

REPORT ON PROCEEDINGS BEFORE

MODERN SLAVERY COMMITTEE

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

CORRECTED

At Macquarie Room, Parliament House, Sydney on Thursday 27 June 2024

The Committee met at 11:20.

PRESENT

Dr Joe McGirr (Chair)

The Hon. Greg Donnelly
The Hon. Dr Sarah Kaine
Ms Lynda Voltz

PRESENT VIA VIDEOCONFERENCE

Mrs Tina Ayyad
The Hon. Robert Borsak
The Hon. Aileen MacDonald

The CHAIR: Welcome to the second hearing of the Modern Slavery 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 respects to any Aboriginal and Torres Strait Islander people joining us today.

My name is Dr Joe McGirr and I am Chair of the 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 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.

Ms ELIZABETH MACPHERSON, National Compliance Officer, Construction, Forestry and Maritime Employees Union (Manufacturing Division), affirmed and examined

Ms NGUYET THI NGUYEN, Outwork Outreach Officer, Construction, Forestry and Maritime Employees Union (Manufacturing Division), sworn and examined

The CHAIR: Welcome. Thank you for making time to give evidence. I also welcome those joining us in the public gallery today. Welcome to you all. It's great to have you here. I just wanted to acknowledge your presence. Thank you very much for coming. We have a number of members of our Committee online as well as in the room. I wonder if you would like to start by making a short statement. Then we'll have a number of questions, and Committee members will take it in turn to ask those questions.

ELIZABETH MACPHERSON: I'll start. Thanks for allowing me to present today. This is a really important issue for the outworkers sitting behind me. I would like to acknowledge their attendance. In some cases, it is very difficult for them to attend something like this. On that, I would like to table the WIEGO report. It has been circulated to the Committee, I understand, by Vivienne Wiles. My history is that I have been in the textile, clothing and footwear industry since 1974, starting in footwear and then moving into clothing. In 1985 I was working at home as an outworker. In 1992 I started in the textile industry as a Warper operator. In the union, I've had a full-time role since 2002. Since that time I've been a member of the Homeworker Code Committee or ECA as you know it. I've held elected roles since approximately 1994. I was the president of the Textile, Clothing and Footwear Union of Australia. After amalgamation in March 2018, I held the positions of Victorian State assistant secretary in the TCF area and national TCF senior vice president.

The report that has been circulated explains the legal frameworks and the IR reforms that we utilise for the work we do to protect the outworkers, to ensure that they are employed under secure, safe and fair systems of work. Without the union's presence on the ground and a clear enforcement framework, there is a risk that the laws will not achieve the intended purpose. A key objective in the union's compliance work, outlined in the report, is to ensure that throughout the entire process, outworkers are protected from intimidation, bullying and the loss of work. A lot of the time, they get blacklisted if they speak up. I would also like to refer to the Ombudsman's report which was a TCF compliance phase campaign. That commenced in 2015, which was an education phase. Then a compliance phase commenced in 2016, with a final report being released in 2019.

Some of the findings in there are quite relevant given some of the other submissions that we've heard, which was that they had real difficulties in identifying outworkers in the supply chains. The union was the one that facilitated outworker meetings within the different States at the time. They found compliance with outsourcing regulation was low. Supply chain mapping and outworker engagement was not easy for them to navigate. Record keeping ended up being the main source of their inspections and, like I mentioned, the TCFUA facilitated meetings with outworkers.

In my role as the national compliance officer, I manage a team of nine people nationally and two that are based in New South Wales: one is a compliance officer and one is an outwork outreach officer. The way we operate is that the compliance officers start at the top of the supply chain dealing with labels, brands and fashion houses and they work their way down through the supply chains till we get to the smaller factories and potentially sweatshops and outworkers. We identify them that way.

The outwork outreach officers are on the ground every day. They're engaging with outworkers through community events and engagement through other activities because, for the outwork outreach officers to do their jobs, it's a building of trust. The outworkers need to know that they're meeting with the outwork outreach officers and they're in a safe space. This work is core union work and activity. We also support the ECA accreditation program through a service-level agreement. Companies that apply for ECA accreditation, we're notified through that service-level agreement, and we undertake those audits throughout the supply chain. Just a note that it's only based on lawful requirements that already exist in the award and the Fair Work Act and other relevant legislation such as superannuation et cetera.

I can speak about the complexities of the supply chain compliance work later if we have time, but I just really wanted to focus on some of the challenges that outworkers have and why it's really difficult to engage with outworkers unless—obviously, I've got a team of multilingual people who are from Vietnam, in particular, who can not only speak the language but understand the cultural differences and navigate those. Some of the challenges, in addition to the obvious, which are the concerns regarding wages, paid entitlements and occupational health and safety matters—there are a whole lot of other things that we have to deal with.

