REPORT ON PROCEEDINGS BEFORE

MODERN SLAVERY COMMITTEE

INQUIRY INTO THE ETHICAL CLOTHING EXTENDED RESPONSIBILITIES SCHEME 2005 (NSW)

CORRECTED

At Macquarie Room, Parliament House, Sydney on Friday 7 June 2024

The Committee met at 9:30.

PRESENT

Dr Joe McGirr (Chair)

Legislative Council	**Legislative Assembly**
The Hon. Robert Borsak	Mrs Tina Ayyad
The Hon. Dr Sarah Kaine	Ms Jenny Leong (Deputy Chair)

PRESENT VIA VIDEOCONFERENCE

The Hon. Greg Donnelly

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The CHAIR: Welcome to the first hearing of the Committee's inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW). I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders, past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respect to any Aboriginal and Torres Strait Islander people joining us today. My name is Dr Joe McGirr. I am Chair of the Modern Slavery Committee. I ask everyone in the room to turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

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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, sworn and examined

Mr LUIGI AMORESANO, National Research Officer, Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [AMWU], affirmed and examined

The CHAIR: Welcome. Thank you for making the time to give evidence today. Would you like to start by making a short opening statement?

IGOR NOSSAR: Yes, thank you, Chair. Before making the statement, I'd like to formally give an apology from the co-author of our submission, Mr John Owen, who is quite severely ill with the flu and was unable to make it, despite his best intentions. He asked for his apology to be heard by the Committee. I also have two brief housekeeping matters. We came across a few typo matters in our submission. We've corrected them and provided copies to the secretarial staff, who I understand have distributed the typo-corrected copies to you. We're happy to provide those typo-corrected copies to be put up on the website of the Committee as well. The second matter concerns the appendices to the submission. I understand, Chair, that it is in the hands of you and the Committee as to how you're going to deal with the specificity of that.

The CHAIR: That's right. I understand the changes to the submission were important but not extensive. It was around the spelling of the word "complementary" in a couple of locations so that it reflects the meaning "to fill out or is akin to", rather than "is complimentary or praising of". Thank you for that. We have circulated copies of that to the Committee. In relation to your request about the publication, with the exception of some clarification around documents that may be commercial-in-confidence and the removal of some photos, the Committee has agreed to that. We hope that Mr Owen recovers quickly.

IGOR NOSSAR: Thank you very much. Firstly, I'd like to briefly introduce myself as a person who was previously employed by the Textile, Clothing and Footwear Union of Australia in the capacity of chief advocate. In that capacity I have been involved with the development, from its very conceptualisation and inception, of the scheme, which we refer to as the TCF mandatory retailer/supplier code, all the way through its development with the department, its ultimate proclamation and then utilising it once it was proclaimed to achieve particular results in relation to exploited workers and supply chains.

I am going to take the opportunity in this opening statement to read briefly from a statement made at the governing assembly of the ILO, the United Nations agency, in 2016, where, for the first time, a committee on decent work in global supply chains was established. On the record of that proceeding was the following comment about the obligation of States to pass laws and regulations which regulate the conduct of enterprises under their jurisdiction wherever the alleged harms occur, which we think is particularly relevant to the issue of modern slavery as well as the domestic regulation that the code itself undertook. The person making the statement was Catelene Passchier, the workers' spokesperson at that particular committee.

She said, "The idea of so regulating is not a far-fetched idea but can be realised in practice, as can be shown by referring to the good practice of Australia, a Federal State where a cross-jurisdictional regulation has been adopted by some of its States to regulate binding obligations upon buyer-retailers in the clothing and footwear industry that ensure that responsibility is taken until the very bottom of the chain. In Australia, clothing products are made in manufacturing supply chains, which supply those products to the retailers of clothing. Typically, a clothing retailer will contract with a first-tier fashion house with few in-house employees, which will then further outsource the work order down to a number of smaller businesses until the work ends up being actually performed in a number of small backyard sweatshops or by individual home-based clothing workers, often migrant female workers", as my mother was an immigrant outworker when my family came to Australia.

She continued, "One of these particular Australian States, being New South Wales, first legislated mandatory legal obligations upon all retailers who sell clothing in that State, as long as the clothing has been manufactured anywhere in Australia, whether or not the clothing was manufactured in that State of New South Wales. Among other things, these binding legal obligations regulate the prime supply contract between the retailers who are operating within the State of New South Wales and all of the retailers' first-tier suppliers. Even if all of these first-tier suppliers operate outside of the borders of New South Wales, the retailer's presence within the New South Wales borders provides to the State legislature the necessary jurisdictional nexus permitting the State of New South Wales to legislatively regulate the contracting practices of the retailer. Thus, a cross-jurisdictional impact can be achieved upon the first-tier suppliers and, through them, the entire supply chain, even when all of the Australian manufacturing activity by all of the suppliers takes place outside of the borders of the State which has legislated these obligations."

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The reason I dwelled on that for a moment is that the Committee can perhaps see the model relevance of that to provisions that operate outside of broader boundaries, such as the borders of the Commonwealth of Australia. I go on to finish that statement that was made at the ILO committee. I quote, "The obligations upon the retailers regard matters such as providing a list of their first-tier clothing suppliers; details, including prices of each supply contract with each first-tier supplier; and the obligation to include in each supply contract the obligation to disclose all locations where the work will be ultimately performed, whether in a factory of at home, sanctioned with the termination of the contract." To clarify that, that's saying that there is an ultimate fallback for any recalcitrant party who decides to thumb their nose at the obligations that they're faced with. It's not a first recourse to such a termination of contract.

Finally, the spokesperson said, "One important effect of the obligations is that the system permits the union," which is one of the two regulators in this strategic co-enforcement model, "to track down the previously invisible workforce of sweatshop workers and home-based workers." The spokesperson said, "The result is remarkable. Supply chain by supply chain, the union has been making each of these workers visible to the regulators and has ensured that each worker is both paid their legal entitlements and provided with legal minimum working conditions, often for the first time."

I think that statement by the workers' spokesperson sums up the scope of the code and how it can be used. Finishing off my opening statement, in the submission that we have provided, we hope to illustrate that the code is in no way intended to supplant the role of the relevant awards, specifically the Federal award, in setting the minimum standards. If you go to the very first page of the scheme, in the objectives, it states very clearly that the function of the code is to ensure that those minimum standards are not avoided and to provide the mechanism by which the flow of work can be tracked down in order to determine that people are being provided with their legal minimum working standards.

The CHAIR: I'll start with a general question. I recognise that the work done before, at the introduction of and in the years immediately after the introduction of the scheme was actually groundbreaking and very significant, but there has been the suggestion that in more recent years the scheme has fallen into disuse and may not be that relevant, particularly with regard to changes in industrial relations legislation with respect to the Federal and State governments. I'm wondering if you might comment on its current relevance and any potential there might be for its use to be extended.

IGOR NOSSAR: I'm very glad for the opportunity to address those two very precise points—the first being the disuse of the code and the second being whether there's still an ongoing relevance, given changes in the legislative frameworks, specifically between the Federal and the State jurisdictions. I might address that second issue first, about the irrelevance, given the referral of IR powers to the Federal jurisdiction. I'm in a position to be a resource for the Committee, if that's of any use, because I've been involved in the process all the way through. That was also at the design stage of the code.

If you turn to the code's objectives page, you will see that there's a reference there that the intention of the code is to prevent avoidance of compliance with all relevant awards, not just the Clothing Trades (State) Award. Even in the circumstance—which I'm not necessarily prepared to concede—that the Clothing Trades (State) Award had absolutely no existence, then the code still applies in relation to preventing avoidance of the Federal awards. In relation to that, I draw the Committee's attention to the definitions clause of the code, and in particular the definition of "relevant industrial instrument". I'm now referring to the definitions clause, which is clause 5. I'm referring to the definition of "relevant industrial instrument", which reads as follows:

> 'relevant industrial instrument' includes a relevant award—

which is defined as the State award—

> and any federal or interstate award or industrial instrument that regulates the conditions of employment of outworkers and applies to the performance of work by an outworker.

So from the very beginning and very explicitly, this code was designed to act against avoidance of the Federal award and defined broadly, without a specific name for the award, knowing that the names of the awards will change through a succession of different award formats. I note also for the Committee that later today you will be addressed by the senior national industrial officer of the successor union to the Textile, Clothing and Footwear Union, Ms Vivienne Wiles. I draw the attention of the Committee to the submission made by that union, which calls for the ongoing retention of the code and, in a sense, it being brought back to full life with some minor tweaks. They suggest explicitly naming the current Federal award. We think there's great merit in the submission of the union, including in respect to that particular matter. Very explicitly we're saying that the scheme—the mandatory code—is a valid, ongoing legislative instrument with great practical utility and the fact that the bulk of the outworkers whose protection is being sought are now covered by Federal award provisions in no way changes the relevance of the code, which is designed to prevent the avoidance of that particular award.

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Thank you for your patience. I will now address the issue of falling into disuse. It's absolutely true that the code has far less implementation in the preceding, let's say, decade or so as opposed to the first decade of its operation. The reasons for that were actually addressed in one of the other submissions by the other parties, where they speculated that it may have been for a reason as simple as people having moved on, which was exactly the case. Mr Owen, who is unable to attend today, and I were both central to the development of the code and then its application after proclamation. I finished with the union in 2008 to basically assist with the full-time care of my frail, elderly parents, who have since passed away. Mr Owen was the final national president of the Textile, Clothing and Footwear Union at the time of its amalgamation into the successor union, which is represented by Ms Wiles this afternoon. So the two people who were most centrally involved did move on.

In relation to the issue of disuse, even in this period of disuse, the fact that the scheme is still a valid legislative instrument has still had a useful effect for the following reasons, which are an elaboration of something that's in our submission. The submission from myself, and Mr Amoresano and Mr Owen is basically that there are two core functions of the code. The first is to prevent avoidance of the relevant award provisions, including the Federal award provisions, which set the minimum standards for those exploited outworkers. The second function can be described as a two-tier characteristic of this regulatory model. If you want to look at this code, you can think of it in broad as being a strategic co-enforcement regulatory model involving both the New South Wales department and the union regulator.

The two-tier aspect arises from the provision, which is also embodied in the objective of the code on its very first page, acknowledging that there's a far-reaching voluntary scheme, which was known at the time of the code's formulation as the Homeworkers Code of Practice and which is now known in its successor manifestation as Ethical Clothing Australia. The second key function of the code was, in essence, to provide a very strong incentive and message to relevant commercial actors—being specifically the retailer oligopoly that dominates the clothing supply chains and domestic manufacture in Australia and their first-tier suppliers—that if they become signatory and accredited to that voluntary code, now Ethical Clothing Australia, then they will no longer be bound by the strictures of the mandatory code.

Certainly within the first decade—and I think this will be borne out by looking at the statistics—the numbers 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." That's a very longwinded answer by way of explanation to say that the two-tier feature of this code model has been ongoing, even after Mr Owen, I and other relevant people left the union.

If you will indulge me for one moment more—I am really grateful for your patience on this, because there is so much information and I'm trying to give the most relevant possible. In one of the appendices to the submission, which is appendix 10—the clothing supply chain strategy presentation from 2009—in the last two slides, in a sense, of that presentation, there's a particular slide that talks about results of the use of the code in relation to specific supply chains, which are quite remarkable in the sense that prior to the utilisation of the mandatory code, there was a certain number of workers admitted to in the records of the various commercial parties down through the supply chain.

You might say that number is X, but by the time the supply chain strategy, which was built on the mandatory code, had been implemented, then you were getting numbers ranging from twice as many workers through to four to five to six times as many workers being admitted being put on the record and being required to be paid their minimum entitlements, often for the first time in their life. While, yes, the code has fallen into relative disuse, the fact that it has still been a valid legislative instrument has helped to keep up the numbers in the voluntary scheme. We are hopeful about the resuscitation of the operation of the code. We recommend the submission of Ms Wiles, a witness later today, as being the model for how to resuscitate it. I am happy to go into more details, if you'd like.

Finally, in relation to the resuscitation of the code, because this is the Modern Slavery Committee, we see great value in liaison between the union, the regulator and hopefully the departmental regulator, utilising the ongoing mandatory code and working together with the Anti-slavery Commissioner. But it should be noted that the specialist expertise in how to utilise the mandatory code really lies with that union regulator. I draw the attention of the Committee to the submission of Ethical Clothing Australia, which refers to a service agreement between Ethical Clothing Australia and the union whereby the union provides the resources for a compliance team to go down through supply chains. Even during the period of disuse of the mandatory code, the union has still

been working with the voluntary scheme structure to drill down through supply chains. The legislative instrument has still maintained its validity, and we are hopeful that it will be resuscitated.

The Hon. Dr SARAH KAINE: Thank you very much, Mr Nossar and Mr Amoresano, for coming along and for your submission. Mr Nossar, I wanted to clarify, for the purposes of the whole Committee, a couple of the points that you've already made. To be clear, the code came into force around 2005.

IGOR NOSSAR: Correct.

The Hon. Dr SARAH KAINE: At that stage, for those of us engaged in industrial relations at the time, it was quite clear that the State jurisdiction was not going to look the same and that, indeed, there was going to be quite a shift to the national system. Being explicit about it, that was something that you as one of the designers and developers of the scheme were aware of, and that fed into this idea that code was constructed to withstand any such change.

IGOR NOSSAR: Very much so.

The Hon. Dr SARAH KAINE: I just wanted to be clear about that. I want to get a little bit more from you. I know for you it's bread and butter but, again, for the purposes of the Committee, why is it so important that this code includes retailers? Often when we're talking about industrial relations instruments, we're looking at where the rubber hits the road in terms of who pays the worker. Why is it so important that the code, then and potentially in the future, includes retailers?

IGOR NOSSAR: I'm very glad you asked that question. We've been very careful to try not to overload the Committee with too much information, but quite a lot of it is contained in those voluminous appendices. I hope to draw your attention to some aspects of them that you'll find relevant for this consideration. In answering your question, I draw your attention to appendix 1, which was an ethical clothing code of practice developed by the then Minister under the auspices of the Ethical Clothing Trades Council. That particular code of practice was signed off by all the members of the Ethical Clothing Trades Council, representing all of the six stakeholders that were invited to be members of that. At the beginning of appendix 1, there is a statement by the Minister, who was John Della Bosca at the time, as to the role of the code of practice for retailers and drawing attention to the fact that "these major retailers have recognised that a truly viable clothing industry in this country must be based on quality, efficiency and fair labour practices". That then comes to the point of the role the retailers in the supply chain.

I don't think it's a secret that the retailer oligopoly in Australia exercises very substantial commercial power over their supply chains. Indeed, it's interesting that we're meeting today because this issue has proliferated throughout so many industries, including in the agricultural sector in relation to farmer suppliers, for example, as well as workers working in rural industries. With that commercial power comes responsibility, and that power is exercised through the prime retailer supply contracts. In relation to this, I want to inform the Committee that I've worked very carefully with those major retailers throughout this entire process, and they were explicitly endorsing the adoption of this mandatory code.

In fact, if I can switch from retailers to go to business in general, the whole issue of fighting exploitation has not been an issue of some kind of antagonism towards business. It's a recognition that ethical business that wants to do the right thing, and make sure that the law is respected in relation to what happens in their supply chains, faces the problem in a competitive market of being undercut by unethical competitors who are basing their competition on breaking the law or on benefitting from breaking the law. This then gets back to the issue of retailers, because those retail prime supplier contracts that I was referring to, in a sense, insulate the retailer from the direct act of exploitation but provide the opportunity for commercially benefitting from lower prices achieved through breaking the law in the supply chain. We have no problem with price competition on other grounds like innovation, for example, or quicker turnaround time or quality improvements. But we have a very, very real problem with competition based on illegality, exploitation and breaking the law.

