakeholders expressed support for reconstitution of the Ethical Clothing Trades Council as a mechanism to ensure the Scheme remains operational.
- 2.126** The Commissioner argued that for the Scheme to be fully effective, the Ethical Clothing Trades Council needs to be revitalised as the governance system overseeing the Scheme. Moreover, to ensure the Scheme's ongoing effectiveness is not dependent on the changing priorities of its participants, the Commissioner advocated for his inclusion on the Council.²⁰⁶
- 2.127** Given some stakeholders' support for the reconstitution of the Council in an ongoing governance capacity, the committee sought further detail on the operations of the Council and its intended functions.
- 2.128** As noted in Chapter 1, the *Industrial Relations (Ethical Clothing Trades) Act 2001* establishes the Ethical Clothing Trades Council (the Council). The Council comprises seven part-time members from the Australian Retailers Association (ARA), the Australian Industry Group (AIG), Australian Business Limited, Textile, Clothing and Footwear Union of Australia (TCFUA), Unions NSW, and a member chosen by the relevant Minister to represent community interests.²⁰⁷
- 2.129** At the time of writing, the Council is non-operational. According to the NSW Industrial Relations, Premier's Department 'there is no information to hand as to why the Ethical Clothing Trades Council ... has not been convened since about 2004 after the terms of appointment of the 7 part-time members expired and there were no further appointments to the Council'.²⁰⁸
- 2.130** However, Mr Igor Nossar, who attended the Council's meetings, shared insight into the reasons why it has not been reconvened.²⁰⁹ With regard to its operation, Mr Nossar outlined the Council's role in the establishment of new improved voluntary codes of practice for the private sector, now known as the ECA Code. Mr Nossar noted that the multi-stakeholder consultation process (within the Council) also culminated in its decision 'to recommend that the relevant minister unilaterally proclaim mandatory retailer obligations which specifically incorporate targeted compliance auditing and enforcement measures'. This was adopted by the Minister and became known at the Scheme.²¹⁰
- 2.131** Mr Nossar emphasised that the Council was 'never intended to be a permanent ongoing multi stakeholder representative body'. Mr Nossar referred to provisions in the *Industrial Relations Ethical Clothing Trades Act 2001*, namely those that require the Council to report to the relevant Minister 12 months after its commencement on action taken by the industry to improve compliance with their obligations to ensure outworkers receive their lawful entitlements. Mr Nossar stated for this reason, 'each of the Council's members were only appointed for a strictly limited term'.²¹¹

²⁰⁶ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, pp 11-12.

²⁰⁷ Additional Information, Mr Igor Nossar, 9 July 2024, p 7.

²⁰⁸ Answers to questions on notice, NSW Industrial Relations, Premier's Department, 5 July 2024, p 1.

²⁰⁹ Additional Information, Mr Igor Nossar, 9 July 2024, pp 4-8.

²¹⁰ Additional Information, Mr Igor Nossar, 9 July 2024, p 7.

²¹¹ Additional Information, Mr Igor Nossar, 9 July 2024, p 5.

- 2.132** Further, Mr Nossar advised that following the Council's delivery of its 12 month report, 'the Council fulfilled no further functions and it ceased to exist as the Council members' appointments collectively expired'.²¹²
- 2.133** Regarding the Council's continued role in the governance of the Scheme, Mr Nossar argued that since the 'multi stakeholder Council format is far too bureaucratically unwieldy for any efficient administration of the Scheme's functions' governance would sit best with the relevant union and the NSW Government department responsible for industrial relations. Mr Nossar argued each party would administer their respective powers pursuant to the provisions of the Scheme.²¹³
- 2.134** In terms of operationalising the Scheme, NSW Industrial Relations, Premier's Department, noted that under the terms of the *Industrial Relations (Ethical Clothing Trades) Act 2001*, the Council is not required for the re-enlivening of the Scheme.²¹⁴ However, referring to section 7 of the *Industrial Relations (Ethical Clothing Trades) Act 2001*, the Department highlighted that the relevant Minister must consult the Council and consider any report or recommendation made by it before amending or revoking the Scheme.²¹⁵ Mr Nossar acknowledged this provision and was of the view that 'the only remaining intended function of the Council is to be reconvened for the purpose of consultation by the relevant Minister prior to that Minister "amending or revoking" [the Scheme]'.²¹⁶

Extension of the Scheme to other areas at risk of exploitation and modern slavery

- 2.135** Several stakeholders identified other industries in which a high risk of modern slavery is present and discussed the value in extending the Scheme. These industries include horticulture, construction and cleaning services in which supply chain characteristics mirror those of the TCF industry.
- 2.136** Dr Chris F. Wright, Associate Professor at the University of Sydney asserted that fissured work arrangements have become increasingly more common in recent decades.²¹⁷ As noted in Chapter 1, these kinds of work arrangements allow for poor working conditions to go largely unchecked.
- 2.137** Similar to what has been observed in the TCF industry, the characteristics of workers in these supply chains can increase their vulnerability and risk of exploitation. For example, Mr Igor Nossar explained that workers in the horticultural industry are often on temporary and insecure visa arrangements and working out of 'backpacker or hostel-type situations'.²¹⁸ Mr Nossar

²¹² Additional Information, Mr Igor Nossar, 9 July 2024, p 8.

²¹³ Additional Information, Mr Igor Nossar, 9 July 2024, p 8.

²¹⁴ Answers to questions on notice, NSW Industrial Relations, Premier's Department, p 1.

²¹⁵ Answers to questions on notice, NSW Industrial Relations, Premier's Department, p 1. See also, *Industrial Relations (Ethical Clothing Trades) Act 2001 (NSW)*, s 7.

²¹⁶ Additional information, Mr Igor Nossar, 9 July 2024, p 10.

²¹⁷ Evidence, Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney, 7 June 2024, p 11.