The Hon. Dr SARAH KAINE: Thank you, Mr Nossar. I'm trying to be a bit quick because I have lots of questions but other members probably do as well. One of the things we're looking at is this is what we've had. Are there lessons or things that we can learn from this or potentially see to use elsewhere. In the journal article authored by yourself and others, you talk about other industries that could potentially benefit from this type of scheme. I wondered if you could talk a bit more about that.

IGOR NOSSAR: Sure. In addressing this, can I say that the phrase that keeps recurring throughout this discussion about the code is the phrase "supply chain". It should be noted that the phenomenon of supply chains is a subset of a broader category of contract networks. Other types of contract networks are, for example, labour hire arrangements, franchising arrangements involving small businesses, digital platforms and gig economy arrangements, which are not exactly the same as supply chains but are networks of contracting arrangements

where powerful commercial parties can exercise that commercial power to socially negative consequences. Once again, I think that's no secret if you look at the debate and discussion about social platforms, such as social media, and suppliers, such as the various corporations like Amazon and Uber.

In relation to other industries, I'm suggesting that in addition to what you read from that piece of scholarship, there is even broader application beyond supply chains to other types of contract networks and that, in a sense, there's a generic model that has its seeds in this mandatory code, whereby that commercial power being exercised is being recognised very openly and is being harnessed for public policy ends, in addition to the private commercial ends for which it has been harnessed. For example, with supply chains, that commercial power has been utilised by the powerful players, such as the retailer oligopoly, in order to achieve benefits in price, quality and turnaround time. The model that has been put before you and that has been embodied in the mandatory code is that the legislature plays a role. I'm happy to say that New South Wales has been the leading Legislature in this respect, historically, and frequently on a bipartisan basis that is supported by virtually all parties across the political spectrum. That model of harnessing the commercial power and those supply chains can, therefore, be adapted.

To directly address your question now, for example, there is the question of horticultural workers, where often the workers, instead of being predominantly female, immigrant women sewing at home, tend to be people on various temporary and insecure visa arrangements, working in backpacker or hostel-type of situations. I think there has been a lot of work done, for example, by Professor Forsyth's inquiry in Victoria into the labour hire and other situations that shows that various unscrupulous commercial operators at the bottom of the supply chain have been happy to grotesquely exploit those insecure visa holders, often robbing them outright of their wages entirely. Thus, our suggestion is that the range of industries to which this model could be applied is very wide, ranging from horticulture through to—if I can address one that is probably of no news to yourself, Ms Kaine—the cleaning industry.

I draw the attention of the Committee to the fact that there's an excellent voluntary scheme arrangement called the Cleaning Accountability Framework, which suffers from the same problem that the Ethical Clothing Australia or Homeworkers Code of Practice faced in clothing, which was that parties that didn't sign up to the voluntary arrangement could, in a sense, benefit from exploitation further down the supply chain and undercut their more ethical competitors.

In the area of cleaning there is a great deal of scholarship—of which I have a number of copies here, including one by Dr Rawling and yourself and others—and multi-stakeholder frameworks for rectification of noncompliance in cleaning supply chains, the case of the Cleaning Accountability Framework. Other industries—and I won't belabour the point—would also include potentially construction in relation to a residential cottage building. At one stage of my life, when I was a student, I worked on building sites in residential construction and the things I saw there were not a million miles away from the things I have been describing in horticulture, cleaning and clothing.

The Hon. Dr SARAH KAINE: I'm not sure if this question is for you, Mr Nossar, or for you, Mr Amoresano. We obviously engage closely with the Anti-slavery Commissioner and he has provided a comprehensive and very interesting submission to the Committee as well. I should note that his submission is co-authored by Justine Coneybeer. Part of the submission was about the fact that the world of supply chain regulation has very much moved on since the early 2000s—aided by people like yourself, Mr Nossar, and the type of work you have done—but that now that we have a proliferation of international codes and other mandates that have come out, a bit like the Federal jurisdiction argument, perhaps that might have superseded at least the efficacy of the code and it probably needs to be taking into account those kinds of developments. Would either of you have a comment?

IGOR NOSSAR: I hesitate to monopolise. Perhaps, before Mr Amoresano, I might just address that particular point. Can I also draw the Committee's attention to the fact that Mr Amoresano is explicitly interested in the issue of adaptation, as are all of us who have had interesting occupational backgrounds. Firstly, Mr Amoresano is an excellent, very highly qualified lawyer himself, with a master's degree in law as well. But he found himself at one stage working as a food delivery bike rider. He is in a position to talk about the adaptation of this kind of model to gig economy situations.

To address this particular point—because I did go through the submissions in great detail, including that particular submission—I found that the discussion about how things have moved on seemed to lack one particular aspect in its analysis. This is perhaps unintentional. In relation to those various instruments, such as the ones that came from the sustainable development goals and the various international business conventions, it didn't address the extent to which these can be practically enforceable as opposed to being merely guiding. The issue that I addressed earlier in relation to the voluntary code—being Ethical Clothing Australia in the case of the clothing industry, or the Cleaning Accountability Framework in the case of the cleaning industry—is always the same. The

ethical parties will feel impelled to sign up to such voluntary guidance arrangements. The unethical ones will be happy to benefit from the commercially competitive consequences of exploitation and law breaking.

The Hon. Dr SARAH KAINE: Mr Nossar, if I could summarise that, basically what you're saying is that, without some kind of regulatory mandate, what these codes do is facilitate unethical actors exploiting a situation where good businesses want to do the right thing?

IGOR NOSSAR: And, even worse, they then place those ethical businesses under such pressure. I have observed this in my dealings in a variety of industries, including internationally in the transport industry. The ethical ones are forced against their will to start to benefit from those exploitative and illegal practices just in order to survive against those competitors. It's even worse than just the unethical ones benefiting. It drives the whole market into benefiting and, in fact, a culture of noncompliance with the legal minimum requirements.

LUIGI AMORESANO: I just want to reiterate the point that my colleague, Igor, made. A mandatory code, even if it does nothing, at least will make businesses fall into the voluntary code and in that way protect ethical business practices. They want to do the right thing.

Ms JENNY LEONG: Thank you, Mr Nossar, for taking us through all of that. I wanted to focus a little bit on and follow up on the question from the Chair around the idea of how we might extend the powers of this. I particularly question where we have any accountability or responsibility for ensuring that this is being utilised. I think we would all agree that there are still outworkers and workers that are being exploited that are not covered and protected by what is this code and this scheme in New South Wales and beyond.

My question goes to three parts. The first is that it's all well and good to say that there are certain individuals within the trade union movement who have moved on or experts in the area, but who in government is supposed to be responsible for this? Where is the department, the people and the accountability that sits within government to ensure that this is functioning as it should have been? The second part of that question is where is the accountability in terms of whether it is being adhered to, used and applied and where do you think that should sit? Then, going to those two points and then extending it to other potential risks in other workplaces, what could we be looking at in terms of extending and expanding what was a very strong and groundbreaking intention into other areas of risk for workers in the State?

IGOR NOSSAR: Could I address your question by focusing on the practical? That's where all this came from. I was hired by the union originally in 1987—that seems a long time ago now—because the award provisions had been introduced by His Honour Senior Deputy President Joe Reardon. They were groundbreaking award provisions into the Federal award and the workload of the union had increased, whereby they needed industrial offices staff at the branch level to then introduce it into counterpart State awards then. I was involved from the very beginning in looking at those supply chains and finding the problems in them and trying to address those problems in a practical way. One of the reasons for the code structure to be a strategic co-enforcement model was that this wasn't an attempt by the union to somehow monopolise the situation.

The union, even in the days when I was there, had very limited resources. Its money came from those women and men who were working primarily in factories, with very hard hours and paying the amounts they could for the union dues. There weren't rivers of gold to fund this. One of the reasons for coming up with really efficient, focused strategies was because there weren't the resources to do anything else. That's why that supply chain strategy, which is set out in appendix 10, was developed—so that a small number of people, but who had expertise, could achieve these kinds of practical results that I was referring to before.

It was hoped that the department at the time would have used their share of the powers. I'm not really aware of the department ever having used its powers and, to be honest, the department faced exactly the same problems the union did. As resourcing was being reduced across the public service, the size of the inspectorate, which was already inadequate for the sweatshop sector, was being reduced further. So I don't really particularly blame the department for the fact it didn't utilise the code but, as far as I know, it really didn't utilise the code. To address how that could be remedied, trying to be as practical as I can here and following on from an aspect of the submission that the union will be putting, we've seen with the voluntary code the benefits and value of service agreements with those who have expertise to implement these functions. I'm suggesting on behalf of myself, Mr Amoresano and Mr Owen that that might be a very practical way forward—to enter into an agreement with the union regulator, not open-ended and not for humungous amounts of money, so that the union is in a position to be able to second people to help, in a sense, to train departmental officers on how to strategically use these resources.

I'm going to make a footnote to that, which may be of relevance because this also now relates to international issues. This model of harnessing the power of the most commercially powerful actors to achieve public good rather than merely just private commercial advantage is not a model confined to Australia. I draw

your attention to the path-breaking work by one of the leading scholars in relation to the issue of the fragmentation of work and workplaces, Professor David Weil, formerly at the Harvard University John F Kennedy School of Government and now playing a key role at Brandeis University, who, among his many other accomplishments, was actually appointed administrator of the inspectorate, which is known as the Wage and Hour Division of the Department of Labor in the federal government of the United States, under the Obama administration. There was an attempt by the Biden administration to appoint him, but some of the parties who are, I think, influenced by various commercial lobbies, spiked that happening, and he didn't manage to get appointed the second time.

His work is, by the way, cited in some excellent scholarship in Australia by Dr Tess Hardy, who is a co-director of the centre for employment relations at the University of Melbourne, and, in particular, her article about who should be held liable for non-payment of minimum conditions. I can give you the citation for that. Dr Hardy analysed the experience with the United States. There was a power in the United States, which we don't have here, under federal legislation, known colloquially as the hot goods provisions in the United States, which gave power to the federal government to seize goods that had been manufactured without compliance with relevant laws, which really meant that the federal government had powers which weren't utilised very extensively since that provision was passed. I think it was originally passed in 1938.

Dr Weil resuscitated that provision. I'm citing that in this particular context where we're looking for resuscitation of the mandatory code—what looked like a defunct provision, which was a provision that gave power over those commercially powerful actors to compel those actors to assist the inspectorate to drill down through the supply chains, locate the sweatshops—because it was in relation to the textile, clothing and footwear industry—and come across a huge number of issues of non-compliance, but with a strategic perspective not of punishing but of, if necessary, dragging reluctant black market operators into a culture of compliance with the law.

Ms JENNY LEONG: Mr Amoresano, I would be keen to hear your thoughts about how we might look to extending the code to apply to other areas.

LUIGI AMORESANO: Yes. I'm the national legal officer at the Australian Manufacturing Workers' Union. I got interested in the code for the exact reason that I was looking at ways on how to expand it in the manufacturing sector. I have been doing some research and I found out that TCF supply chains share most of their characteristics with the manufacturing industry, which I'm working on, and I'm beginning to look at how that can be expanded also to the manufacturing industry. I want the Committee to know that both the manufacturing and TCF industries share some of the complex supply chains in which a powerful entity at the top dictates the conditions on how the work is done at the bottom of the supply chain by the workers. They also share reliance on low-wage labour and subcontracting practices. So extensive subcontracting is common in both industries, and there's the same kind of feeling of pressure for cost reduction. When supply chains share those kinds of characteristics, I think there is a way in which the mandatory code can actually be extended to supply chains that share most if not all their characteristics with the TCF.

IGOR NOSSAR: Can I follow up on that?

The CHAIR: We are running out of time, actually.

Ms JENNY LEONG: Mr Nossar, if you want to follow up and provide additional information on that, I am happy for you to take any of the questions that we have asked on notice and provide additional details. In that way, we can get it on record. You have the opportunity to do that, but I am aware of the clock.

IGOR NOSSAR: Thank you.

Mrs TINA AYYAD: Mr Nossar, I am interested to know more about the compliance measures which are enforced and included in the code. How successful are they in practice?

IGOR NOSSAR: To be, once again, talking completely practically, the incentive function of the code to give an incentive to sign up to the voluntary system, in my personal experience, has never failed, so that every time we approached a particular supply chain and explained to them what were the provisions in the mandatory code and the alternative in the voluntary system, we didn't come across one commercial party that didn't say, "Well, in that case, we're going to opt for becoming accredited to and signatory to that voluntary system." I'm not in a position to know what kind of experience there is in implementing those particular provisions of the mandatory code, because every time we have come across a party they've elected to go into the voluntary one. In the abstract, could I note that those provisions were developed by the departmental drafting officer—who did an excellent job, I have to say—in relation to the code, to be practically realisable both for the State departmental inspectorate and for the union.

CORRECTED

The CHAIR: At that point, I would like to thank you for your evidence. We will contact you in relation to any questions on notice. Thank you.

(The witnesses withdrew.)

CORRECTED

Dr MARTIJN BOERSMA, Associate Professor, Work and Organisational Studies, University of Sydney, affirmed and examined

Dr CHRIS WRIGHT, Associate Professor, Work and Organisational Studies, University of Sydney, affirmed and examined

The CHAIR: Welcome to you both. Thank you for making the time to give evidence. Would either of you like to make a brief opening statement of a couple of minutes' length? Dr Boersma?

MARTIJN BOERSMA: Sure. I'll be making a statement on our behalf. We're very grateful today to speak about the Ethical Clothing Extended Responsibilities Scheme 2005. This scheme, which is currently underutilised, stands, in our opinion, as a vital tool in the enforcement of labour standards within the New South Wales textile, clothing and footwear industry, or the TCF industry. The workforce and the TCF sector, as outlined in our submission, is particularly vulnerable to labour standards noncompliance and exploitation. The industry predominantly employs workers who are culturally and linguistically diverse, with many facing significant barriers, such as limited English proficiency and precarious employment conditions. This demographic profile inherently places these workers at higher risk of modern slavery-like practices. The scheme is an important example of regulatory innovation that plays a vital role in ensuring business compliance with employment regulations and ensures TCF workers receive the wages and conditions they are legally entitled to.

Current modern slavery legislation, such as the Modern Slavery Act 2018, relies heavily on transparency measures. However, there is growing recognition of the need to shift towards due diligence and more proactive enforcement to effectively mitigate the risks of modern slavery. The Ethical Clothing Extended Responsibilities Scheme provides an avenue to facilitate this by ensuring greater accountability and transparency throughout the supply chain. By leveraging the scheme, we can enhance oversight and enforcement, ensuring that even smaller entities and subcontractors are held to high labour standards. This approach complements existing legislation and addresses gaps where the risk of abuse is most acute. In conclusion, strengthening the application of the scheme is imperative to protect vulnerable workers and uphold ethical standards in the TCF industry. We urge the Committee to consider the recommendations for promoting supply chain mapping, creating a comprehensive supply chain database and exploring the extension of the scheme to other high-risk industries.

The CHAIR: I might just start with a fairly general question. Obviously this is the Modern Slavery Committee, so we are interested in the application, perhaps, to instances of modern slavery. You've indicated the possible applicability of this scheme more broadly. I wonder if you could just expand on that a bit, and how the Anti-slavery Commissioner might participate in that?

MARTIJN BOERSMA: Sure, I'm very happy to. 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.

This brings us to the scheme. What the scheme does is look at this type of transparency in a much more strategic way. Effectively what it does is provide transparency on very select data points which are helpful in assessing whether exploitation is taking place and whether legal entitlements are being paid; but also, it provides that data to a very select group of stakeholders. By providing that to, in this case, the union—but also possibly NSW Industrial Relations and, as you mentioned, the Office of the NSW Anti-slavery Commissioner—we have, obviously, conferring publics that are not abstract investors or abstract people in the market, who may or may not change their behaviour on the basis of these disclosures. We have, obviously, a regulator and a union, in those capacities, and an Anti-slavery Commissioner 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 that sense, the scheme itself is very complementary to the work that the office of James Cockayne is doing, but also what NSW Industrial Relations could be doing.

The CHAIR: In essence, the current framework around modern slavery is we've got these statements that are made and no-one reads them—I mean, not "no-one reads them", but they're not the sort of thing the general public goes to and makes decisions around products on. You're saying an alternative approach—I'm just trying to encapsulate this—is to collect the data but actually make it more specific, and to specific interest parties?

CORRECTED

MARTIJN BOERSMA: Yes.

The Hon. Dr SARAH KAINE: I know the work of both of you quite well. I know that both of you would have been listening with interest to the previous witnesses. The first thing I wanted to do is get a response to that evidence, particularly, I think, with the Chair reminding us again that we have a modern slavery focus. Starting with you, Dr Wright, and the supply chain work that you've done, how is that structure and those characteristics of supply chains relevant to us, thinking about modern slavery? What are the leverage points available if we're trying to look at ways that mitigate it?

CHRIS WRIGHT: At the risk of being a bit too academic, I would just like to return the Committee's attention to evidence provided by Mr Nossar around the concept of "fissured work", a term coined by Professor David Weil at Brandeis University. This term basically means that the business or entity that employs a worker is not the one who controls how the work is performed. The reason for that is because of commercial pressure imposed through a contracted or networked business structure. That basically means that the employer has limited control over the work and the conditions as well. An example might be a retailer who engages a contractor, who then employs a worker, but the terms of the commercial contract imposed by the retailer don't allow decent work principles to be upheld or legally compliant conditions to be adhered to. This, I think, is a very relevant point.

In recent decades we have seen fissured work arrangements proliferate across labour markets in Australia and many other countries as well. That's definitely the case in textile, clothing and footwear, but it's also the case in construction; in business services, like cleaning and security; and in the supply chains that support the retail sector—food, fruit and vegetables and the like. The model that the code incorporates reflects international best practice. It does so for two reasons. It provides accountability for what David Weil calls the "lead firm", the firm at the top of the supply chain, like the retailer, who through their commercial power basically controls the work that's being performed by everyone within the supply chain. It is also because of the monitoring and enforcement that it provides to empowered independent agents, like trade unions or government agencies.

It's a model that I think is very well designed to support the work of this Committee around modern slavery, given that modern slavery—and Associate Professor Boersma can talk to this more than I can—embodies those characteristics of fissured work. It's one of the central features that lies at the heart of modern slavery. I might leave my answer to that question there and pass to Associate Professor Boersma for further comment.

MARTIJN BOERSMA: Thanks, Chris. That's absolutely true. Thank you for scheduling Mr Nossar before we appeared, because he obviously gave such an excellent outline of how the scheme operates. As my colleague Chris mentioned, a lot of the characteristics that make people vulnerable to modern slavery we see in the TCF industry. As he rightfully points out, we see that particularly happening in these fissured workplaces where people quite often fall through the cracks due to the opacity of those supply chains. This brings me to a point that I wanted to make before, as well, when the question of the Chair was directed at me.

Currently there are only a certain number of entities, based on the annual revenue that they make, that have to disclose their modern slavery mitigation risk measures. While federally, at least, they're considering lowering that threshold, a lot of the entities that would have to provide transparency in the TCF industry would not make that threshold. That would mean that we have a large blind spot, effectively, if we weren't to utilise this particular scheme. That obviously also applies to the potential broadening of the scheme, which my colleague Chris referred to, and which Igor and Luigi also referred to. A lot of those entities, the smaller ones, would not be captured by the legislation. Again, coming back to the blind spots and the idea that obviously modern slavery oftentimes occurs in those places which are more opaque, where people are more likely to fall through the cracks, I think those smaller entities would ultimately also be captured by these types of schemes and initiatives, which would shed light indeed on those sectors where people are most vulnerable.

The Hon. Dr SARAH KAINE: Often when we talk about modern slavery in an Australian context, and even when we're talking about it here, we're talking about pressures in supply chains and that kind of thing. But noncompliance with labour law isn't the same as modern slavery, is it? What's the connection there?

MARTIJN BOERSMA: I'm happy you raised that. Modern slavery is a bit of an unfortunate term in many ways because it always conjures up connotations with what might be coined traditional slavery. One of the key differences is that traditional slavery was more about legal ownership, where this is about illegal control. As a result, modern slavery should be seen as occurring on a spectrum of exploitation, where people might initially experience lesser forms of labour abuses or simple forms of labour standards noncompliance—whether that's not being given their legal entitlements—but people can move along that spectrum. It's not a "once and for all" set of circumstances that you are exposed to. Indeed, times change. Situations change. People might move along that spectrum. So we shouldn't see modern slavery and decent work as binary categories. There is a large area in between with large amounts of different types of noncompliance and exploitation that can occur.

CORRECTED

I suppose, coming at it from a proactive enforcement perspective as well, what this scheme does—obviously it would potentially nip worse types of exploitation in the bud, if you are able to make sure that people do meet their legal entitlements or get paid their legal entitlements. Mr Nossar referred to this as well in terms of putting a bottom in the market by having a scheme in place such as this. But also you refer to the Cleaning Accountability Framework, which has effectively also put in a bottom in the market. You level the playing field and you stop that race to the bottom, where you have these unethical practices just because profit margins have become so thin that a lot of suppliers and businesses almost have no choice but to look up the boundaries of what would be legally permissible and not. Therefore, you could potentially deal with these issues before they escalate into worse types of exploitation.

The Hon. Dr SARAH KAINE: Part of your submission was about transparency. You also spoke about transparency. Part of the benefit of something like this scheme is in improving transparency, but the other part is hopefully not finding modern slavery-like characteristics because the scheme, if it's operationalised, actually prevents the worst effects.

MARTIJN BOERSMA: That's correct, yes. That's what I was getting to.

The Hon. Dr SARAH KAINE: Associate Professor Wright, you mentioned that a code like this—and I know your scholarship is about supply chain regulation around the world—is best practice. Could you contextualise that? Is there anything else that we could look at for other thoughts or inspiration? Could you expand on the best practice?

CHRIS WRIGHT: Yes, sure. There has been a lot of scholarship that has been done on this issue and those two principles around the accountability measures for lead firms and having empowered independent agents to monitor and enforce. Those are features that are not common to many of the forms of voluntary codes that you referenced in your questions to the previous witnesses. We've seen in the past 10 years or so, including in this industry, major multinational retailers adopt voluntary codes of practice that are aimed at demonstrating that they're being proactive around ensuring that their supply chains are free of modern slavery practices and associated practices related to noncompliance with legal standards. Many of those measures don't provide firm accountability mechanisms for the lead firms, the retailer involved, because they're voluntary. There's no-one really to hold them to account. That's where the State has a very important role, I think, in providing that accountability. They often don't empower independent agents, like trade unions, for example, to be involved.

There are other schemes in other parts of the world that do provide measures akin to this. In the United Kingdom there's an agreement called the National Agreement for the Engineering Construction Industry. This provides those two measures: lead firm accountability and it empowers unions as independent agents to enforce the agreement. This is a scheme that is supported by unions and also employers because of the benefits that are produced by this arrangement in terms of supporting decent work, avoiding modern slavery-like practices, especially at the bottom of the contracting chain, and also productivity benefits, reduced industrial disputation, and greater certainty for businesses involved. There are significant benefits from these types of arrangements. They also help to reduce commercial risks as well, for lead firms.

Just to take one example from this industry, 11 years ago there was a disastrous factory collapse in Bangladesh—the Rana Plaza factory collapse. Many 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 this, had it extended beyond the jurisdictional boundaries of Australia—I know that it does beyond the boundaries of New South Wales within Australia—then those sorts of risks would have been minimised for the Australian businesses that were associated. In terms of potentially extending this sort of scheme, the measures involved could significantly help to reduce commercial risks for businesses within the supply chain.

The Hon. Dr SARAH KAINE: That is really interesting. Thank you for both of those examples. I want to ask about the co-enforcement. Both the ethical clothing scheme and the schemes you spoke about—and we heard evidence from Mr Nossar—speak about the importance of having businesses involved. I think there may be a danger, if people aren't aware of that kind of involvement, of reading the code and of thinking this is some kind of union scheme that sends a union in to do something. I don't know what, but to do something. But that's not really what it's about, is it? Could either of you explain a bit more about the importance of that multi-stakeholder approach, using either this or other examples?

CHRIS WRIGHT: What constitutes effective regulation of work? In Australia, we have a tradition of the State having a strong role. That's been effective, for the most part, from my research. But one of the things that comes out of the international evidence about effective regulation is the importance of both worker

representatives and business representatives being involved because they are the actors with the greatest stake in ensuring compliance and effective regulation—effective regulation that balances the needs of workers for fairness and business for certainty. A State-led model of regulation has benefits, but the most effective models of regulation supported by the State are those that proactively involve both business and workers and their representatives in this process. I believe this scheme does that through the measures it contains regarding transparency, monitoring and accountability, and the roles that retailers and trade unions play in those processes.

MARTIJN BOERSMA: Yes, absolutely. I can second that. When I spoke before about 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. That has happened, like I said, both globally as well as domestically. The initial response to that was for companies to come up with their own codes for business to regulate themselves to try and address that. That has not been highly successful. From the mid-2000s and later onwards, 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.

But, also, in the context of contemporary labour standards enforcement, the idea that it's just the regulator that can do it all by itself, for example, is outdated. You do need the union involved in that capacity. You do need the industry involved in that capacity. You do need big bodies, the companies themselves and, most importantly, the workers involved in those initiatives to, again, put the finger on the sore spot and effectively come together and try to address this issue. We've referred to the Cleaning Accountability Framework before, which is a prime example of an industry which has been plagued for many decades by labour standards noncompliance due to cutthroat competition. The union itself couldn't solve it. The Fair Work Ombudsman couldn't solve it due to various reasons. The industry itself surely couldn't solve it as well. They have ultimately all come to realise that, when they join efforts in order to address this problem, they have a much better chance of addressing this issue. So, yes, the multi-stakeholder route and bringing stakeholders together is definitely the way forward. I think the scheme offers avenues to do the same.

The Hon. Dr SARAH KAINE: The point that was made by Mr Nossar was the difference between the scheme and, for example, CAF is that you do still have the involvement of the State—which is what you were talking about in terms of it still providing that greater impetus for unethical players to be involved. Both of you mentioned traditional labour law. Traditional labour law has done this work in the past and we've had it work. What is it about the characteristics of modern work that mean that traditional labour laws and arbitration systems we've had in the past don't work?

CHRIS WRIGHT: Labour law—employment law—is built around the assumption of a direct employment relationship between employer and employee whereby the employer is not only managing that worker but has control over that employee's conditions. This industry is characterised by other actors—third parties, effective business controllers like retailers—whose commercial activities invariably influence the employment relationship or work relationship between a contractor and a business who engages their services.

I know there has been discussion in the previous session about whether changes to the law—State and Federal—since the establishment of the code in 2005 render it redundant. My answer to that would be no, absolutely not. The code is a way of making awards, for example, as one form of employment law, work more effectively. Awards are a necessary but insufficient measure of regulation, because all they do, essentially, is provide a minimum standard that the employer of the employee is obliged to uphold. But, when the employer has limited capacity to uphold their responsibilities because of the commercial pressures they're facing through their commercial contract with the retailer or with a contractor who's engaging them, then they have limited control.

Having an additional measure in the form of a code that brings the lead firm—the retailer—explicitly into the arrangement, and provides accountability to them to monitor, enforce and work with empowered independent agents to do that, is necessary. In many ways, Australia's systems of employment law, State and Federal, reflect that they're rather old fashioned in that they are based around the assumption of relationship between an employer and employee without explicitly incorporating other third parties. We need measures like the code to ensure that labour law reflects the realities of work and business in 2024.

Ms JENNY LEONG: Thank you both for your responses so far and for your submission. I want to give you the chance to talk a bit more about establishing a supply chain database. In the discussions we've had so far around the lack of resourcing or engagement with this at a departmental level within the public service and within government, I wonder how do you see that working? Where would you see it being resourced? Who would ultimately be responsible for maintaining it and that kind of thing? I appreciate the recommendation around it but,

given the risks around the scheme itself and the code being sidelined, do you see a place where that would sit such that it would actually be delivering what you're hoping it would?

MARTIJN BOERSMA: I think that would naturally sit with NSW Industrial Relations, to be frank. I think that one of their roles, potentially, could be to establish standard operating procedure around that. From my experience, again coming back to the Cleaning Accountability Framework, is that all the stakeholders that are meant to provide information but also the stakeholders that are meant to digest that information benefit greatly from really straightforward guidelines and streamlined procedures as to how to submit that type of interpretation. If it's clear for retailers, for example, through the establishment of templates, a simple online portal or a simple email address that you would send that to, it would make that information provision a lot easier. The regulator, as an objective body, would also potentially be a natural place to submit that to—potentially also due to possibly commercially sensitive information or other information.

Also, from an enforcement perspective, they're very well placed to look at that data and look at those submissions. Through the existing data points but potentially through extension of the scheme and the inclusion of additional data points, it would for them be easier to establish where there might be little red flags as to potential labour standards noncompliance—for example, submissions of information that submit profit margins that are so thin that, potentially, somewhere corners are being cut. That could lead them to strategically direct their resources to follow up with an audit or an additional request for information et cetera. Ultimately, NSW Industrial Relations would be a natural place for that to sit, in my opinion.

Ms JENNY LEONG: Pointing to Industrial Relations and recognising that the Anti-slavery Commissioner and responsibility for the Modern Slavery Act currently sits with the Department of Communities and Justice, and given the submissions we have received from a number of people to—in Mr Nossar's words—"resuscitate" this scheme and the code, and given that you're aware that we're reviewing the Modern Slavery Act, do you have thoughts about whether there is potential to strengthen the enforceability and direct compliance elements of the Modern Slavery Act by learning from this code, and potential for an integration between those elements? Historically they have sat very much in different departments. We have heard all the evidence and we all know that there is a direct link between dodgy labour practices and risks of modern slavery, yet they're seen as such separate entities. I wonder if you have thoughts about the potential for the multi-stakeholder model being applied to the Modern Slavery Act, but also if there is an opportunity for us as a Committee to review the Modern Slavery Act with a desire to strengthen it with a potential regulation model that involves other stakeholders?

MARTIJN BOERSMA: Yes, absolutely. I think, from what I have learned, Commissioner Cockayne has been very busy meeting different departments and other people who have been working in any area related to labour standards compliance and whatnot. His office has made a submission, co-authored by Ms Justine Coneybeer, articulating what role his office could play in enforcement here. Indeed, my colleague Chris and I, as part of recommendation 3, think that there is scope to articulate that collaboration between those departments more succinctly. Obviously the New South Wales Anti-slavery Commissioner office has only fairly recently been established. It's still in its early days and finding its feet and finding a form in which it best operates.

But, yes, articulating the role that they could play and finding effective ways of resource sharing, finding effective ways of working together to come to more effective enforcement would be very valuable. Indeed, the commissioner has articulated in other areas, such as renewable energy, particular guidelines and codes recently as well, which is obviously a very important area. But this similarly could be an area. I think there is a role, potentially, for a broader working group which includes people from NSW Industrial Relations but also from the Commissioner Cockayne's office to come together to sit and see which elements from this particular scheme, the core elements, can be taken and potentially transposed onto other high-risk industries. So I definitely see further scope for collaboration there, yes.

Ms JENNY LEONG: Thank you. Did you want to comment, Chris?