²¹⁸ Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, p 6.

emphasised that there is evidence to suggest that insecure visa holders in fissured work arrangements have been subjected to significant exploitation, including wage theft.²¹⁹ Similar conditions have been observed in the construction and cleaning industries.²²⁰

- 2.138** The committee heard differing views about how the Scheme should be implemented if it was expanded to other industries. For example, The NSW Anti-slavery Commissioner cautioned that if the Scheme was expanded into other high-risk industries, there is 'a danger in creating individual structures for each sector' as this could lead to demarcation disputes.²²¹ Noting that any decision regarding the expansion of the scheme would require careful consideration, the Commissioner proposed that a generalised approach may be more appropriate.²²²
- 2.139** The Office of the NSW Anti-slavery Commissioner was not necessarily opposed to extending the scheme to other areas. Rather, the Commissioner recommended first reviving the Scheme with the inclusion of an anti-slavery lens, before exploring options to expand the Scheme two years after its initial revival.²²³
- 2.140** By contrast, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, emphasised the importance of regulatory bodies having industry-specific knowledge. Ms Reilly highlighted that union compliance officers with prior work experience in their relevant industries are able to quickly recognise where legally complaint working conditions are not being upheld.²²⁴
- 2.141** Ms Reilly viewed a generalised approach to this expansion as ineffective, arguing that an 'overarching committee' across industries would 'weaken what the program is in itself'.²²⁵

Other programs and assistance for outworkers in the textile, clothing and footwear industry

- 2.142** In examining the Scheme and its potential to protect outworkers from exploitation and modern slavery, the committee heard from stakeholders about a range of other programs and assistance the NSW Government should give consideration to.²²⁶
- 2.143** In particular, the CFMEU – Manufacturing Division advocated for programs that would:
- enhance English language and literacy skills for TCF outworkers
 - enhance financial knowledge and literacy for TCF outworkers

²¹⁹ Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, p 6.

²²⁰ Evidence, Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar, p 6.

²²¹ Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 12.

²²² Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 June 2024, p 12.

²²³ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 22.

²²⁴ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 21.

²²⁵ Evidence, Ms Rachel Reilly, National Manager, Ethical Clothing Australia, 7 June 2024, p 22.

²²⁶ Answers to questions on notice, Ms Vivienne Wiles, Senior National Industrial Officer, CFMEU – Manufacturing Division, 5 July 2024, p 1.

- assist outworkers to understand and enforce their legal, industrial and employment rights, with the help of the union
- actively encourage social inclusion and participation in dignified, well paid and safe work
- provide practical pathways for training, skills development and further education.²²⁷

2.144 The CFMEU – Manufacturing Division highlighted that any such programs should be 'designed, developed and delivered in a culturally sensitive and linguistically appropriate way'.²²⁸

2.145 To support this recommendation, the CFMEU – Manufacturing Division referred to an English language course for outworkers that the former TCFUA was funded to run for approximately 10 years. The course included:

... important information about occupational, health and safety, including the safe operation of sewing machines, the dangers of excessive work hours, how to minimise the risk of workplace injury and where to get advice and assistance if injuries did occur. There was also subject matter about award safety net, wages, leave and conditions and legal rights as an outworker and general financial literacy education.²²⁹

2.146 The CFMEU – Manufacturing Division stressed that without these types of programs outworkers face major barriers in being aware of their legal and industrial rights and to practically enforce those rights.²³⁰

Committee comment

2.147 The intention of this inquiry was to explore the ongoing utility of the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) to protect outworkers in the textile, clothing and footwear industry. As we have found, outworkers in this industry remain at significant risk of exploitation and modern slavery.

2.148 The committee notes that despite various efforts to regulate this workforce and protect vulnerable workers, there remains key challenges that limit their effectiveness. These include the complexity of the supply chain, the nature of the work performed, and the demographic profile of outworkers in the industry.

2.149 It is clear from the evidence that the Scheme at the time of its establishment was a useful and innovative tool in the face of these challenges. In particular, its ability to capture supply chain data that is essential to enforcing compliance with industrial instruments and awards was especially valuable.

2.150 The committee understands that the Scheme is currently not in operation. From the evidence, the exact reason is unclear; however, the committee acknowledges that the state's referral of its industrial relations powers to the Commonwealth may have contributed to a misunderstanding of the Scheme's application. In this context, the committee notes the discussion around the

²²⁷ Answers to questions on notice, CFMEU – Manufacturing Division, 5 July 2024, p 1.

²²⁸ Answers to questions on notice, CFMEU – Manufacturing Division, 5 July 2024, p 4.

²²⁹ Answers to questions on notice, CFMEU – Manufacturing Division, 5 July 2024, p 4.

²³⁰ Answers to questions on notice, CFMEU – Manufacturing Division, 5 July 2024, p 3.

validity of the Scheme as it is currently designed. We agree with stakeholders that it remains a valid state instrument in protecting outworkers and promoting compliance with the federal award and other legal entitlements.

- 2.151** Evidence on the Scheme's relevance to modern slavery, its interaction with current regulation and its benefits were particularly helpful in our assessment of its ongoing utility. The committee acknowledges that a key benefit of the Scheme is that it complements and, in some cases strengthens, the existing legal protections afforded to outworkers. This is also the case for more recent modern slavery legislation where many textile, clothing and footwear businesses are not captured by the reporting obligations imposed on larger corporations.
- 2.152** Of note, an important feature of the Scheme is that it captures retailers at the top of the supply chain who wield significant economic power and control the work that is being performed. The committee understands that this is especially important in the current regulatory landscape where it has been difficult to ensure retailers comply with the federal award.
- 2.153** The committee therefore finds that there is ongoing utility in the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) given the significant risk of exploitation and modern slavery that outworkers in the textile, clothing and footwear industry face and its potential to mitigate these risks. Further, we recommend that the NSW Government revive the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).
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Finding 2

That there is ongoing utility in the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) given the significant risk of exploitation and modern slavery that outworkers in the textile, clothing and footwear industry face and its potential to mitigate these risks.

Recommendation 1

That the NSW Government revive the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).