CHRIS WRIGHT: Thanks, Ms Leong. I think that it is a model that the Committee should consider for strengthening modern slavery regulations, both in terms of the accountability mechanisms and transparency mechanisms, but also regarding the threshold. This is an industry where many of the businesses, as we say in our submission, are under the $150 million threshold. The code provides effective mechanisms to cover those businesses. I think those three elements of the scheme around accountability, transparency and coverage the Committee should consider when reviewing the Modern Slavery Act.

The CHAIR: Any more questions?

Ms JENNY LEONG: If we've got time, I will ask one more. Obviously there are the good sides of multi-stakeholder involvement. The negative side is that no-one feels like they own it and have accountability and

responsibility for ensuring that it happens. There is mention in the Act of a council. As far as I can tell, it doesn't exist.

The Hon. Dr SARAH KAINE: It used to.

Ms JENNY LEONG: It used to exist, but it doesn't anymore. It's unclear who is responsible for ensuring that it does exist. Do you have thoughts about how we can ensure there is some ownership or accountability or responsibility at a ministerial level and a departmental level for ensuring that this scheme, as it stands, is adhered to and applied?

MARTIJN BOERSMA: Yes, that's a very good point. 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. Often, just joining is seen as an act of "We're trying to do the good thing", but not effectively and working toward a solution. Reiterating my previous point, a natural place where the scheme could sit would be NSW Industrial Relations. That would be a natural place where it could sit. I think if they would be spearheading initiatives, that could be very helpful. But also, the idea of participation in the scheme is good and potentially could lead to stopping worse types of abuses of labour standards, noncompliance, occurring. I suppose for them it is a bit of a carrot as well for retailers. You can join and be proactive and try to sort this out, rather than later on being confronted with a particular abuse and potentially NSW Industrial Relations striking a different tone and using more of a stick than the initial carrot.

CHRIS WRIGHT: I have some additional thoughts in answer to your question. I think that a council model is a very good one and it works in some of the examples I've mentioned, such as the National Agreement for the Engineering Construction Industry in the United Kingdom. They have 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. The council consists of equal representatives from employees, the unions and the employer associations, and the independent chair that is jointly agreed by both parties. It's a model that's worked well previously in Australia.

Another ingredient is ensuring that workers and, indeed, businesses are represented effectively through that structure. I know there have been recent changes to Commonwealth law around trade union access to workplaces. We're yet to see what the impacts of those are. But having a well-represented workforce and business community is widely identified as necessary for effective joint regulation to occur. That's what we see in Nordic countries, in Germany, in other parts of the world. So ensuring that those measures are in place in this industry and in other industries where this sort model might be expanded to is absolutely essential for its future success.

The Hon. Dr SARAH KAINE: But it's fair to say, picking up the point from Ms Leong, that having a code that's notionally meant to have a base and a regulatory force in the State, if it's not housed somewhere within State apparatus or auspiced or driven there then, beyond what ECA and the union have been trying to do, it's not particularly useful, is it?

CHRIS WRIGHT: No. State support is absolutely vital.

Ms JENNY LEONG: It seems a bizarre situation that we have a requirement for a council, no-one's removed that requirement, but there are no details as to who is responsible for that council.

The CHAIR: I did have a discussion with Mr Nossar prior to the hearing and reflected on the fate of the council. I think it may have had a specific time frame. It may be worth going back and finding out precisely what happened to that and why that was the situation.

The Hon. Dr SARAH KAINE: It established the Homeworkers Code of Practice, which then became ECA.

The CHAIR: Yes, so I think it's worth us perhaps seeking some further information to clarify what happened in that instance.

Ms JENNY LEONG: Yes.

The CHAIR: But, clearly, you've reiterated, Dr Wright, the value of having that council and that structure in place.

The Hon. Dr SARAH KAINE: And it doesn't take away from what we're saying about, regardless of the council, if there is a code and it's State-endorsed or State-derived then it needs to have a home.

The CHAIR: Yes.

Ms JENNY LEONG: Yes, totally, which I think is the—

CORRECTED

The Hon. Dr SARAH KAINE: Key thing.

Ms JENNY LEONG: —bigger question here: Who is responsible for it being resuscitated?

The CHAIR: Which part of the Government?

Ms JENNY LEONG: Yes.

CHRIS WRIGHT: I would agree with those comments.

Ms JENNY LEONG: Great. Thank you.

The CHAIR: I thank you for your evidence. The secretariat will contact you in relation to questions on notice and if we require any further information.

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

Ms RACHEL REILLY, National Manager, Ethical Clothing Australia, affirmed and examined

The CHAIR: Welcome to everyone as we resume the hearing today. I welcome our next witness, Ms Rachel Reilly. Would you like to commence by making a short statement?

RACHEL REILLY: Yes. Thank you. First of all, I would like to acknowledge that I am on the lands of the Gadigal people of the Eora nation. I also acknowledge that my homeland is the Wurundjeri in Naarm in Melbourne. Thank you for the opportunity to appear before the Modern Slavery Committee this morning. Having read through the submissions and heard the two previous witness panels, I point out that there is significant subject matter expertise around IR laws which I don't have. To that end, I'd like to note the following opening comments.

I have worked directly with victims and survivors of human trafficking in Australia in another industry for more than 5½ years, which has provided me with critical insight into the conditions which enable modern slavery to occur within Australian workforces. With the structure of the TCF industry and the existence of outworkers within the business model, who are extremely hidden and invisible within supply chains, there is no doubt in my mind that the full continuum of exploitative labour practices exists, which would include what would constitute modern slavery in the local industry.

If we work on the assumption that modern slavery results from the failure of our systems to identify vulnerability and to prevent and remedy exploitation, then I do firmly believe that the existence of the Ethical Clothing Australia accreditation program was born out of recognising these vulnerabilities and creating a framework for remedy to occur. The program is both a protective and preventative factor of the more extreme forms of exploitative labour practices from occurring, including forced labour. Due to the business model itself being a risk factor, there should be sustained efforts to ensure that protective frameworks not only remain in place but are enhanced, and this includes initiatives to increase New South Wales TCF businesses to participate in the Ethical Clothing Australia accreditation program and also retaining and operationalising the Ethical Clothing Extended Responsibilities Scheme.

Ethical Clothing Australia is a multi-stakeholder initiative spanning industry, business and union. The program truly centres worker voices, provides remedy and restitution for rights violations while creating a pathway for workers to access their human rights which empowers them as rights and duty bearers rather than from a position of benevolence. To this end, the Ethical Clothing Australia accreditation program supports the State's international human rights obligations and is also a program to support the private sector to carry out their obligations under standards such as the UN Guiding Principles on Business and Human Rights, other international standards and also the proposed future treaty on business and human rights.

Lastly, and akin to what I've said of New South Wales being the leading State in addressing modern slavery, we do firmly encourage the New South Wales Government to recognise that both the global and the local industry as high-risk industries and, further noting what I have said, recognise that Ethical Clothing Australia is offering a proven solution for risk mitigation and remediation of rights violations. Subsequently, we firmly do encourage the New South Wales Government to adopt a procurement policy which preferences Ethical Clothing Australia accreditation for all publicly procured textile, clothing and footwear items, such as uniforms and PPE.

The CHAIR: Ms Reilly, could you outline for me how the accreditation scheme currently operates, what resources you have and how that's funded? What is preventing its expansion? What are the barriers to more firms taking it up or the scheme expanding? So please describe it, how it's funded, how it operates, the resources you have, and then barriers to expansion.

RACHEL REILLY: The scheme itself, as I noted in my opening remarks, is a joint industry, union and business initiative. To that end, it's a voluntary code of practice or voluntary accreditation program that businesses sign up to. The code of practice is based on the existing workplace laws, primarily the textile, clothing, footwear and associated industries award and other relevant workplace laws. The businesses which are voluntarily signing up are not being asked to do anything beyond complying with the existing workplace laws, with the exception of one instance, which is where there has been a violation where an outworker in the supply chain has not received their legal entitlements. The principal business is responsible for remediating that violation, which is an extension of current laws.

The businesses sign up. They sign up to the code of practice, which then requires them to go through a yearly annual audit. It must be repeated each year, because we know that if it's not repeated each year, there's the likelihood of the compliance slipping within the organisation or the business. We maintain that yearly audit, where they're complete supply chains—all in-house operations and all suppliers that they've contracted, including down to the outworkers—are audited. That includes looking at ensuring they're being paid appropriately against the

award, receiving all their correct legal entitlements, as well as superannuation, and working in safe and healthy conditions.

I point out as well that during the course of the audit—because it is a joint union/industry initiative and it's supposed to be a collaborative approach, which works with businesses who have breaches in their supply chain or within their in-house operations—the compliance teams work with a business until breaches are remediated. By the end of the audit cycle, they are compliant with all Australian relevant workplace laws. I think that's 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. It works until resolved, unless there is a barrier to prevent that, and that barrier is that the principal business, or a supplier in the principal business supply chain, is opting not to be legally compliant. There is a real power in that collaborative approach.

I note on that that we know that some businesses opt to be noncompliant but, often, it is because they don't quite necessarily understand their own obligations. So, again, there is the power in being able to work with them to understand their obligations so that they build that into their business practices. Ethical Clothing Australia is the administrative side of the program. As Mr Nossar outlined, we have a service level agreement with the relevant union to execute the compliance audits. They have existing powers under the Fair Work Act to be able to enter and request the documentation, which is, again, where it is considered, probably, one of the more rigorous audits globally, because it's drawing on those existing powers. The union executes the audit component of the program.

In terms of resourcing, up until recently, we have been funded by the Victorian Government for the last six years. Prior to that, it had been the Federal Government. More recently, in April of—I can't remember what year we're in. I think it was April of '23. We received funding from the Federal Government. So currently we're resourced by both the Federal Government and the Victorian State Government. In terms of what is preventing, I think that's a good question. It's voluntary, so it's predicated on the fact that most businesses want to be doing good. But we're existing in an environment that's incredibly strained at the moment, economically, so some businesses are opting to opt out of the program or to not join it in the first instance.

I think another barrier is that, coming back to where we've been resourced, we have been heavily focused in Victoria. That's where our head office is and that's where our operations have lain up until recently. We have been working on expanding and have staff in both Queensland and one staff member in New South Wales now. We don't have the, I guess, brand awareness of who we are in the other States and Territories, so there's a lot of groundwork that needs to be done to build that awareness to get eligible businesses on board.

I guess, as well, the Victorian Government has sort of incentivised businesses to join up with the program through schemes such as the ethical supplier register and the guidance on procuring uniforms and PPE, and that has seen a growth in Victoria of businesses joining. Coming back to what Mr Nossar said, the extended clothing responsibility scheme was, in part, supposed to drive businesses to become accredited under the voluntary code, and with that being operationalised there's less incentivisation in other States and Territories to join up to the scheme.

The CHAIR: I have a couple of follow-up questions. Do organisations pay any fees to join?

RACHEL REILLY: Yes, they do. The fees are based on their operations, so how many staff are covered in house and how much they are outsourcing in terms of revenue. It is an incredibly cheap audit compared to what you would get internationally through third parties, and I have an example here for you. We have a business that employs more than 70 people, and we don't know how many. Our fee structure caps out at 70-plus. So they employ more than 70 people. They outsource more than $10 million worth of services. They have 22 businesses in their supply chain, and in that 22 businesses there are more than 405 additional workers that the audit's covering. They pay less than $10,000, which is the equivalent of about $20 per worker that's being audited to ensure that all their rights are being upheld and protected, so an incredibly affordable cost to the businesses.

The CHAIR: And the auditing is done by union members, delegates, representatives?

RACHEL REILLY: Yes.

The CHAIR: And from what you said, they visit each site yearly?

RACHEL REILLY: Yes.

The CHAIR: Would that include, for example, each of the 22 businesses in that example you just referred to?

RACHEL REILLY: Correct, yes, and I think, again, that's the power of the audit. They're on the ground, doing the work, meeting the workers, understanding the working environments in which they're working in, talking to the workers, really centring those worker voices in the audit.

The CHAIR: Just finally, do you fund those union representatives or are they funded from the union?

RACHEL REILLY: So, again, under the service level agreement, so in part the funding which we receive from the Victorian and the Federal governments. We then provide funding to the union to execute that aspect of the program.

The Hon. Dr SARAH KAINE: Thank you very much, Ms Reilly, for your submission and your evidence today. Just talking again about that service level agreement. Obviously, this is the Modern Slavery Committee, and you mention in your submission that there is nothing in particular in your service level agreement that talks about identifying modern slavery. But I guess given the evidence we've heard, given the industry, there's an overlap, isn't there? There's an important oversight function that's still being performed by the code, your code.

RACHEL REILLY: Yes, absolutely. My opening comments have sort of spoken to the fact that it's both a protective and a preventative framework for modern slavery. Genuinely having worked in an industry that doesn't have these sorts of frameworks in place, I genuinely believe that, and I come back to what Professor Martijn Boersma said as well that there's the full continuum of exploitative labour practices that exist in the industry and the fact that this yearly audit is undertaken sort of ensures that the standards within the businesses themselves and their supply chains doesn't slip over time.

Should that not be in place—and we do have case examples of that, where a business has opted out of the accreditation program and within a year, two years, they had significant amounts of wages or superannuation that was owing because there was nobody there checking and inspecting and making sure that they were maintaining and keeping up with their obligations. So I do firmly believe that the existence of the program itself is the protective and preventative factor within the industry and that, potentially, as well, based on my experience, understanding and recognising what constitutes modern slavery in workplaces is probably still something that a lot of people need to fully understand. And, most certainly, in some of the case examples that I have heard, I would say that those situations constituted modern slavery.

The Hon. Dr SARAH KAINE: I guess a related question, to do again with this service level agreement—and I'm trying to remember whether it was your submission or the union's submission talking about trust issues in terms of getting workers to reveal the actual conditions but also the types of people even that you want to go and conduct audits or engage. What I'm understanding is your previous experience—have you got some comments to make about why the people that you get—yes, the union has industrial powers that other organisations might not have but there are other reasons, aren't there, to get, perhaps, the union?

RACHEL REILLY: Yes, 100 per cent. I think today we've spoken a lot about the laws around it, but at the end of the day we're trying to protect people, and often people don't understand their rights. They might understand that they're being exploited. They have fear, distrust, a whole range of things. I think in these sorts of working environments, the importance of employing people with lived or living experience of the industry and the exploitation, having potentially experienced the exploitation themselves, is a powerful tool in being able to adequately build that rapport to enable people to be able to speak out or to feel confident and comfortable to bring an issue to the fore.

Most certainly, the compliance team that we contract to at the union—and also to note, as part of the SLA agreement, they have an outworker outreach team as well who are made up of people who have experience of the textile, clothing and footwear industry and who are multilingual and bilingual so that they do understand how to engage and approach the different demographic profiles that exist within the industry. So it is incredibly important, from my perspective of both being at Ethical Clothing Australia and my previous role, to be engaging people who have the understanding of the work at hand and the lived experience to be able to engage vulnerable workers.

The Hon. Dr SARAH KAINE: That was one of the questions that I had. So you have the accreditation program and then you have the outreach. Could you talk a little more about the outworker outreach program?

RACHEL REILLY: Yes, sure. It is an incredibly difficult cohort of workers to be able to access, and I think all submissions struggle to be able to define how many there are, and one submission indicated that the situation has been fixed because everything went offshore, and I actually think that that's not the case at all. I think it's probably beyond this Committee to be addressing gender equality, but we know that this type of work really works for women who have unpaid labour caring duties. They need to be working from home. They have other barriers to be able to access more formal forms of employment, so they're incredibly hidden and incredibly under the radar. For the outworker outreach team, again, with bilingual and multilingual workers, and workers with experience of the industry, it's not as simple as knocking on an outworker's door and saying hello. It is about going to community centres, to Lunar New Year festivities and to places where outworkers are likely to be, and building awareness of what the program is but, more importantly, what their rights are under Australian workplace laws.

CORRECTED

Then, through building that rapport, we build the trust, both in the individuals and also within the program, for outworkers to disclose their situation.

I draw your attention to the case study that I put in my submission, which was about an outworker who came across one of the union outworker outreach workers years after she'd quit being an outworker and how thankful and relieved she was that she was able to share her experience of exploitation because she'd carried that with her for years and had no-one to tell, because no-one either cared or listened to what she had to say. That real on-the-ground, bottom-up work has to be done with this particular cohort of workers.

The Hon. Dr SARAH KAINE: I want to ask a question about the multi-stakeholder nature you mentioned in your introduction. Can you maybe give us a bit of a sense of the governance and how the different stakeholders interact?

RACHEL REILLY: Yes, sure. It is a joint union-industry business initiative. We have the Homeworker Code Committee, which has equal representatives of business or industry and union members. At the moment we have three accredited businesses, four union representatives and Business NSW sitting on the committee. It is a governance model by consensus. To that end, it's not preferencing one area over the other. A consensus must be achieved. There is a provision for when consensus can't be achieved. The stakeholders that have come together to be on the committee are genuinely there to foster that collaborative approach. I must say having been involved in other governance structures. Sometimes it's tense. Someone said to me that in the real world that sort of collaboration is probably quite challenging, but I think that's a testament to the fact that this is a program that people genuinely want to maintain as a collaboration and also to be effective. It has been going for 23 years, which is a testament to that. So it is governed by both spaces.

The Hon. Dr SARAH KAINE: Most of your accreditation organisations are Victorian-based. That's where your base has been, but you still have Business NSW as part of your governing body.

RACHEL REILLY: Correct. That comes from the origins of the code of practice being developed.

The Hon. Dr SARAH KAINE: You still have that connection through that.

RACHEL REILLY: We still have that connection. They're a founding member, so they continue to be included on the committee.

Ms JENNY LEONG: Thank you so much, Ms Reilly. I really appreciate that. I should say that for many years I have been using your website but had no idea of all of the machinations behind how this works. So it's wonderful to be part of this committee and process.

RACHEL REILLY: Great.

Ms JENNY LEONG: The thing that I want to go to first is the discussion around funding and resourcing, and recognising the Victorian Government funding and the focus in Victoria. What do you see as the potential gap or the extent of your coverage in New South Wales versus the potential to expand that, if you were to be able to have that New South Wales focus? How does your level of coverage compare in terms of Victoria versus New South Wales? What percentage do you see of New South Wales that might currently be covered by Ethical Clothing Australia and what is the potential for growth?

RACHEL REILLY: Yes, sure. Thank you. I will give the most up-to-date numbers of accredited businesses. We have 113, and 17 of those sit in New South Wales. There is the opportunity for significant growth. I don't have the numbers at hand, but I know that in other submissions they drew on the ABS data to outline how many businesses would be considered TCF businesses operating in Victoria. As long as they have local operations—local manufacturing and local supply chains—then they are eligible to apply and join the program. There is a significant opportunity for growth in New South Wales with the right levers sitting behind it.

Ms JENNY LEONG: In relation to that—and I'm happy for you to take it on notice—are you able to provide a bit more detail around your funding breakdown and how that works in terms of Victorian Government funding and Federal funding such that we would have some idea? I appreciate you're recommending that the New South Wales Government provide funding. It would be great to have a sense of what we're talking about in terms of the scope and different sources of your funding and what's possible.

RACHEL REILLY: Yes, I can do that now. Historically, we received $1 million from the Victorian Government. More recently, we've received an additional $1 million dollars from the Victorian Government for two years, so it's $2 million. The additional funding has been for other, additional sorts of programs. We received $1 million to deliver the program that we're talking about at the moment, and we received $2 million per year for a period of three years from the Federal Government. That is to grow the program in States and Territories beyond

Victoria, but there was also a large component of that funding that supported us to do internal upgrades to the organisation itself. Those operational processes will enable us to have a stronger output later on.

Ms JENNY LEONG: Thank you so much for that. You mentioned the collaborative way in which audits are undertaken and a willingness for any issues that have been found to be rectified, and then people can maintain their accreditation. In instances where there's a decision not to rectify those situations and people no longer maintain their accreditation, what are the current recourse, penalties or structures in place to report on that, or otherwise? Going to the focus of this Committee on modern slavery, do you see that there's potential to weave in the responsibilities of the Anti-slavery Commissioner in relation to being aware of or becoming aware of certain risks that might occur that go beyond the accreditation element but may move into the area of modern slavery?

RACHEL REILLY: First of all, de-accreditation as such is an absolute last resort. It's where there is a complete breakdown and the issues is unable to be remedied. Vivienne Wiles will potentially speak to this a little bit more, but there is then the ability for the union to prosecute. So there is still a recourse of action. Again, this is Australian workplace laws. They need to be compliant. It's not anything above and beyond that. Where they can't fix the issue—and I've been through this process with the compliance officer—it's absolutely when it's a last resort. The union does have the ability to prosecute there.

Ms JENNY LEONG: Can I jump in and say that's another benefit of the union being directly involved—because then they can engage in their own process.

RACHEL REILLY: That's absolutely correct.

Ms JENNY LEONG: That moves back from your shared collaborative approach to the union's core business.

RACHEL REILLY: That's correct. It's really important to have that distinction, because we want to maintain that collaboration. It comes out of the program and into a completely different space. I do note that the Office of the NSW Anti-slavery Commissioner's submission said that there were limited accountability mechanisms, but I think that the involvement of the union in the audits themselves creates this different wraparound support to make sure that there are the accountability mechanisms in place. To weave in the Anti-slavery Commissioner, I think there is merit to ensuring that things aren't siloed and that it's linked up in the different spaces.

I disagree with his recommendation that he would be the person to go out and speak to outworkers, just drawing you back to what I said about the nature of outworkers and the need for that bottom-up approach to be able to safely and culturally speak to people, predominantly women, about their situations of exploitation. I come back to the point that, potentially, there is a lack of awareness of what constitutes modern slavery within Australian workplaces. There is a real need to increase awareness of what constitutes modern slavery and, to that end, potentially there is something that needs to be done around appropriate referral mechanisms, if that is a situation and modern slavery is to be found. That is complicated though because, again, we're trying to work with businesses to enhance their operations. If you are outing a worker, then you are outing the business. There are some complexities around that. But there is an opportunity for a bit more of a joined-up approach, yes.

Ms JENNY LEONG: Given your experience in other industries prior, and the other evidence and submissions we have received about the potential for expanding this approach into other at-risk industries and to protect at-risk workers, how do you see the model of Ethical Clothing Australia fitting into that? Would you see that we would need a similar body for other areas—ethical delivery driving in Australia or ethical whatever it is—or do you see that there's the potential because of the overlap of the risks to actually expand out how that structure would work to different areas? How specific do you think it would need to be as we're expanding that out or are the kinds of things we're looking at very similar at that top level of multi-stakeholder integration and actually more specific as to the specific audit process and who are the people going in to do the audits?

RACHEL REILLY: That's a very good question.

Ms JENNY LEONG: I'm happy for you to take it on notice.

RACHEL REILLY: I think it's an excellent question. I think it comes back to my point that the power in the program, particularly with the audits, is through union compliance officers having come up and worked through those industries, having the knowledge of the nuances of how the industry operates and being able to quickly recognise where something isn't quite right or where it's impossible for a garment to be made for that particular price or seeing bagged clothes on the shelves but then the supplier hasn't disclosed outworkers or whatever it is. I think there's a real power in ensuring that it's industry specific. If we come back to powers for other regulatory bodies to go in, they don't necessarily have the nuance of the industry to be able to adequately check. They don't know what the risks are that they're looking for.

CORRECTED

I see what you are saying, though. It would essentially have hundreds of different committees. But I think that that's probably where the power lies. To have an overarching committee that's there to address the exploitative labour practices across industries, I think, would then weaken what the program is in itself. Previous experience and the lack of any of this type of program existing and the laws being very loosely applied in the industry, I think, would be problematic to bring in just a generalised program to try and protect the workers in that space. I guess that's a longwinded way of saying that I think it does need to be industry, potentially over the course of 10, 15, 20, 30, 40 years as we really operate and work to address how we've created structures that enable and allow exploitive labour practices to exist. Potentially, over time, as we siphon through that and we get—

Ms JENNY LEONG: Yes, if we abolish capitalism, then we don't need to. I don't imagine anyone is giving evidence at this Committee about that. The reason I ask is because we have received quite different submissions in terms of where the Anti-slavery Commissioner is coming from and his perspective versus the really industry-specific perspective. I wanted to draw out what you saw as the benefits of the industry-specific element, recognising that we can identify that there are particular areas where workers are more at risk and that those industries over time may shift and change. You wouldn't necessarily need the equivalent of Ethical Clothing Australia for every industry, but those that are identified as larger risks.

I will make this comment and ask for your thoughts on it. To me, one point of integration that I'm potentially thinking is the idea that the Anti-slavery Commissioner has the power to be able to identify certain at-risk industries that would then trigger some kind of establishment of a stronger mechanism along the lines of what we're seeing in the ethical clothing space rather than necessarily saying that the Anti-slavery Commissioner would have full oversight of everything. As you have identified, it needs to be industry specific. I don't know if you have thoughts about how we would go about identifying those industries or whether or not you think the model for how it's set up would work for other industries and it is just that it needs the right people around the table.

RACHEL REILLY: I believe the latter.

The Hon. Dr SARAH KAINE: Following on from the questions from Ms Leong about applicability to other industries, part of the submissions that we've had was about the specificities of understanding what constitutes exploitation in terms of output. In TCF it's about value and volume and how you decide what is an appropriate productivity rate. What I'm hearing is that, for other industries, there would need to be comparable consideration of what is an appropriate level of productivity to expect in agriculture or in cleaning. How many offices are you meant to clean? There would have to be that nuanced information. I want to confirm that that is the essence of what you're saying.

RACHEL REILLY: Yes. Agreed.

The Hon. Dr SARAH KAINE: And also, jumping off from the evidence we have had about multi-stakeholder schemes, you would want to have business and employer input into that side of things as well. It wouldn't just be a regulator and the workers. You would also want to have the business side of things contributing.

RACHEL REILLY: Yes, absolutely. It's hard work but it's an exceptional model, yes. I think it needs to be a multi-stakeholder approach, not a one particular player approach.

The CHAIR: I'm going to ask a clarification question. Forgive my ignorance on this. You have been in operation for 23 years.

RACHEL REILLY: Yes.

The CHAIR: And Ethical Clothing Australia is a joint union business arrangement around accreditation. In New South Wales we have the ethical clothing responsibility scheme with a mandatory code. As we've heard from other evidence, one of the main effects of the mandatory code is that it incentivises people to adopt a voluntary accreditation system. I'm trying to understand how Ethical Clothing Australia interacted with the New South Wales system over these years. How did it actually work with respect to the Homeworkers Code of Practice? That has now been renamed, and I think we had an ethical clothing council. What was your involvement with that scheme? I will ask the union representative to also explain it to me. Could you try and take me through that and assume that I don't understand anything?

RACHEL REILLY: I'm going to have to take that one on notice because I don't know how, back in 2005, that particularly worked. Vivienne might be able to speak to that a little bit more, but I can absolutely take that on notice, yes.

The Hon. Dr SARAH KAINE: A follow-up on when we were speaking about this. Ms Leong asked some questions, as did I. Would it be fair to say that because, for whatever reasons, the New South Wales code,

as opposed to your own code, was not perhaps followed up or enforced in New South Wales, it did not work in the way it was intended to create ethical clothing as a voluntary alternative? Because there was not any real regulatory oversight, despite it existing on the books, it was not having the effect that it was meant to of providing that alternative with ECA.

RACHEL REILLY: The only comment I could make without a little bit of further research and conversations with people who are involved in the organisation is to Mr Nossar's point that, even though it wasn't fully operationalised, when they were talking to businesses they opted into the Ethical Clothing Australia code of practice because it was easier to do than the code at hand. I'm drawing on what I have heard earlier today to be able to answer your question, but I can most certainly do a bit of a deeper dive.

The CHAIR: I just need to clarify what was happening in New South Wales then and now. You say you have 17 New South Wales businesses and you have got Business NSW on your oversight governance committee. I am not sure what other voluntary system is operating in New South Wales at the moment and what was happening before. I do not think it was going entirely through your organisation. There must have been some other means of accreditation instead of the code. I will need to clarify that. You mentioned earlier that people opt out and that perhaps resourcing is an issue for that. I think you referred to the fact that the economic environment is tough and pressures are tough and, therefore, people do not want the expense of accreditation. Is that related to the fee cost, or is it related to the fact that they actually want to change their model of business?

RACHEL REILLY: Yes, good question. I have done a little bit of reviewing of businesses that have opted out over the last few years, just to see what's been happening. I'm not necessarily sure that it is the fee cost. For a sole trader, it's $300 or $400 to be accredited. I think the external economic environment is creating pressures that are leading to businesses potentially not having what they see as the fee to make the payment. They're closing down. A lot of smaller manufacturers have been closing down. Some have been moving offshore as well because there have been challenges within the local industry. Yes, I imagine that, in my review, there are also businesses that have opted out that haven't provided a solid reason that sits around the struggles or the pressures that they're taking, which may lead—you might be able to assume that it is because there are cost savings to be made in their practices that might not be uncovered if they're not part of the accreditation program.

The CHAIR: That might also play to businesses that go overseas as well. Could you take this on notice and give us some information on the number of businesses that have opted out and whether there has been a change recently in relation to that? That would be helpful.

RACHEL REILLY: Yes, absolutely. I have got that.

The CHAIR: Thank you very much, Ms Reilly. We have indicated some questions that you have taken on notice, and we will follow up if we have any further questions.

(The witness withdrew.)

CORRECTED

Ms VIVIENNE WILES, Senior National Industrial Officer, Construction, Forestry and Maritime Employees Union - Manufacturing Division, affirmed and examined

The CHAIR: We welcome our next witness. Good afternoon, Ms Wiles. Thank you for making time to give evidence today. Would you like to start by making a short statement?

VIVIENNE WILES: Good afternoon to the members of the Committee, and thank you for the opportunity for me to address you in person today. As I indicated, I am appearing today on behalf of the manufacturing division of the CFMEU but, by way of background, I used to work for the Textile, Clothing and Footwear Union of Australia prior to its amalgamation with the CFMEU in 2018. I had worked with the TCFUA since 2000, so I have had extensive experience representing and advocating for workers in the textile, clothing and footwear industry, including outworkers. I was also involved in the union campaign for TCF award-specific reforms to the Fair Work Act in 2012 and also the review of the modern award, so I have a reasonable breadth of experience around the industry and understanding of the industry. For transparency, I should also say that I am currently the secretary of the Homeworkers Code Committee and a member of that committee. As Ms Reilly indicated, it's a joint union voluntary committee, and the union has representatives, as does business, on that committee.

I think we all probably understand the problems in the TCF industry in terms of its structure and its history and that it has been an industry, unfortunately, characterised by widespread noncompliance with minimum wages and conditions and with poor health and safety over time. Partially, that was driven by the reduction in tariffs over 35 to 40 years, and what that meant is that the traditional structure of the TCF industry essentially fragmented into very long and complex supply chains, and the use of outworkers did increase as a result of that process.

The industry now is kind of a complex combination of what would be considered to be traditional factories and long supply chains. We know that there is a group of outworkers, usually at the end of those supply chains. There's also the phenomenon of sweatshops which, unfortunately, still persist. As we indicated in our submission, it's not uncommon for outworkers to move between outwork and sweatshops and back again, following the work that's available to them. This context of the nature and characteristics of the TCF industry is important to understand because it explains why the attempts at regulation of the industry have been so difficult over such a long time, why some of those attempts have been successful and why some of them have failed. Obviously, the union, over many decades, has been involved in that process.