- 2.154** However, the committee heard evidence from various stakeholders that amendments to the Scheme are necessary to reflect current industrial awards, address the referral of the state's powers to the Commonwealth, and clarify the role of the CFMEU – Manufacturing Division and NSW Industrial Relations in the Scheme.
- 2.155** The committee also notes the evidence of the NSW Anti-slavery Commissioner about the limitations of the Scheme, in that it does not explicitly work to prevent modern slavery in its objectives, nor does its scope align with Australia's commitment to various international standards and guidelines. The committee has considered the amendments proposed by the Commissioner to address these gaps and sees merit in these. However, the committee believes further consideration is needed, in consultation with the NSW Government and the textile, clothing and footwear industry about the implications of such amendments, including the practicality of enforcing them and the Commissioner's existing powers under section 27 of the *Modern Slavery Act 2018 (NSW)*.
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- 2.156** Further, the committee notes that we did not hear directly from any retailers or retailer associations throughout this inquiry. We believe that their views need to be taken into consideration, particularly with regard to any anti-slavery amendments to the Scheme.
- 2.157** To facilitate such change, it is clear from the evidence that the Ethical Clothing Trades Council must be reconstituted for any amendments to the Scheme to be made. However, the committee recognises the contrasting views of stakeholders regarding its ongoing role in ensuring the Scheme remains operational. In particular, we acknowledge the NSW Anti-slavery Commissioner's suggestion that he hold an ex officio position on the Council to ensure the Scheme's ongoing operation and alignment with anti-slavery obligations. We also note Mr Igor Nossar's differing view on the Council's ongoing role in the governance of the Scheme, and his calls for NSW Industrial Relations and the Construction, Forestry and Maritime Employees Union – Manufacturing Division (CFMEU – Manufacturing Division) to be responsible for the Scheme's operation.
- 2.158** Ultimately, the committee is of the view that further consideration and collaboration is needed about the proposed amendments to the Scheme, in particular, those proposed by the NSW Anti-slavery Commissioner. On that basis, the committee recommends that the NSW Government, in reviving the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), consider the following issues:
- the evidence, findings and recommendations made in this inquiry
 - the ongoing role of the Ethical Clothing Trades Council and the need for its reconstitution to consider amendments
 - views of retailers within the textile, clothing and footwear industry
 - updates to the Scheme that accurately reflect the views of union and government department stakeholders, industrial awards and instruments and the voluntary code
 - amendments to reflect the operation of the Scheme following referral of the state's powers to the Commonwealth
 - incorporation of anti-slavery objectives and obligations, in particular, those proposed by the NSW Anti-slavery Commissioner in his amendments to the Scheme and the *Industrial Relations (Ethical Clothing Trades) Act 2001*.

Recommendation 2

That the NSW Government, in reviving the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW), consider the following issues:

- the evidence, findings and recommendations made in this inquiry
 - the ongoing role of the Ethical Clothing Trades Council and the need for its reconstitution to consider amendments
 - views of retailers within the textile, clothing and footwear industry
 - updates to the Scheme that accurately reflect the views of union and government department stakeholders, industrial awards and instruments and the voluntary code
 - amendments to reflect the operation of the Scheme following referral of the state's powers to the Commonwealth
 - incorporation of anti-slavery objectives and obligations, in particular, those proposed by the NSW Anti-slavery Commissioner in his amendments to the Scheme and the *Industrial Relations (Ethical Clothing Trades) Act 2001*.
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2.159 Regardless of whether the Ethical Clothing Trades Council plays an ongoing role, the committee is of the view that it is necessary that the NSW Government be responsible for ensuring the Scheme remains operational. We believe this responsibility sits with NSW Industrial Relations, given the evidence we heard about the role of the agency in ensuring compliance with Scheme. The committee is pleased to hear that the NSW Industrial Relations inspectorate team is actively considering their role under the Scheme and looking at how to monitor, collate and share supply chain data and promote compliance of the Scheme and other relevant awards. It is encouraging to see the department's recognition of this Scheme's potential.

2.160 We therefore recommend that the NSW Government appoint NSW Industrial Relations as the agency responsible for ensuring the Scheme remains operational.

Recommendation 3

That the NSW Government appoint NSW Industrial Relations as the agency responsible for ensuring the Scheme remains operational.

2.161 While the committee believes that responsibility of the Scheme should sit with NSW Industrial Relations, the committee appreciates that there was general agreement among inquiry stakeholders that multi-stakeholder involvement in the regulation of the textile, clothing and footwear industry is effective in being able to ensure compliance with workplace instruments and awards. This includes the union, NSW Government and industry.

2.162 The industry-specific knowledge and cultural understanding that is required to enforce compliance of workplace entitlements and conditions cannot be understated. In particular, the committee notes Ms Nguyet Nguyen's evidence, who clearly highlighted the specialist skills and knowledge required to undertake her role as an Outwork Outreach Officer at the CFMEU – Manufacturing Division.

2.163 It was clear from the evidence that engaging with outworkers is challenging, particularly as there is a high level of fear in reporting exploitation amongst these workers. The union's process of

engagement is strategic and has been developed over many years. This includes employing workers like Ms Nguyen who have a cultural understanding, are bilingual or multilingual, and have previously been outworkers themselves. We understand that this is an important aspect of the compliance work the union undertakes.

- 2.164** The committee notes the debate as to whether the NSW Anti-slavery Commissioner should be mandated to visit outworker locations and engage with outworkers on a confidential basis. Given the various difficulties in engaging with outworkers, the committee believes that this may be counterproductive to the work of the union and may even put outworkers at greater risk. Therefore, the committee finds that unions and workers with direct experience in the textile, clothing and footwear industry, relevant language skills and cultural awareness are best placed to undertake outreach with outworkers.

Finding 3

That unions and workers with direct experience in the textile, clothing and footwear industry, relevant language skills and cultural awareness are best placed to undertake outreach with outworkers.

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- 2.165** The committee also acknowledges the calls for an establishment of a supply chain database accessible to the union and the NSW Anti-slavery Commissioner. The committee believes this is a crucial component to the Scheme and that the NSW Government should ensure that such a database is operational and shared with the necessary stakeholders. We therefore recommend that the NSW Government, as part of reviving the Scheme, develop and implement a supply chain database that is shared with relevant stakeholders, including the relevant unions and the NSW Anti-slavery Commissioner.

Recommendation 4

That the NSW Government, in reviving the Scheme, develop and implement a supply chain database that is shared with relevant stakeholders, including the relevant unions and the NSW Anti-slavery Commissioner.

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- 2.166** In this regard, we note the evidence of NSW Industrial Relations that gathering and mapping supply chain data can be achieved within their allocated resources. However, given the potential for the Scheme's alignment with anti-slavery objectives and obligations, the committee believes further consideration of resourcing is needed to ensure its ability to meet these objectives. Likewise, noting the role of the union in the Scheme and their other compliance activities, it is reasonable that consideration of their resourcing is also necessary. On that basis, the committee recommends that the NSW Government assess the funding and resources of relevant stakeholders to ensure industry compliance with the Ethical Clothing Extended Responsibilities Scheme (NSW). The assessment should include consideration of funding and resourcing for gathering, mapping and sharing supply chain data; ensuring compliance with the Scheme; promoting and aiding compliance with other relevant awards and instruments; and any anti-slavery objectives in the Scheme.