We need to acknowledge that it is a difficult industry and, despite its association with fashion, the reality of much TCF production in Australia is unglamorous. The need to consistently look behind the label is both a practical and moral necessity if workers' rights are to be effectively protected. The need for strong, comprehensive and effective regulation of the TCF industry remains. I wasn't present earlier, unfortunately, for Mr Nossar's presentation. As I understand it, he set out the origins of the New South Wales ethical clothing responsibilities scheme, which was very much driven by the union at that time. It was very much an innovative attempt to ensure transparency within TCF supply chains in New South Wales. Importantly, the New South Wales scheme placed significant obligations on retailers in the TCF industry. This really did reflect the real power exerted by them in the setting of the price for the production of TCF goods for sale in New South Wales.

This intervention directly acknowledged that retailers in the TCF industry do not sit at arm's length from production in the industry but instead exert real economic power at the top of multiple supply chains. In this sense, the New South Wales 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. This critical element was something which wasn't found in any other form of TCF award or legislative regulation at the time, either at the State or Federal level.

The NSW scheme was, in the union's view, correctly structured as a mandatory scheme. As we've heard, it did, however, contain a mechanism whereby if a business was accredited to the Homeworkers Code of Practice, either as a retailer or a manufacturer, it was exempt from the New South Wales scheme. Clearly that intention was to incentivise, not only on an individual level but also on an industry level, to take responsibility for ensuring that ethical production occurred in the TCF industry. One of the things to remember, too, is the whole origin of the homeworkers code was that parts of the industry that were ethical and were doing the right thing actually came to the union and said, "This race to the bottom based on price is killing us. We can't compete, essentially, with those rats and mice over there who are profiting on the basis of exploitation of workers." That's how the discussion started. It was a recommendation, I think, from a 1996 Commonwealth Senate committee, but in practice that's how it came into being, so its origins were obvious. There was an obvious need to capture retailers as well, because of their economic power.

CORRECTED

In our written submission we do acknowledge there has been a range of developments since the scheme was legislated, and those developments are significant. We acknowledge that. That includes the passage of the Fair Work Act, the creation of the modern award for the TCF industry and the transfer of industrial relations powers from the New South Wales Government to the Commonwealth in 2010. There was also some major reforms to the Fair Work Act in 2012 that expressly dealt with the position of TCF outwork. The aim of those reforms, importantly, was to create a set of nationally consistent rights that dealt with outwork across Australia. That was partially successful, but there was one aspect that wasn't successful.

As part of those reforms, the Commonwealth Government now had the capacity to issue or to legislate a national code of practice relating to TCF outwork, but that never eventuated. The capacity still exists in the legislation but was never enacted. What we say is that there's still a gap in regulation whereby if there was a national code, for example, maybe the New South Wales scheme wouldn't be needed—but there isn't. Why that national code 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.

Similarly with the Textile, Clothing, Footwear and Associated Industries Award, it is a fantastic award. It has very innovative provisions regulating outwork in Schedule F. But again, some retailers, when we try to raise these issues with them, essentially say to us, "Well, that doesn't cover me because I'm not in the TCF industry. I'm in the retail industry and I'm not a principal. If you want to test that point, go off to court." We say there still is a role for the New South Wales scheme, which isn't to say that it can't be reconfigured or improved to bring it up to date. We still think the mechanism that potentially could drive businesses to the voluntary code still remains valid.

I won't go on for too much more. I have read the other submissions to the Committee and there are a number of issues I'd like to respond to. The submission from the office of the modern slavery commissioner raises a couple of suggestions. Page 7 of their submission suggests that "the Anti-slavery Commissioner could be integrated into the Scheme and given power to visit and confidentially speak with vulnerable workers in TCF supply-chains," and on page 34, "engage with people with lived experience". We respectfully say that those proposals are ill considered and not reflective of the significant difficulties involved in, firstly, identifying and locating TCF outworkers and, secondly, appropriately approaching outworkers in a way that is not counterproductive.

The union has learnt over many decades of trial and error the best and most effective way of engaging outworkers in the industry. The level of fear amongst the outwork community is real and should not be disregarded by regulators or any other bodies. Outworkers fear talking to authorities. They fear a loss of work if they speak up about the conditions. They fear exposure within their communities, because sometimes the person engaging them is someone from their own community. Sometimes there are visa concerns or fear of deportation, in some instances. From the union's perspective, inappropriate attempts to engage outworkers can actually set back the objectives by years.

In the union's experience, the most effective path that we found—again, this is by trial and error; we've made mistakes and we've had to learn how to do it most effectively—is through a slow but consistent engagement, which builds trust and confidence. I really can't emphasise that point enough. The union does this through employing bilingual and multilingual workers. Some of those people have been outworkers themselves. Those workers try and meet outworkers at community events where outworkers are likely to gather.

Over time, the union has developed specific communication strategies in language to try and connect with those people. But certainly, if engagement is poor or threatening in any way, outworkers will simply stop talking to you. Not only will they stop talking to you but it will take you three or four years to get them to talk to you again. Critically, any information that the union obtains from an individual outworker is never used in a way that personally identifies them. That's to ensure there are no other repercussions from other participants in the supply chain, including cutting off work for the outworker or otherwise intimidating or pressuring them.

When the union does its mapping, for example, of a supply chain, it works practically from both ends. Through its engagement with outworkers, it gathers information. Often that will just be "This is the label that I sew on the garments", and we work from the other end, at the top end, with the fashion house as well, obtaining documentation. And then we try and map each level of the chain to work out, critically, how many people work in that chain, under what conditions, and how much value and volume they're actually producing.

The CHAIR: I'm conscious of time. You said there were a number—

VIVIENNE WILES: Sorry.

The CHAIR: No, the information you've provided is valuable, which is why I'm very happy to hear it. You said that you wanted to respond to a number of issues in other submissions. You have just dealt with one from the Anti-slavery Commissioner. Are there other issues that you wanted to raise with the other submissions?

VIVIENNE WILES: Yes. I can't remember which submission it was, but I think there was a suggestion that we have the Fair Work Ombudsman as the Federal regulator—which is true; we do. That regulator is very well resourced but, again, its activity in the TCF industry is quite low. It did produce a number of reports in the mid-2000s, but up to that point, from our research, they had never prosecuted one company in the TCF industry for noncompliance, even though this is an industry where noncompliance is embedded.

In fairness to the Fair Work Ombudsman, it's difficult. It's a difficult process to try and work out when an outworker, for example, has been underpaid. You have to work out how much they've been paid per piece. You have to work out how much they've done, when they did it, and use a value and volume method to then try and equate that to an hourly rate of pay in the award. It's not straightforward. And also, as I've said, engaging outworkers is very, very difficult. They don't necessarily have all the skills, either, to do it properly. But I don't think just saying "We've got this regulator" is sufficient because it's not going to solve the problem that we all want to solve, which is to reduce and eliminate exploitation in the industry. I might leave it there and open up for questions.

The CHAIR: I would like to seek a point of clarification about the operation of the accreditation scheme in New South Wales. In your submission, one of your recommendations states:

> Amend the references to 'the Homeworkers Code of Practice' … to 'Ethical Clothing Australia's Code of Practice, including Homeworkers' (ECA Code of Practice).

Currently in New South Wales we have this mandatory code. You're exempted, as I understand it, if you engage in the voluntary accreditation system. Is the voluntary accreditation system through Ethical Clothing Australia? Is that the current alternative to the mandatory code in New South Wales?

VIVIENNE WILES: That's right.

The Hon. Dr SARAH KAINE: It's just a change of name.

VIVIENNE WILES: The change of name that we include as part of our recommendations—that was the change of name to the code that was endorsed through the ACCC determination process in 2018.

The CHAIR: Has that always been the mechanism in New South Wales?

VIVIENNE WILES: Yes.

The CHAIR: Therefore, when we have heard in evidence that there are 17 businesses in New South Wales that have signed up to the code, that's basically—out of 120 or 130, we have 17.

VIVIENNE WILES: That's right.

The CHAIR: I just wanted to clarify that. There's no other accreditation scheme operating in New South Wales. This is it.

VIVIENNE WILES: This is it, yes.

The CHAIR: And we have only 17 businesses currently signed up to it.

VIVIENNE WILES: That's right.

The CHAIR: I just wanted that clarified. Thank you for your evidence. I'm sorry to bring you to a close, but I know members of the panel are keen to ask some questions.

VIVIENNE WILES: Understood.

The Hon. Dr SARAH KAINE: Thank you very much, Ms Wiles, for your submission and evidence. I have a couple of questions about disparate issues. In your opening statement, you talked about transparency. Could you talk a bit more about why transparency is so important in order to mitigate the risks of noncompliance or slavery in TCF?

VIVIENNE WILES: For the union, it's really the number one, first thing that has to happen because without it, you can't map the supply chain. You might be able to map some of it, but not all of it. The regulation that exists, for example, in the TCF award in schedule F, is designed, in a way, to regulate the supply chain as it exists in reality. For example, what I mean by that is that it contains a series of cascading obligations from the principal through to the contractors and subcontractors down at the end to the outworker. They cascade down, so

that for each time work is given out, certain reporting and documentation obligations are kicked in. Without getting the information at each level, the union is unable to identify, as I said, the amount of work that is being done, who is doing it, when it is being done and under what conditions it is being done. Then, unless you can determine that, in terms of firming up contraventions, it's very hard. It's kind of the first thing. I know that people think, "Well, you know, do we really need all this documentation?" But without it, you actually can't really know what's going on.

The Hon. Dr SARAH KAINE: You can't find out whether workers are being exploited if you don't know where they are.

VIVIENNE WILES: That's exactly right. You don't even know where they are. It's interesting. In the union's experience, when principals have come to the union or we've raised issues with them, and then we've subsequently mapped their chain, often they're really surprised about how many people are in their chain, because they might know, "Well, I give my work to that contractor over there." Maybe they've given it to someone else. But apart from that, they don't really have real line of sight as to what's happening in their own supply chain. Now, some people might say, "Well, that's quite convenient." I think for some fashion houses and principals, it is quite convenient, but for others they were genuinely shocked about how many people were in their supply chain.

The Hon. Dr SARAH KAINE: Without getting too technical—I don't know how many other IR nerds are on the Committee—in terms of schedule F and that information, you talked about retailers saying, "All well and good, but the award doesn't apply to me, so schedule F, by default, doesn't apply to me." Could you speak a bit more about that?

VIVIENNE WILES: Part of what has happened to the industry over 30 or 40 years is that there has been a really massive concentration of retailers into a handful of major retailers. I think we all know who they are. As part of that, increasingly, a lot of their production has gone offshore, but they still may retain a small percentage of domestic production. When we've raised issues with them—when we've found their house labels in sweat shops, for example—they said, "Well, thank you for your bringing that our attention, but—". And then we raise issues about the award and what they should be doing, and they say, "But we're not a manufacturer; we're actually a retailer."

The Hon. Dr SARAH KAINE: By extrapolation, the value of the New South Wales scheme is that if a retailer doesn't want to go into the voluntary code, it still compels them to provide information that otherwise we wouldn't be able to get, to find out where workers are.

VIVIENNE WILES: That's right, and that's why the New South Wales scheme, the structure of it, is so clever, really. It's not clever in a "ha-ha" way, but just clever because it closes down any loopholes for them. I suppose that's the other thing. This is an industry where, unfortunately, if businesses can find a loophole, they'll take it. People might say, "It's so overregulated", but really, it's not. It's because, increasingly, businesses find models of production to avoid regulation. That's just what happens. And so, in the context of the retailer, the New South Wales scheme really addressed that very directly.

The Hon. Dr SARAH KAINE: Already within your evidence, and evidence we've heard today, there is a bit of a tension, isn't there? Because there are these businesses who have a desire—and you said the inception of the whole thing was conversations with businesses trying to do the right thing, but operating in a context of intense competition with those who don't want to do the right thing. So there's a bit of a tenson, isn't there, because there are groups of businesses—or even when you said you've presented businesses with evidence, they haven't known. So there is a cohort of business that you've been working actively with for however many years that do want to do the right thing but there's a tension, isn't there, between those good businesses and those less ethical?

VIVIENNE WILES: That's right. I think those businesses should be rewarded. They should be advantaged in some way to enable them to manufacture ethically in Australia and to be supported to do that. There are ways to do that. You disincentivise businesses that are not ethical. You put things in place to ensure that they don't get a leg up if they are unethical. There are also more positive things that governments can obviously do around procurement policy. Local, State and Federal governments—it's pretty critical. Governments are huge procurers of TCF products—enormous power.

The Hon. Dr SARAH KAINE: We probably shouldn't say unethical, should we? We should say illegal when we're talking about businesses that engage in that behaviour down the supply chain. It's not just a question of a choice to be better or not; it's often a choice to just not be legally compliant. Would that be right?

VIVIENNE WILES: That's right. If they get caught out, it's sort of treated like a cost of doing business, really. It is unlawful. Then the onus is put on the worker, union or regulator to then bring applications in courts about those contraventions et cetera. It's resource intensive. Enforcement is resource intensive. But, in this

industry, it is two things. If I had to think about it, transparency of the supply chain is the critical thing and the enforcement piece is the other. Because without both of those things, exploitation will return.

Ms JENNY LEONG: Thank you so much, Ms Wiles, for your opening remarks. My first question was going to be to ask you to respond to the other submissions, so I really appreciate you taking us through those. In terms of the funding and resourcing of the compliance and outreach/outwork officers and the funding of that program—recognising that a service agreement exists between the union and Ethical Clothing Australia—there's a need to look at the fact that, in Victoria, Ethical Clothing Australia is funded by the Victorian Government. There's no funding coming from the New South Wales Government. How do you see the specific resourcing of that very unique and critical role of those outreach officers fitting into the need to be resourced and funded adequately? Do you see that as something being done through the overall scheme or are there examples of government seeing the specific role that unions play and then funding a service or a support directly to the union around that?

VIVIENNE WILES: Historically, a bit of both. I know in Victoria—in the early 2000s, I think. I can't remember exactly. But there was a project around resourcing the union to try and engage outworkers because the union had done a national phone-in, I think in the late 90s, and was kind of shocked about how many people rang in and the extent of exploitation. I think there was a bit of follow-on from that. Apart from that, the union itself engages its own bilingual workers, and has done for a long time. But, in terms of the capacity to actually have a proper program consistently, it really is dependent on having sufficient funding to support that work. Because it's hard work. It's slow work. It's painstaking work—incredibly skilled workers who go above and beyond to try and engage with outworkers and bring them into the fold, if you like.

Ms JENNY LEONG: And I guess it's very different from other industries where the kind of people who are being unionised are not being paid at rates where it's then funding the union to be able to do that, so there's a need to find other ways through.

VIVIENNE WILES: Yes, that's right.

Ms JENNY LEONG: You've talked about, and we've heard about, how we might strengthen the current scheme and code. Particularly to your point around both the transparency piece and ensuring adherence and compliance, do you have thoughts on what the Committee could recommend in relation to strengthening the code? Recognising and knowing the Chair is very interested in the lack of pick-up in New South Wales, what could be done to address that to require there to be more of a take-up that isn't voluntary? Or do you think that undermines the model of a multi-stakeholder engagement? How do you see those two things coming together?

VIVIENNE WILES: The New South Wales scheme, for whatever reason—and I can't really enlighten you on why—has fallen into disutility, to some extent. There are probably multiple reasons for that, but it needs somebody or some agency to have carriage of it. It needs to be a priority. I think you asked an earlier question whether that was the Industrial Relations department, but it does really need to be a priority. It needs to be driven. I think the multi-stakeholder part of it is important because businesses need to be on board. Those parts of the industry that want an ethical industry and are committed to it need to be part of that conversation and part of that process because they have contributions to make as to the best way to have a sustainable industry in New South Wales which can operate on an ethical basis.