Recommendation 5

That the NSW Government assess the funding and resourcing requirements of relevant stakeholders to ensure industry compliance with the Ethical Clothing Extended Responsibilities Scheme (NSW). The assessment should include consideration of funding and resourcing for gathering, mapping and sharing supply chain data; ensuring compliance with the Scheme; promoting and aiding compliance with other relevant awards and instruments; and any anti-slavery objectives in the Scheme.

2.167 The committee notes the evidence that the Scheme provides a clear incentive for businesses to be compliant with Ethical Clothing Australia's Code of Practice incorporating Homeworkers (ECA Code). Given low participation in Ethical Clothing Australia's accreditation program in New South Wales, the committee sees the Scheme as a powerful regulatory tool to drive participation in the program, which has the benefit of yearly audits by the compliance team at the CFMEU – Manufacturing Division. The committee understands that funding for the program is currently provided by the Victorian and Federal Governments and fees provided by accredited businesses. However, it is envisaged that many businesses will opt to participate in the ECA Code and accreditation program as a result of the Scheme's revival. Therefore, it is the committee's view that further resources to support this program will be needed. In the meantime, the committee sees value in the NSW Government's support of this program to improve New South Wales businesses' participation. We therefore recommend that the NSW Government:

- consider funding Ethical Clothing Australia's accreditation program to drive participation in the initiative by New South Wales businesses
 - reassess its funding of Ethical Clothing Australia's accreditation program following revival of the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).
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Recommendation 6

That the NSW Government:

- consider funding Ethical Clothing Australia's accreditation program to drive participation in the initiative by New South Wales businesses
 - reassess its funding of Ethical Clothing Australia's accreditation program following revival of the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).
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2.168 The committee heard evidence about other related issues. In particular, the committee heard various proposals from stakeholders on how to align the Scheme with the existing anti-slavery guidance and strengthen the NSW Government's procurement policy. The committee notes the amendments to the Scheme proposed by the NSW Anti-slavery Commissioner in relation to the incorporation of a Code of Practice under section 27 of the *Modern Slavery Act 2018* (NSW) into the Scheme and its implications for public procurement. It is clear to the committee that there are avenues for the Scheme to be integrated into the government's procurement policy in some regard. However, the committee notes there is work underway in this area by another NSW Legislative Council Committee with a more specific remit to examine the efforts of the NSW Government in this space.

- 2.169** Further, the committee notes the union's call for specific programs and assistance for outworkers that aim to improve their English and literacy skills, financial knowledge and understanding of their workplace rights and entitlements. These programs should be designed in a culturally and linguistically sensitive way to ensure maximum effect. We recommend that the NSW Government establish culturally and linguistically sensitive programs for outworkers that seek to improve their English and literacy skills, financial knowledge, and understanding of their workplace rights and entitlements and risks of modern slavery.

Recommendation 7

That the NSW Government establish culturally and linguistically sensitive programs for outworkers to improve their English and literacy skills, financial knowledge, and understanding of their workplace rights and entitlements.

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- 2.170** Finally, the committee recognises the Scheme's potential to be extended to other industries with similar characteristics and at high risk of modern slavery. However, the committee believes further consideration is needed on the implications of having an industry-specific approach, like the Scheme and the ECA Code, compared to a more generalised approach as suggested by the NSW Anti-slavery Commissioner. We believe these issues should be considered after revival of the Scheme. This will allow an accurate assessment of its impact on the TCF industry. The committee therefore recommends that the NSW Government, following the Scheme's revival, assess its potential for expansion into other industries with similar characteristics and risks of modern slavery. The assessment should focus on the implications of an industry-specific approach like the Scheme, compared to a more generalised approach.

Recommendation 8

That the NSW Government, following the Scheme's revival, assess its potential to be expanded into other industries with similar characteristics and risks of modern slavery. The assessment should focus on the implications of an industry-specific approach like the Scheme, compared to a more generalised approach.

Appendix 1 Submissions

No.	Author
2	Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division)
3	Office of the NSW Anti-slavery Commissioner
4	NSW Industrial Relations, Premier's Department
5	Associate Professor Martijn Boersma and Associate Professor Chris F. Wright
6	Ethical Clothing Australia
7	Igor Nossar, John Owen, Luigi Amoresano
8	Australian Fashion Council

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Friday 7 June 2024 Macquarie Room Parliament House, Sydney	Mr Igor Nossar	Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar
	Mr Luigi Amoresano	National Research Officer, Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU)
	Dr Martijn Boersma	Associate Professor, Work and Organisational Studies, University of Sydney
	Dr Chris F. Wright	Associate Professor, Work and Organisational Studies, University of Sydney
	Ms Rachel Reilly	National Manager, Ethical Clothing Australia
	Ms Vivienne Wiles	Senior National Industrial Officer, Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division)
	Ms Marina Rizzo	Executive Director, NSW Industrial Relations, Premier's Department
Thursday 27 June 2024 Macquarie Room Parliament House, Sydney	Ms Elizabeth Macpherson	National Compliance Officer, Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division)
	Ms Nguyet Thi Nguyen	Outwork Outreach Officer, Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division)
	Dr James Cockayne	NSW Anti-slavery Commissioner

Date	Name	Position and Organisation
	Ms Justine Coneybeer	Research Consultant and PhD Candidate, Office of the NSW Anti-slavery Commissioner

Appendix 3 Minutes

Minutes no. 2

Thursday 24 August 2023

Modern Slavery Committee

Room 1043, Parliament House, Sydney, 1.45 pm

1. Members present

Dr McGirr, *Chair*

Ms Leong, *Deputy Chair*

Mrs Ayyad (from 1.48 pm)

Mr Donnelly (until 1.58 pm)

Dr Kaine

Ms MacDonald

Ms Wilkinson

2. Previous minutes

The committee noted the minutes of meeting no. 1 on 3 August 2023 were confirmed via email on 4 August 2023.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 3 August 2023 – Letter from Dr James Cockayne, NSW Anti-slavery Commissioner offering to engage with the committee throughout the term of Parliament
- 8 August 2023 – Letter from Dr James Cockayne, NSW Anti-slavery Commissioner, confirming his attendance at this meeting to give the committee a private briefing
- 22 August 2023 - Letter from the Hon Dr Sarah Kaine MLC, Dr Joe McGirr MP and the Hon Aileen McDonald MLC requesting a meeting of the committee to consider a proposed self-reference into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).

Sent

- 7 August 2023 – Letter from Chair, to Dr James Cockayne, NSW Anti-slavery Commissioner, advising him of the establishment and membership of the committee and inviting him to provide a private briefing to the committee.

4. Briefing from NSW Anti-Slavery Commissioner

Dr James Cockayne, NSW Anti-slavery Commissioner, accompanied by Tim O'Connor, Communications and Engagement Manager and Victoria Gordon, Senior Legal and Policy Officer, briefed the committee on the work of the Commissioner.

5. Conduct of the review of the Modern Slavery Act 2018

5.1 Proposed timeline

Resolved, on the motion of Dr Kaine: That the committee adopt the following timeline for the administration of the inquiry

- Submissions close: 5 October 2023
- Hearing: October 2023
- Reporting: December 2023.

5.2 Stakeholder list

Resolved, on the motion of Ms Wilkinson: That the following stakeholders be invited to make a submission, with members to forward additional stakeholders to the secretariat by COB Monday 28 August 2023:

- Dr James Cockayne, NSW Anti-slavery Commissioner
- Office of the Director of Public Prosecutions
- Australian Human Rights Commission
- Auditor-General of NSW
- NSW Procurement Board
- Law Society of New South Wales
- NSW Bar Association
- Anti-Slavery Australia
- Be Slavery Free
- Australian Red Cross
- Australian Lawyers for Human Rights
- Women's Legal Service
- The Salvation Army
- Unions NSW
- Global Fund to End Modern Slavery
- Mr Paul Green, former member, NSW Legislative Council.

6. Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

The Chair tabled a letter proposing the following terms of reference for an inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW):

1. That the Modern Slavery Committee inquire into and report on the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) (the Scheme) and its potential to mitigate the risks of modern slavery in the clothing manufacturing industry in New South Wales, and in particular:
 - a. the characteristics of the textiles, clothing and footwear (TCF) manufacturing industry in New South Wales, in particular:
 - i. the size of the TCF industry including numbers of outworkers
 - ii. the number of workers in the TCF industry and their employment status
 - iii. the demographic profile of workers in the TCF industry, including their gender, migration status, and the language spoken at home and in their workplace
 - iv. the lived experience of workers in the TCF industry
 - v. the nature and complexity of supply chains in the TCF industry
 - vi. the risks of modern slavery present in the TCF industry
 - vii. extent of participation by different parts of the TCF industry in alternative voluntary codes
 - viii. the nature and pattern of reporting of exploitation, abuse or modern slavery in the TCF industry
 - b. the current application of the Scheme in New South Wales
 - c. the conformance of the Scheme with Australia's commitment to relevant international standards and frameworks such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct

- d. if changes are required to the current scheme to better mitigate the risks of modern slavery in the TCF industry in New South Wales
- e. the enforceability of the Scheme in New South Wales, including methods for promoting compliance, such as incorporation by reference through exercise of the Anti-slavery Commissioner's power under section 27 of the *Modern Slavery Act 2018* (NSW)
- f. other industries that are vulnerable to the risks of modern slavery due to their supply chain characteristics, such as primary industries and construction, and the characteristics of those industries in New South Wales
- g. the merits of extending the Scheme to other industries that are vulnerable due to their supply chain characteristics to mitigate the risks of modern slavery
- h. any other related matter.

Resolved, on the motion of Dr Kaine: That the committee adopt the terms of reference.

7. Conduct of the inquiry Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

7.1 Commencement of the inquiry

Resolved, on the motion of Dr Kaine: That the committee commence the inquiry and call for submissions on 1 December 2023.

7.2 Closing date of the inquiry

Resolved, on the motion of Ms Leong: That the closing date for submissions be 29 February 2024.

7.3 Stakeholder list

Resolved, on the motion of Ms MacDonald: That:

- the secretariat circulate to members closer to the commencement of the inquiry the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

8. Briefing from the Department of Communities and Justice

Resolved, on the motion of Ms Leong: That the committee invite the Department of Communities and Justice to brief the committee on the operation of the *Modern Slavery Act 2018* prior to the public hearing on the review of the Act.

9. Adjournment

The committee adjourned at 2.45pm, *sine die*.

David Rodwell
Committee Clerk

Minutes no. 8

Monday 29 April 2024

Modern Slavery Committee

Via videoconference at 11.02 am

1. Members present

Dr McGirr, *Chair*

Mrs Ayyad (from 11.12 am)

Mr Borsak
 Mr Donnelly
 Dr Kaine
 Mrs MacDonald

2. Apologies

Ms Leong, *Deputy Chair*
 Ms Wilkinson

3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 7 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 24 January 2024 – Email from Anti-slavery Commissioner's Office, advising on the release of the Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains
- 27 February 2024 – Email from Mr Paul Green to the secretariat, attaching 1) letter offering to the committee support in seeking evidence from people with lived experience 2) Recommendations for Helpline Design and Operation from People with Lived Experience of Modern Slavery
- 29 February 2024 – Email from Igor Nossar, John Owen and Luigi Amoresano to the committee requesting an extension to 19 April 2024 to lodge a submission to the inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) and providing a paper by Igor Nossar entitled 'The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications', dated 17 April 2007
- 21 March 2024 – Email from Mr Craig Giles to the Chair, requesting to meet with the committee to introduce an educational resource to combat human trafficking
- 24 April 2024 – Invitation from Ms Sarah Dickson, Chief Executive, CPA UK, requesting that legislatures nominate delegates to attend the CPA UK workshop, Legislative Strengthening Seminar to Address Gender-Based Violence and Modern Slavery in Supply Chains from 16 to 18 July in Westminster, London.

Sent

- 4 April 2024 – Email from the secretariat, to Dr James Cockayne, Anti-slavery Commissioner, advising that the committee has published an erratum to its report on the review of the *Modern Slavery Act 2018*
- 4 April 2024 – Email from the secretariat, to Ms Madeleine Bridgett, NSW Bar Association, advising that the committee has published an erratum to its report on the review of the *Modern Slavery Act 2018*.