There's the architecture that supports the New South Wales scheme. If it's to be retained, that obviously has to be enhanced. Then, in terms of the Homeworkers Code—and, obviously, I've said that I'm a member of the committee. But, if you really want to drive participation in that scheme then, again, it's open for the New South Wales Government to fund it. Maybe in conjunction with procurement policies, which is what the Victorian Government did—having the ethical register, for example. Again, part of that was to reward companies that basically are committed to producing ethically in this space.

Ms JENNY LEONG: Obviously, the union has a specific role to play in terms of being able to access and have connection to workers. Are there currently any barriers in terms of union access to those workplaces or other things that are impeding the ability for your outreach workers and the audits to take place, or do you have the access that you need?

VIVIENNE WILES: Do you mean legally?

Ms JENNY LEONG: Yes. Not in terms of individually problematic workplaces, but within the legal framework.

VIVIENNE WILES: Federally, in the Act, apart from general right-of-entry provisions, there are TCF right-of-entry provisions, which were enhanced as part of the 2012 reforms. They do allow the union to investigate breaches of the whole of schedule F of the award, including at each level of the supply chain, and also to obtain

documentation where suspected contraventions are being asserted. That right-of-entry regime's pretty solid. We can use that right of entry in New South Wales, obviously, as part of the Federal scheme, so probably nothing specific that I can think of off the top of my head.

Ms JENNY LEONG: Going back to your comments in relation to the Anti-slavery Commissioner's submissions, what do you see in terms of the barriers or the challenges that the union would have in accessing that, despite the fact you have strong legal protections to access those rights versus what might be the case if the Anti-slavery Commissioner was attempting to do that?

VIVIENNE WILES: Under the Modern Slavery Act there are some qualifications anyway. One is, obviously, the annual turnover of businesses that are bound by it, and also I think the modern slavery commissioner is not really empowered to take up individual grievances, for example.

The Hon. Dr SARAH KAINE: It's got no compliance power.

VIVIENNE WILES: But, again, they're not subject experts and so I guess our concern is that, unless they brought in experts or people who really understood the industry, it could be counterproductive.

Ms JENNY LEONG: It's good to get that on the record. I appreciate it. The final question I have, because it does intersect a lot with people finding themselves in exploitative or high-risk workplace settings, is in relation to pressures around both housing and visa risks. I am happy for you to take this on notice. Do you have any thoughts around what the State Government might be able to do in relation to other reforms or changes that would make it more reassuring to people who are outworkers to speak up about their conditions? We've heard evidence in the context of the Modern Slavery Act review that a lot of people don't want to speak out on their situation because they fear risking visa breaches, or the reason they get into it in the first place is because of insecure housing or housing needs.

Given we have the ability to look at the State Government's role beyond just industrial relations, what is it that we could be doing in other areas, in other departments, in other parts of legislation to look at strengthening offers to people in insecure work to allow them the space to be able to come forward? I'm happy for you to comment now or to take on notice any other changes. Maybe you could speak with the outreach officers around what reassurances might help them to be able to say, for example, "Look, if we do this, then you have access to temporary accommodation", or "If we do this, then you have access to this, that or the other that may assist", using the other resources of the State rather than in an industrial context.

VIVIENNE WILES: It's a really good question. I will probably take most of that on notice. But one of the things that the union was a part of some years ago was—when working with outworkers, one of the things that was expressed a lot was the issue around training and moving into more secure work or higher paying work. And so—I think this is in Victoria—the union collaborated with RMIT to basically encourage outworkers, for example, to be trained as patternmakers and designers. A group of outworkers did go through that process, which meant that with that skill they could get better paying work, because there was such a need for patternmakers, for example. That was done in a culturally sensitive way and there were interpreters involved et cetera. So I think training is critical.

I think a number of the submissions have really pointed to the fact that many outworkers don't know what's available to them. They don't know how to access training and support and, obviously, anything that's proposed needs to be in a culturally sensitive way and something that they feel like they can take up. Some outworkers want to continue working at home, but some don't; they would prefer to have alternative work, either within the industry or in another industry.

Ms JENNY LEONG: Thank you. I'll just give a shout-out to The Social Outfit, which is in the electorate of Newtown. They do incredible work—

The Hon. Dr SARAH KAINE: These jeans!

Ms JENNY LEONG: There you go. Love it. But, yes, I think it's a good example, and maybe it's good for us to think about some of the other examples where that's happening or where it could be put in.

VIVIENNE WILES: Yes.

Ms JENNY LEONG: Thank you. I appreciate it, Ms Wiles.

The CHAIR: I have one observation for clarification. Ms Wiles, you and a previous witness mentioned that businesses may choose to go offshore. Of course, scrutiny of the supply chain and the work of Ethical Clothing Australia and the unions applies to domestic manufacturing and outworkers, and so it has no reach beyond the shores of Australia. Is there a risk that we'll drive manufacturing offshore? I guess that's always been there when

enforcing this and it really isn't an excuse, but what are the risks associated with that? Does work continue to be driven offshore and is that something we need to be taking into account?

VIVIENNE WILES: The process of offshoring—I think we're probably in our fifth decade now since the progressive reduction in tariffs. It's been a very long process. It's almost like any business that was ever going to go offshore has already gone, pretty much. In fact, there is a move back to onshoring to some extent, because the industry is changing and there are issues around quality. I think this was exposed during the COVID period, about sovereign capability. Look, there are always parts of the TCF industry that need to be here, around defence apparel, for example, around security issues. Some parts of the industry, it's just not really feasible to go offshore. School uniforms, most of that's still produced here—not all. So this is always the question, isn't it? If we regulate here, will they just push people overseas?

I think if a business has made the decision to go offshore, they've already made it and I don't think the level of regulation, which has now been in place for many decades, is going to change their view. And we have to acknowledge that the domestic TCF industry is part of a global supply chain and the issues that we face here are replicated globally, as we all know, across the world: in South-East Asia, in Africa, parts of Latin America. On a positive note, I think there are things that governments and organisations can do to support the local TCF industry and, as I said, to reward those parts of the industry that are committed to staying here and producing their goods and garments ethically. But I understand your question.

The CHAIR: I'll just add that I think the focus on supply chains globally, in terms of modern slavery, is an important part of this discussion. It brings a scrutiny beyond Australia. You mentioned earlier the importance of rewarding firms that operate ethically, and I think highlighting good work and good production within Australia just strengthens the Australian brand, if you like, in an international sense. So I think there is an opportunity there. I wasn't trying to suggest that we should in any way change what we're doing here. I just wanted to get your thoughts on that and where that's up to in terms of offshoring. I appreciate that very much.

VIVIENNE WILES: Could I just add one thing? I think consumer sentiment has also changed. There is quite a strong consumer movement around ethical, sustainable clothing manufacture now and I think that's only going to grow, because everyone understands that the consequences of fast fashion are not only bad for the environment but they're also usually bad for the people making the clothes. So despite probably sounding a bit negative, I'm actually quite optimistic about the TCF industry here. I think it has got a future, I think it can be supported and, in that, workers can have decent jobs and make a living from making good-quality clothes here.

The CHAIR: Also, to your point about trying to reward businesses that do the right thing, we have an accreditation scheme in place and maybe in the context of discussions around global slavery there is an opportunity to do that as well, to be honest. It only comes about by emphasising this scheme and then encouraging businesses to comply with it, and then rewarding that and recognising that. Thank you very much.

VIVIENNE WILES: Thank you for the opportunity.

(The witness withdrew.)

(Luncheon adjournment)

CORRECTED

Ms MARINA RIZZO, Executive Director, NSW Industrial Relations, Premier's Department, sworn and examined

The CHAIR: I welcome Ms Rizzo this afternoon. Would you like to start by making a short statement?

MARINA RIZZO: Yes, I would like to do that. First, I'd like to thank you for allowing me to appear at the hearing. I would also like to acknowledge the important work of this Committee. I am the executive director of the industrial relations branch at the Premier's Department. I've held this role for approximately four months. Prior to this role, for a period of almost two years, I performed the role of director of the bargaining and legal strategy team which sits within the industrial relations branch of the Premier's Department. Before commencing employment at the Premier's Department, I was a solicitor at the NSW Crown Solicitor's Office and led the employment law and industrial relations practice group. I was employed at the Crown Solicitor's Office for 25 years. That was just some background about me and my expertise.

The industrial relations branch at the Premier's Department is divided into four teams. There is the inspectorate, which promotes compliance with industrial legislation by providing information, advice and assistance relating to industrial entitlements, undertaking industrial inspections and, where necessary, prosecuting breaches of industrial law; the public sector industrial relations team, which advises and supports New South Wales Government agencies on public sector industrial relations issues; the policy team, which advises the New South Wales Government on industrial relations policy; and the bargaining and legal strategy team, which provides support to agencies across the sector in bargaining. At the outset I would like to highlight that the industrial relations branch regards its role as regulator of New South industrial relations legislation and instruments as serious and important and seeks to create a compliance culture across our jurisdiction.

The Ethical Clothing Trades Extended Responsibility Scheme, which I will continue to refer to as the scheme, was introduced in 2005 pursuant to the Industrial Relations (Ethical Clothing Trades) Act 2001. That was as a result of key recommendations made by the Ethical Clothing Trades Council of New South Wales. The council was constituted under the Act and was comprised of business, government and employee representatives. The scheme imposed—and imposes—reporting obligations on retailers and suppliers in relation to outworkers in the TCF industry to ensure the transparency of the contracting process in the clothing supply chain with the objective of ensuring that outworkers in the clothing trades receive their lawful entitlements—enforceable under the Clothing Trades (State) Award and the New South Wales Industrial Relations Act 1996.

The reporting obligations aimed to capture information about where production work is taking place and who is undertaking that work. The NSW Industrial Relations—which was then part of the Department of Commerce—and the Textile, Clothing and Footwear Union of Australia were named as co-regulators under the scheme. The scheme was put in place in recognition of the exploitative nature of outworker work arrangements and the difficulties of regulating the complex subcontracting and supply chain arrangements that often has a migrant, ethnically diverse and scattered workforce.

At the time of the scheme's commencement, there were some active compliance activity undertaken by the then Office of Industrial Relations. As a result of preparing for this inquiry and as part of my new role at the Premier's Department in the industrial relations branch, it has become apparent to me that there hasn't been proactive compliance action by NSW Industrial Relations during the course of the last, probably, 15 years. I haven't been able to locate records which set out the reasons why decisions may have been taken in that regard. You can't, however, look at that decline in compliance work in isolation.

The industrial relations landscape in New South Wales underwent a dramatic transformation after the commencement of the scheme in 2005, most notably as a result of the State's referral of industrial powers to the Commonwealth in 2009. In very short summary, this meant that the framework which regulated and enforced the industrial entitlements of outworkers actively transferred from the New South Wales jurisdiction to the Federal jurisdiction. These changes paved the way for the National Employment Standards, special protective provisions in the Fair Work Act 2009 and the enactment or the making of the Textile, Clothing, Footwear and Associated Industries Award. The TCF award provides an avenue for individual outworkers to enforce their rights and their employer's obligations, with the assistance of the Fair Work Ombudsman or their union, as necessary.

It is probable that a significant reason for the lack of compliance action was the creation and implementation of the national workplace relations framework which provides industrial protections for TCF outworkers. Changes in organisational structures, industry dynamics and the passage of time have also resulted in compliance activities being more focused around long service leave entitlements and those employers and employees that remain in the New South Wales jurisdiction. It ought to also be noted that another element of the national regime is the Ethical Clothing Australia code of practice, the voluntary code which requires domestic

retailers to provide regulators with information about where clothing work is being performed. But we know—and we've heard this morning—that engagement with that voluntary code is low.

I note that the terms of reference for this inquiry refer to the scheme's ability, in either its current or in an expanded form, to address modern slavery. Whilst the nexus between industrial noncompliance and modern slavery on the continuum of exploitation is beyond doubt, my area of expertise doesn't extend to a nuanced understanding of the characteristics of modern slavery. It is just not in my bailiwick. As such, I am not best placed to speak to the risks or benefits of the scheme as it might pertain to modern slavery.

Having read the submissions and heard the witnesses here this morning, people with much better expertise are able to assist the Committee on that matter. However, I will note that whilst the scheme's objective of ensuring that outworkers in the clothing trades are receiving their lawful entitlements has in large measure been superseded by developments in the Federal jurisdiction, the Committee should note that the scheme continues to provide 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. This needs to be considered in particular, given the context of the lack of powers provided under the Modern Slavery Act 2018. There aren't any powers under that Act to compel the production of such critical information.

The CHAIR: That's interesting.

MARINA RIZZO: Outworkers have been subject to significant exploitation because of the invisibility of the workforce and the complexity of the supply chains. The scheme obliges retailers at the top end of the supply chain, amongst other matters, to collect and provide key information and give undertakings about the use of outworkers in the manufacture of clothing. It is really critical. It is critical information. It is critical data for those with expertise in preventing and resisting modern slavery. I have met with my inspectorate team. We are actively considering how we commence collecting and sharing this information under the scheme. It's important as there appears from my review of the submissions and hearing the evidence presented to the Committee that there is a dearth of data available about this workforce.

Within the inspectorate team of the branch of the Premier's Department there is a team that's currently managing compliance activities in the private sector supply chains pursuant to the NSW Industrial Relations' guidelines in the building and construction procurement space. We will be looking to expand the scope of that team's work to include work under the Ethical Clothing Trades Extended Responsibility Scheme. I'm advised and understand that that work can be undertaken within existing allocated resources. I look forward to considering the recommendations of the Committee and where appropriate implementing any decisions of government that might arise from those recommendations, and once again I thank you for the opportunity to appear and I hope that I can assist.

The CHAIR: Thanks very much, Ms Rizzo; that was great. I noticed in the submission there is reference to the fact, and I quote:

> … since referral of powers and the making of the TCF award, the Scheme now appears to have very limited practical utility in terms of enforcing the pay and conditions of outworkers in the manner originally intended at its inception.

I know you spoke about the importance of data collection and I note your comments in that regard. I'm sure we will come back to that, but just on this issue of the utility in respect of industrial awards, we heard this morning that the intention of the original scheme was to actually prevent noncompliance with a range of industrial relation instruments, not just the TCF award, and it was also to develop a co-regulatory model that again would prevent noncompliance with awards, which was particularly important in the context of what was referred to as fissured workplaces, so that there was not a direct employer-employee relationship within these supply chains and that retailers would contract and the terms of the contract would have an influence on an employee's terms and conditions down the supply chain. The retailer wasn't in fact the employer in that circumstance.

So it was a space in which, if you like, compliance with the award is very difficult to enforce—my interpretation—as per the usual model of industrial relations. In light of those two remarks—the importance of ensuring compliance with a range of industrial relations instruments, not just the TCF award, and also the importance of a mechanism of improving compliance in these fissured workplaces, I think that's the phrase—could you reflect on the comment about the limited utility in the submission in that respect?

MARINA RIZZO: The framework that has now been established in our Federal jurisdiction covers and prescribes the enforcement of those workplace entitlements, which are now clearly provided for under the modern award and in addition to protective provisions that are set out and stipulated in the Act. So, in that respect, yes, there is a limited capacity for us in the New South Wales jurisdiction to undertake compliance action in that regard in those instruments. I do pause and reflect to look at, though, the additional objectives that have been set out in

clause 3 (2) of the scheme that set out other outcomes that the scheme will promote and ensure that remain relevant, and I'm happy to read those.

The CHAIR: Yes, if you wouldn't mind.

MARINA RIZZO: These provisions are set out in clause 3 (2), and that clause is entitled "Objectives" of the scheme:

> (2) The code will:
>
> (a) aid in monitoring the use of outworkers in the manufacture of clothing products for retail sale within New South Wales; and
>
> (b) prescribe practices and standards that will aid in compliance with, and prevent avoidance of—

reference to the 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
>
> (c) 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
>
> (d) 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
>
> (e) complement and encourage compliance with the Homeworkers Code of Practice by signatories to that code.