Resolved, on the motion of Mr Donnelly:

- That the Chair respond to Mr Giles thanking him for the offer to meet with the committee and advising that he is welcome to make a submission to the committee in a future inquiry
- That the Chair respond to Mr Paul Green thanking him for the offer to support the committee to seek evidence from lived experience witnesses and advising that the committee will be pursuing evidence from those with lived experience expertise through other means.

- 5. Invitation to attend Commonwealth Parliamentary Association UK (CPA UK) – Legislative Strengthening Seminar to Address Gender-Based Violence and Modern Slavery in Supply Chains**
 Resolved, on the motion of Mr Donnelly: That Dr McGirr and Dr Kaine be nominated to attend the CPA UK Legislative Strengthening Seminar to Address Gender-Based Violence and Modern Slavery in Supply Chains from 16 to 18 July in Westminster, London.

6. Briefing from Anti-slavery Commissioner on Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains

Resolved, on the motion of Mrs MacDonald: That the committee request a private briefing from the Anti-slavery Commissioner on the Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains, on a date to be determined by the Chair in consultation with members.

7. NSW Anti-slavery Forum

The committee noted that the NSW Anti-slavery Forum will be held in Sydney on 21 and 22 May 2024.

8. Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

8.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: 1-7.

8.2 Extension request

The committee noted that it agreed via email to the request from Igor Nossar and John Owen, who were involved in the design and operation of the Scheme, and their research associate Luigi Amoresano to lodge a submission by 19 April 2024.

8.3 Conduct of inquiry

Resolved, on the motion of Dr Kaine: That the committee:

- hold one hearing in June 2024 the date of which is to be determined by the Chair after consultation with members regarding their availability
- report by 30 August 2024.

9. Review of the *Modern Slavery Act 2018*

9.1 Erratum to report no. 1

The committee noted that it agreed via email that:

- the committee publish the Commissioner's response to the report on the Review of the *Modern Slavery Act 2018* on the committee's website
- the committee issue an erratum correcting an error in paragraph 2.88, publish it on the committee's website and link to it on the first page of the report and in the footnote to paragraph 2.88
- the Chair write to the Clerks of both Houses advising them of the error and requesting that it be corrected in the official tabled records
- the secretariat write to the Commissioner and Ms Bridgett (who is referenced in paragraph 2.88) advising them of the correction.

9.2 Continuation of the Review of the *Modern Slavery Act 2018*

In its first report, the committee made the following finding and recommendation:

Finding 1

That the committee needs to involve people with lived experience expertise in its review of the Act before making further recommendations, noting that this has not been possible given the requirement to complete the report within 24 months of the commencement of the Act.

Recommendation 1

That the Modern Slavery Committee continue to review the Modern Slavery Act 2018 in the next six months specifically seeking evidence from people with lived experience expertise and considering the evidence already received.

Resolved, on the motion of Mrs MacDonald: That the committee continue its review of the *Modern Slavery Act 2018*.

The committee discussed the Chair's proposal for how the committee should engage with individuals with lived experience expertise.

Resolved, on the motion of Dr Kaine:

- That the committee adopt the proposal for how the committee should engage with individuals with lived experience expertise, including that:
 - the secretariat identify potential witnesses by:
 - requesting assistance from the Anti-slavery Commissioner, Global Fund and Survivors Alliance to nominate individuals with lived experience expertise who may be willing to meet with the committee
 - a general call out allowing individuals with lived experience to nominate to meet with the committee or to provide a written submission
 - the secretariat prepare a short briefing document with the invitation/call out outlining options for how people can participate, details of the committee and members, and information about the inquiry, including supports offered
 - once potential witnesses are identified, the secretariat speak with each individual to explain the committee's work and determine their preferences about meeting with the committee
 - the secretariat provide a list of potential witnesses to the committee, including a short biography and a proposal for how contributions will be made
 - the secretariat prepare witnesses for their appearance by:
 - providing a verbal briefing and follow up with written confirmation
 - inviting individuals to attend 15 minutes before their scheduled time to meet with the committee informally and familiarise themselves with the meeting room
 - inviting individuals to bring a support person if they wish
 - following each session, the secretariat debrief with the individual and send a thank you letter on behalf of the Chair
 - the secretariat liaise with the Anti-slavery Commissioner regarding training for the committee and secretariat to ensure questions and interactions with the individuals with lived experience are trauma-informed
 - the committee engage a counselling service to provide support on site and, with the permission of individuals, after meeting with the committee
 - the committee hold hearings/meetings in smaller meeting rooms and take an informal/conversational approach to questioning
- the secretariat seek feedback from the Anti-slavery Commissioner on the committee's agreed approach to engaging individuals with lived experience.

10. Adjournment

The committee adjourned at 11.37 am, *sine die*.

Lauren Evans
Committee Clerk

Minutes no. 9

Friday 7 June 2024

Modern Slavery Committee

Macquarie Room, Parliament House, Sydney at 9.15 am

1. Members present

Dr McGirr, *Chair*

Ms Leong, *Deputy Chair*

Mrs Ayyad

Mr Borsak (until 1.45 pm)
Mr Donnelly (via videoconference)
Dr Kaine

2. Change in committee membership

The Chair noted the resolution of the Legislative Assembly of Thursday 6 June 2024 discharging Ms Kylie Wilkinson from the committee and appointing Ms Lynda Voltz to the committee.

3. Apologies

Mrs MacDonald
Ms Voltz

4. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no.8 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Received:

- 2 May 2024 – Email from Mr Igor Nossar, Mr John Owen and Mr Luigi Amoresano to the committee, requesting that the attachments to their submission (no. 7) be made public and published online
- 7 May 2024 – Email from Mr Tom Pecipajkovski, National Spokesman, Jehovah's Witnesses Australasia to the committee requesting that certain pages of submission no. 17 to the review of the *Modern Slavery Act 2018* be removed due to defamatory, offensive and false information about the religion of Jehovah's Witnesses
- 9 May 2024 – Email from Mr Craig Giles to the committee, requesting the committee's assistance in disseminating his human trafficking fictional feature film and educational resources
- 22 May 2024 – Email from Ms Anne Charlton, NSW Council of Civil Liberties to the committee, declining invitation to give evidence at the hearing on 7 June 2024 for the inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)
- 26 May 2024 – Email from Dr James Cockayne, Anti-slavery Commissioner to the committee, declining invitation to give at the hearing on 7 June 2024 for the inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) and noting he would be able to attend a hearing at a later date or respond to written questions if required.

Sent:

- 29 May 2024 – Letter from Dr Joe McGirr, Chair of the committee to Mr Paul Green, SlaveCheck, thanking him for the offer to support the committee to seek evidence from lived experience witnesses and advising that the committee will be pursuing evidence from those with lived experience expertise through other means
- 29 May 2024 – Letter from Dr Joe McGirr, Chair of the committee to Mr Craig Giles, thanking him for the offer to meet with the committee and advising that he is welcome to make a submission to the committee in a future inquiry.

6. Review of the Modern Slavery Act

6.1 Briefing and training with Anti-slavery Commissioner

The committee noted that a briefing on the *Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains* and training for the committee and secretariat on how to engage with individuals with modern slavery lived experience has been confirmed for Friday 2 August 2024. The report deliberative for the inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) has been scheduled for the same day and will commence following the conclusion of the briefing and training with the Commissioner.

6.2 Submission no. 17

Resolved, on the motion of Dr Kaine: That the news article (pages 31-38) from submission no. 17 to the review of the Modern Slavery Act 2018 be redacted.

7. Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

7.1 Attachments to submission no. 7

Resolved, on the motion of Dr Kaine: That:

- attachment no.10 be made public with the exception of photographs included in the document (pages 7-11 and 15-17).
- attachments nos. 3, 4, 6 and 7 be made public subject to the secretariat confirming whether they are already public documents
- all remaining attachments (1-2, 5, 8-16) be made public.

7.2 Sequence of questioning

Resolved, on the motion of Ms Leong: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

7.3 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and admitted:

- Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF), Independent Scholar
- Mr Luigi Amoresano, Former National President, Textile Clothing Footwear Union of Australia (TCFUA), Former State Secretary, TCFUA (NSW Branch).

Mr Nossar tabled a revised copy of his submission no.7, co-authored with Mr Owen and Mr Amoresano.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and admitted:

- Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney
- Dr Chris F. Wright, Associate Professor, Work and Organisational Studies, University of Sydney.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and admitted:

- Ms Rachel Reilly, National Manager, Ethical Clothing Australia.

The evidence concluded and the witness withdrew.

The following witness was sworn and admitted.

- Ms Vivienne Wiles, Senior National Industrial Officer, Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division).

The evidence concluded and the witness withdrew.

Mr Borsak left the meeting.

The following witness was sworn and admitted.

- Ms Marina Rizzo, Executive Director, NSW Industrial Relations, Premier's Department.

The evidence concluded and the witness withdrew.

The public hearing concluded at 2.30 pm.

The public and the media withdrew.

7.4 Submission no. 7

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the replacement submission tabled by Mr Nossar.

7.5 Further hearing

The committee noted that Thursday 27 June 2024 has been confirmed for a further hearing with the Anti-slavery Commissioner for the inquiry Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).

Resolved, on the motion of Ms Leong: That an officer within Compliance and Outwork Outreach team at the Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division) be invited to appear before the committee on Thursday 27 June 2024.

8. Adjournment

The committee adjourned at 2.35 pm until Thursday 27 June 2024, Macquarie Room, NSW Parliament (Ethical Clothing Scheme inquiry – public hearing).

Lauren Evans

Committee Clerk

Minutes no. 10

Thursday 27 June 2024

Modern Slavery Committee

Macquarie Room, Parliament House at 11.00 am.

1. Members present

Dr McGirr, *Chair*

Mrs Ayyad

Mr Borsak (*via videoconference*)

Mr Donnelly

Dr Kaine

Mrs MacDonald

Ms Voltz

2. Apologies

Ms Leong

3. Previous minutes

Resolved, on the motion of Dr Kaine: That draft minutes no. 9 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 12 June 2024 – Email from Mr Tim Roberts, Secretary, New South Wales Council for Civil Liberties to the committee, requesting to withdraw their submission to the inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).

5. Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)**5.1 Public submissions**

The following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 8.

5.2 Attachments to submission no. 7

Resolved, on the motion of Dr Kaine: That the committee:

- publish attachment no. 6
- keep attachments nos. 3, 4 and 7 confidential due to the commercially sensitive nature of the documents.

5.3 Request to withdraw submission

Resolved, on the motion of Mr Donnelly: That the New South Wales Council for Civil Liberties' submission to the inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) be withdrawn.

5.4 Time period for provision of answers to questions on notice

Resolved, on the motion of Ms Voltz: That witnesses provide answers to questions on notice and answers to supplementary questions within 7 days of receipt of the transcript.

5.5 Sequence of questioning

Resolved, on the motion of Mrs MacDonald: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

5.6 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and admitted.

- Ms Elizabeth Macpherson, National Compliance Officer, Construction, Forestry and Maritime Employees Union – Manufacturing Division
- Ms Nguyet Thi Nguyen, Outwork Outreach Officer, Construction, Forestry and Maritime Employees Union – Manufacturing Division.

Ms Macpherson tendered the following document:

- Document entitled 'Women in Informal Employment: Globalizing and Organizing (WEIGO) Organising (Law) Brief No. 14, 'Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector', August 2023'.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and admitted:

- Dr James Cockayne, Anti-slavery Commissioner
- Ms Justine Coneybeer, Research Consultant and PhD Candidate, Office of the Anti-slavery Commissioner.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.58 pm.

The public and the media withdrew.

5.7 Tendered documents

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the following document tendered during the public hearing:

- Document entitled 'Women in Informal Employment: Globalizing and Organizing (WEIGO) Organising (Law) Brief No. 14, 'Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector', August 2023'.

5.8 Request for further information

Resolved, on the motion of Dr Kaine: That:

- correspondence be sent to Mr Igor Nossar, Former Chief Advocate, TCFUA (NSW Branch), Former Advisor to the International Transport Workers' Federation (ITF) and Independent Scholar, requesting he provide further information to the committee about the Ethical Clothing Trades Council (the Council), which is constituted under the *Industrial Relations (Ethical Clothing Trades) Act 2001 (NSW)*. In particular, the history of the Council, its operation, and observations and recommendations for the Council going forward.
- a response to the request be provided within 7 days of receipt of the correspondence.

6. Adjournment

The committee adjourned at 1.06 pm until Friday 2 August 2024, Room 1043, NSW Parliament (Ethical Clothing Scheme inquiry – report deliberative and private briefing and training with the Anti-slavery Commissioner).