Yes, strictly in terms of the enforcement of the industrial entitlements, that rests in the Federal jurisdiction but there are a number of very important objectives that remain independent of that primary objective. Sorry, I hope I've answered that question.

The CHAIR: Thank you for that answer; that clarifies it. That's in addition to the importance of collecting data, which you have referred to already.

MARINA RIZZO: Yes.

The Hon. Dr SARAH KAINE: I just want to clarify, in the "Objectives" we have the first one which is arguably the one that seems a bit dated because it refers to the State award, but in the second objective that you have just read out, (b) talks about prescribing practices and standards that will aid in compliance or avoidance of that State award—but things have changed—and other industrial instruments. Even though the State doesn't have an enforcement capacity, other industrial instruments as defined by this scheme talk about any jurisdictional instrument. So while there isn't any capacity to enforce—and I don't think anyone here is suggesting we try to take back our powers—it does say that the practices and standards and what this scheme will try to do is to promote compliance with that Federal instrument. That's correct, isn't it?

MARINA RIZZO: Yes, but I want to check the definition of "other industrial instruments". I did check it in my preparation for coming here today. Before I answer that, I want to be absolutely certain.

The Hon. Dr SARAH KAINE: You can come back to it if you like.

MARINA RIZZO: It shouldn't take me too long. But yes, that's my recollection, and I will correct the record if—

The Hon. Dr SARAH KAINE: Sure.

MARINA RIZZO: That's right.

The Hon. Dr SARAH KAINE: I want to ask a little bit about the compliance powers that you do hold. I'm very conscious of the differences between the jurisdictions, but in a clause of the code, it does talk about the compliance powers. Clause 8—compliance with the code—talks about the role of the Industrial Relations Act and the role of inspectors. We're trying to grapple with who is responsible for what. What would be the role and what could an inspector do? What if there was noncompliance with providing that information that we've said is so vital? What potentially would be the role of an inspector under the IR Act?

MARINA RIZZO: Let me begin by saying we do have inspectors that are duly appointed under the Industrial Relations Act that form part of the inspectorate in the industrial relations branch of the Premier's Department. Their role would be multifaceted. It would begin by engaging with the relevant stakeholders, which would include retailers, employee representatives and business representatives, undertaking an education piece and informing them about the code. It would be to educate about the requirements and make those requirements public on our website. It would be collating that data. We have access to sophisticated programs that do that. They would also be engaging with the Anti-slavery Commissioner and with the Federal Ombudsman, and there are

mechanisms within the code to provide that information so that, where necessary, enforcement action could be taken if required in the Federal space. Yes, there are mechanisms. This is not a right. There isn't a means to provide that information directly, but there are avenues which we could undertake to provide that information. There are means of providing that data.

The Hon. Dr SARAH KAINE: Thank you, that's really interesting.

Ms JENNY LEONG: Thank you so much, Ms Rizzo. It's really helpful to get you to outline where in the branch it sits and who is responsible for what and to hear that there is going to be an increased focus on this in terms of how the scheme is used and who is responsible for it, because it has been one of the things we've been nutting out. I think you referred to the existing team that has a focus on building and construction potentially taking on looking at ethical clothing and this scheme. Beyond that, what do you see as the role of the IR branch, if the scheme was to be—to use the phrase used earlier—resuscitated? To go to that, I'm curious about whether or not you have any insights or details about the council, because I think there are differing views as to whether the purpose of the council was to establish the existing framework we have under Ethical Clothing Australia and other stuff, or whether there is an ongoing role for the council.

MARINA RIZZO: I will just write some notes.

Ms JENNY LEONG: Sorry, I'm a good one for four questions at once when the Chair says I can have one.

The CHAIR: I think you got two there.

Ms JENNY LEONG: Just two. See, that is measured—reasonable.

MARINA RIZZO: The council and the work.

Ms JENNY LEONG: Yes, it sounds like some of that is already underway in terms of you taking on that role, but I wonder what else you see as capacity to strengthen that responsibility.

MARINA RIZZO: What I think is key with resurrecting that work would be a key engagement and collaboration with the Anti-slavery Commissioner and the role he has under his Act to combat the effects and risks around modern slavery with the information that we will be able to collate. That's number one. It's also strengthening and participating actively in discussions with the Federal Ombudsman in terms of potential breaches of industrial instruments. But the great benefit is that we'll potentially be able to access data that just isn't around at the moment that will probably expand on the work and the objectives set out in clause 2 and the functions of the Anti-slavery Commissioner under his Act because, as I referred to in my opening statement, there is a dearth of information. So that's the additional role that can be done here with re-enlivening that work—strengthening those relationships with those very key stakeholders in the modern slavery and industrial relations space. The purpose of the council is set out in the Industrial Relations (Ethical Clothing Trades) Act 2001, and I can go to that.

Ms JENNY LEONG: It's less about the details of what the council is, and more about whether or not we think that it needed to continue and where we think that has fallen down if we think that the Act requires it to continue. I'm very curious about things that are supposed to exist that don't.

MARINA RIZZO: That will be a matter for Government policy. There are mechanisms in the Act; they exist. The Act is live. There are means for that council to be reconstituted. It will need to be reconstituted if the code is going to be amended or extended, subject to the decision of Government. It will be a requirement for the scheme to be amended or extended for that council to be reconstituted, and that's an available mechanism under the Act. I'm very happy to take the Committee to those provisions.

Ms JENNY LEONG: What I would be interested in is the context. It appears that the Act requires the council to exist. I think it's pretty clear that the council doesn't currently exist.

MARINA RIZZO: That's right.

Ms JENNY LEONG: I think it's unclear as to why the council doesn't exist or when it stopped existing. I don't believe there was a sunset clause on the council. Therefore, I'm curious, Ms Rizzo, as to who you see is responsible for re-establishing the council. Is it the Minister? Where does that sit?

Who, in a sense, is responsible for ensuring that the council exists, if you were wanting to recommend that it be reestablished?

MARINA RIZZO: Because it's a statutory body, I would have to go to the terms of the legislation.

Ms JENNY LEONG: I'm happy for you to take that on notice, if you don't want to do it now.

CORRECTED

MARINA RIZZO: I will take it on notice.

Ms JENNY LEONG: It would be really helpful. Thinking down the track in terms of where we are at and making recommendations, there is a lot of lack of clarity as to why it stopped existing. At the very least, we could get some clarity on where we think or who would be responsible to be recommended to reestablish it if that's the way the Committee so chose to go.

MARINA RIZZO: Absolutely, sure. I can do that.

Ms JENNY LEONG: I appreciate that.

MARINA RIZZO: I suspect the term—the council lapsed. The appointments are made on a three-year basis. But, yes, I will take that question on notice.

The CHAIR: Can I just follow up on Ms Leong's question there? You will take on notice the question as to why it stopped existing and also what precisely needs to happen for it to be reconstituted. You made a comment there that it will need to be reconstituted. Could you just go over that again? You said it will need to be reconstituted if we are to—I think, essentially, as the phrase has now become current—resuscitate the scheme. As a medical practitioner, I am in familiar territory with "resuscitate".

Ms JENNY LEONG: I like the "re-enliven" that you used. Maybe it sounds slightly lesser. But you prefer the medical term, Doctor.

The CHAIR: I will stick with "resuscitate".

MARINA RIZZO: To answer this, I will need to go to the Act. It won't take me too long. Section 7 of the Act sets out the functions of the council. One of those functions requires—it is in here because I've seen it. I'm sorry, I might need to take that on notice because I don't want to take up your time. But I recall reading a provision in that Act that requires a council to—

The CHAIR: It makes sense that the council has a function.

MARINA RIZZO: I'm sorry, I can't locate it.

The CHAIR: I'm happy for you to take that on notice.

The Hon. Dr SARAH KAINE: Sorry, we are putting you on the spot with very specific things. In a good way, you have come at the end so we have collected a whole lot of questions that we didn't start with, necessarily, that we are now landing at your feet. One of the questions I wanted to raise again goes to the objectives of the code. I guess it goes a bit to the resource question. The last objective you read out—paragraph (2) (e) of 3, Objectives—says that the scheme is about complementing and encouraging compliance with the Homeworkers Code of Practice, so encouraging retailers to sign up to the voluntary code.

It would seem, from the evidence we have heard today and from the construction of the scheme, that the scheme was largely intended to push retailers and others in the supply chain into that voluntary code. It is a little bit hypothetical. You talked about the work that there will be to educate—because people don't necessarily know it's there—to set up the stuff to gather data and that kind of thing. But, looking ahead, isn't it possible that, because the voluntary code is indeed probably preferential to a lot of the potential signatories, actually that work won't necessarily stay with your team and that it might actually be taken over by the work the code does? The ECA actually goes out and audits, so it might be that there is a temporary increase that might over time be managed through work with the ECA.

MARINA RIZZO: Most certainly.

The Hon. Dr SARAH KAINE: I just wanted to check that I was getting that right.

Ms JENNY LEONG: I will turn to one of the recommendations specifically around looking at the potential for strengthening State and even local government procurement policies in line with this. I wondered if you could provide any thoughts. Obviously, it's a political decision in terms of taking that. But I wonder where you would see the work sitting or the responsibility for that sitting, either from a perspective of where we are at in terms of this sitting within the industrial relations branch of the Premier's Department and the ethical clothing scheme sitting in that context versus the idea of procurement sitting outside that ministerial responsibility. I'm asking because this Committee is looking forward to putting recommendations for how we would strengthen these things. I'm interested in your thoughts on how something like that would take place. Obviously, within the Modern Slavery Act, there are certain requirements around how that is done, but it doesn't exist currently in terms of the Government's responsibilities.

CORRECTED

MARINA RIZZO: I'm probably not in a position to comment on that. In the absence of consulting with other areas in government, they would be better placed to provide their views about procurement and those other related matters.

Ms JENNY LEONG: No problem. That's fine. I didn't mean to put you on the spot. I was just very curious. The other one is in relation to the recommendations around the supply chain data base and looking at that. Is that something that you would see would be a responsibility of the industrial relations branch to be responsible for? What resourcing would be needed to do that to the level that you think would be at a standard necessary?

MARINA RIZZO: Yes, it would be part of the function of collating that data. We are resourced to do that work. Whether that analysis would be to the level that, for example, the Anti-slavery Commissioner—would satisfy the more nuanced and sophisticated work of the Anti-slavery Commissioner, I can't comment on. But, certainly, there would be absolutely a degree of analysis that we would undertake.

Ms JENNY LEONG: I'm happy for you to take this question on notice. We have heard some submission and some evidence around expanding to other potentially high-risk industries. You have mentioned the building and construction space and we have had reference to cleaning and to other areas that we know are high risk. It would be great to get some indications of what kind of data you would have either through your inspectorate or through the policy team as to where you are identifying potential high-risk industries and what monitoring could be done of those that would allow us to look at the potential expansion into other areas.

The Hon. Dr SARAH KAINE: To follow up with that, Ms Rizzo, perhaps you could provide on notice any information on how you prioritise areas in terms of vulnerability and any methods that you currently have in that compliance team.

Ms JENNY LEONG: And maybe, for a bit of context, part of the consideration of whether or not there are certain—if we take the idea of there being the spectrum of exploitative workplaces and then the risks of modern slavery, whether or not there are ways to be sharing potential hotspots or risk spots at a level that could be looked at where the Anti-slavery Commissioner could potentially be identifying those and they could be put back into another way. It is unclear what data exists and what information is out there to be able to feed in to look at what those high-risk industries would be. I assume gig workers is one. We can all guess what they are, but it would be really great to have some details on what data might exist in government to do that.

MARINA RIZZO: Yes, noted. Understood.

The CHAIR: I want to follow up on the issue of the co-regulatory approach that's contained within the voluntary part of the system. We have heard evidence that the mandatory code is critical to encourage people to go into the voluntary scheme. The voluntary scheme itself is a co-regulatory scheme and it involves business, which has the advantage of precisely that—involving businesses. It also harnesses, from the evidence we have heard, the expertise of people with lived experience who have worked in that area who work with the union and the union has built up expertise in that area. However, that is all mediated through the ethical clothing association. They are funded by the Commonwealth and Victorian governments, along with contributions from members who seek accreditation. But they sound fairly modest. I guess I am looking ahead to a space in which more than the 17 businesses currently seeking that accreditation do so in New South Wales as a result of the activity of your department, but—perhaps you could take this on notice—it seems to me that would possibly need the Government to consider a contribution to that council in terms of its funding.

MARINA RIZZO: I would definitely have to take that on notice. It is a matter for Government.

The CHAIR: I will put that on notice, because it seems to me that if we are hoping to expand that work, it is only right that there should be a contribution of resources or, alternatively, a mechanism by which that could be funded.

Mrs TINA AYYAD: I have one question, and I will be thoughtful of time. I want to know how effective the New South Wales Ethical Clothing Extended Responsibilities Scheme 2005 has been in collecting and reporting data since its introduction. In your opinion, are there any improvements that could be made to enhance data transparency and accuracy without burdening businesses?

MARINA RIZZO: To answer the first part of that question, it is very difficult to comment on the potential of the scheme and the ability of the scheme to effect changes in this area. Because there was active compliance under that scheme initially and then, for various reasons primarily relating to the referral of powers to the Federal jurisdiction and, because of that, an adjustment of priorities, it is difficult to comment on the potential of the scheme to effect those objectives or changes or provide that insightful data. I think there was a second part to your question, which I've forgotten.

CORRECTED

The CHAIR: I think it related to potential burdens on business in data collection going forward.

Mrs TINA AYYAD: Correct. What changes can be made to increase the reporting and collection of data in the industry without increasing the burden on business?

MARINA RIZZO: Part of looking at this scheme and looking at what needs to be done is looking at the forms that business would need to complete. We would look at streamlining and making those forms accessible and easy to fill out. We would be mindful of not increasing administrative tasks or creating undue burdens. We would be very mindful.

The Hon. Dr SARAH KAINE: Is it not also the case that business would have the option of either the mandatory code or opting for the voluntary code? They would have some discretion as to which of the codes suited their business better.

MARINA RIZZO: Most definitely. That's right.

The CHAIR: I think the advantage with a co-regulatory regime is that business has input into that accreditation process and would hopefully gain benefits from the process as well. I might just make that as a comment.

MARINA RIZZO: I can answer the question about the council and its involvement in any change or amendment to the code.

The Hon. Dr SARAH KAINE: Great.

MARINA RIZZO: Section 12 (5) of the Industrial Relations (Ethical Clothing Trades) Act 2001 says:

> (5) The Minister:
>
> (a) must consult the Council and consider any relevant report or recommendation made by it, and
>
> (b) may consult such other organisations or persons as the Minister thinks appropriate, before amending or revoking the code.

It was this mandatory component that the Minister must consult the council.

The CHAIR: Before any change to the code.

MARINA RIZZO: Yes, before amending or revoking the code.

The CHAIR: That is very helpful.

The Hon. Dr SARAH KAINE: I have one last question, and it is probably a quick one. You might have answered it, because it is a bit hypothetical. Given the change you mentioned with regard to the creation of a single industrial system in Australia and the powers being ceded to the Federal Government was around the time of the code, is it possible that someone misunderstood the code and how it was applied, given that, on a face value reading, it seems to relate to the State award? Is it possible that, in that big change that went on, there might have been a sense that that was a State instrument that we leave behind?

MARINA RIZZO: I can see how that might have occurred, yes. But that's my opinion, yes.

The CHAIR: On that note, we will bring this part of the hearing to a close. The secretariat will contact you in relation to any questions on notice. Thank you for appearing today.

(The witness withdrew.)

The Committee adjourned at 14:30.