Lauren Evans

Committee Clerk

Draft minutes no. 11

Friday 2 August 2024

Modern Slavery Committee

Room 1043, Parliament House, Sydney at 9.34 am

1. Members present

Dr McGirr, *Chair*

Mrs Ayyad (via videoconference)

Mr Borsak (via videoconference)

Mr Donnelly

Dr Kaine

Mrs MacDonald

2. Apologies

Ms Leong

Ms Voltz

3. Briefing and training session with the Anti-slavery Commissioner

Dr James Cockayne, Anti-slavery Commissioner and his office provided a briefing and training session on:

- the Anti-slavery Commissioner's Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains, published in December 2023
- how to engage with individuals with modern slavery lived experience.

Dr Cockayne was accompanied by:

- Lucy Forbes, A/Senior Legal Policy Officer, Business & Human Rights, Office of the Anti-slavery Commissioner
- Sarah Schricker, Lived Experience Practice Lead, Office of the Anti-slavery Commissioner
- Yvette Proud, Program Coordinator, The Lived Experience Engagement Program (LEEP), Trafficking and Slavery Safe House, The Salvation Army Australia
- Emma Dalco, Policy and Projects Officer, Business & Human Rights, Office of the Anti-slavery Commissioner
- Tim O'Connor, Manager Communications and Engagement, Office of the Anti-slavery Commissioner.

4. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 10 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Received:

- 24 June 2024 – Email from Craig Giles to the committee, thanking the committee for its correspondence, dated 29 May 2024, and providing further information on the updated Get Free Social Justice Course and a short documentary and the Get Free Dramatic Film
- 5 July 2024 – Email from Ms Rachel Reilly, National Manager, Ethical Clothing Australia, to the committee, providing answers to questions on notice and requesting that additional information provided be kept confidential
- 25 July 2024 – Email from Mr Jake Moran, Project Officer, Commonwealth Parliamentary Association UK (CPA UK) to the Chair, inviting him to make a contribution to the CPA UK Modern Slavery ehandbook.

Sent:

- 28 June 2024 – Letter from the committee to Mr Igor Nossar, former Chief Advocate for the TCFUA, requesting that he provide further information on the Ethical Clothing Trades Council for the inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).

Resolved, on the motion of Dr Kaine: That the secretariat prepare a draft contribution to chapters 1 and 2 of the CPA UK Modern Slavery ehandbook and circulate to the committee for comment.

6. Review of the Modern Slavery Act 2018

Resolved, on the motion of Mr Donnelly: That the committee:

- hold two days of hearings/private meetings in September/October 2024, the dates of which are to be determined by the Chair after consultation with members regarding their availability.
- report by 13 December 2024.

7. Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

7.1 Answers to questions on notice and additional information

The following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Vivienne Wiles, Senior National Industrial Officer, Construction, Forestry and Maritime Employees Union (CFMEU) (Manufacturing Division), received 5 July 2024
- answers to questions on notice from Ms Rachel Reilly, National Manager, Ethical Clothing Australia, received 5 July 2024
- answers to questions on notice from Ms Marina Rizzo, Executive Director, NSW Industrial Rations, Premier's Department, received 5 July 2024
- answers to questions on notice from Dr James Cockayne, Anti-slavery Commissioner and Dr Justine Coneybeer, Office of the Anti-slavery Commissioner, received 9 July 2024
- additional information from Mr Igor Nossar, former Chief Advocate for the TCFUA, received on 9 July 2024
- answers to questions on notice and additional information from Mr Igor Nossar and Mr Luigi Amoresano, received 11 July 2024.

Resolved, on the motion of Mrs MacDonald: That the committee keep confidential the additional information provided by Ethical Clothing Australia on 5 July 2024.

7.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)*, which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Dr Kaine: That paragraph 1.74 be amended by:

- (a) omitting 'protected' and inserting instead 'empowered'
- (b) omitting 'protect these workers' and inserting instead 'prevent, expose and end exploitation of workers'.

Chapter 2

Resolved, on the motion of Dr Kaine: That paragraph 2.86 be amended by omitting 'the Scheme's obligations are now weaker than what is currently expected under Australia's international commitments' and inserting instead 'the Scheme does not reflect current expectations under Australia's international commitments'.

Resolved, on the motion of Dr Kaine: That paragraph 2.95 be amended by omitting 'monitoring and ensuring compliance' and inserting instead 'implementation of'.

Resolved, on the motion of Dr Kaine: That paragraph 2.126 be omitted: 'The NSW Anti-slavery Commissioner expressed that given the potential reasons for its disuse in the past decade or so, the Scheme is "hostage to the political will of Scheme participants, including the government of the day".'

Resolved, on the motion of Dr Kaine: That paragraph 2.162 be amended by omitting 'NSW Anti-slavery Commissioner' after the 'NSW Government'.

Resolved, on the motion of Dr Kaine: That the following new finding be inserted after paragraph 2.165:

'Finding X

Unions and workers with direct experience in the textile, clothing and footwear industry, relevant language skills and cultural awareness are best placed to undertake outreach with outworkers.'

Resolved, on the motion of Dr Kaine: That:

- (a) paragraph 2.166 be amended by omitting 'the CFMEU – Manufacturing Division' and inserting instead 'the relevant unions'
- (b) Recommendation 4 be amended by omitting 'the CFMEU – Manufacturing Division' and inserting instead 'the relevant unions'.

Resolved, on the motion of Dr Kaine: That paragraph 2.167 be amended by omitting 'NSW Industrial Relations and CFMEU's Outwork and Compliance Team' and inserting instead 'relevant stakeholders'.

Resolved, on the motion of Dr Kaine: That paragraph 2.167 be amended by omitting 'This should include' and inserting instead 'The assessment should include consideration of'.

Resolved, on the motion of Dr Kaine: That Recommendation 5 be amended by:

- (a) omitting 'NSW Industrial Relations and CFMEU's Outwork and Compliance Team' and inserting instead 'relevant stakeholders'.
- (b) omitting 'This should include' and inserting instead 'The assessment should include consideration of'.

Resolved, on the motion of Mr Donnelly: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, tabled documents, submissions, correspondence, answers to questions taken on notice and additional information relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, tabled documents, submissions, correspondence, answers to questions taken on notice and additional information related to the inquiry be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

The report be tabled in both Houses on 8 August 2024;

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

8. Adjournment

The committee adjourned at 12.15 pm, *sine die*.

Lauren Evans
Committee Clerk