Obviously, they're from a non-English-speaking background. They're isolated from other workers, whether they're other outworkers or in-house workers. They've got a limited or no understanding of workplace rights.

They're fearful for the loss of work or income if they're seen to be doing or standing up to get those things corrected. There's harassment and bullying by the person delivering them the work. They suffer with work injuries: wrist, neck and their back in particular.

Trust is a major issue, like I mentioned. That takes time to develop; it's not something that happens with just one meeting. There are other challenges like the person providing them the work may own the house that they're living in or renting. They face financial hardships and stress because they get the work in ebbs and flows; they might be flat out working 18 hours a day for a number of weeks, sometimes months, and then it dries up and there's no work at all, so they live on their credit cards for that period because there's no income.

There are visa concerns and control. They may not be an Australian citizen or have permanent residence or hold a valid work visa and, if they raise concerns, there's fear of deportation. They face family and domestic violence. Coercive behaviours usually come from others family members—usually male members of the family. They suffer from mental health issues as well. We engage with outworkers on a daily basis. We have, like I said, a team that does community engagement into those communities. We have contact with them via a quarterly newsletter. We have Zoom catch ups nationally with the outworkers, and Facebook and YouTube channels so we can get that message out to them.

Obviously, one of the things that Viv Wiles had taken on notice is about what could benefit the outworkers in New South Wales. One of them is, clearly, English classes that have support around their particular issues. Not only are they learning how to speak English, but they are also learning about occupational health and safety issues that they face. But it also allows topics around financial matters, financial support and where to go to get the other support that they need around DV and the coercive situation that they may be in. That's what I have to say today. I'll pass it over to Nguyet.

NGUYET THI NGUYEN: I would like to begin by acknowledging the traditional owners of the land on which we are meeting today and pay my respects to Elders past and present. It is a great pleasure for me to be here at New South Wales Parliament House today. A bit of my background—I'm a refugee from Vietnam. With my brother, when I was 16 years old, we fled Vietnam from our hometown in 1979. We got picked up by the Dutchmen and we lived in Holland for eight years. After I got married, I had one daughter. We migrated to Australia in 1987. My history about work—I worked at home in the TCF industry as an outworker from 1987 to 2009. I became an Outworker Outreach Officer with the TCFUA in 2009. I was elected as a member of the committee of management for the TCFUA Victorian Queensland Western Australian branch. I am the first outworker to hold a union office in Australia. I took part, with the union, in a Senate hearing in 2008.

In those 20 years, I worked from home. There was no control of wages except working hard and long hours. I had no idea that the outworkers have the right to be treated fairly. I was too afraid about losing the work. I was threatened with harassment to get more work, facing tough rules if jobs could not meet the deadline. Any mistake could have to be compensated out of own pocket and at retail price, which is enormous. I was dealing with the middleman, who speaks the same language. With a highly skilled base in the sewing industry, I made complex garments for big brands' labels. Getting paid from \$5 to \$7 per garment, each took me about an hour to complete—and hourly average of \$7 at best.

There is no superannuation, holiday pay or sick pay, nor WorkCover in case I had an accident while working. Most of the time, I had to hide the work stress from my kids. This was not easy, as they soon discovered the different lifestyles from their school friends. Even in a school assembly, the students were shown a video about outworkers where my daughter recognised people in the video. Only then, she started understanding my work situation. Sitting alone in the corner of my garage, I felt isolated. While listening to SBS Radio I became aware of the union, then decided to step out of my shell and got into the pattern making course at RMIT University. Joining the union was a big risk for me, but then I had big support.

It was a privilege for me to speak at the Senate inquiry in 2008. It was the start of a new journey to make a difference. Meeting people in the same situation as me was a great experience since I became an Outworker Outreach Officer, to build people's trust and rapport in the union and make known the rights of those who work from home. Some of the common stories that outworkers are sharing while I'm working with people—a lack of confidence because of no English skills, and using children to translate in parent-teacher interviews. The majority of outworkers are women; they must sacrifice for their family. Irregular payments—in fact, some employers owe a large amount in wages never paid, and they have to be in a sham contract.

Outworker achievements during the course of approach. More and more outworkers have been acknowledged as outworkers, receiving an hourly wage of skill level 3 and a written agreement to secure their work; companies started paying superannuation and all legal entitlements; having proper holidays to spend time with family; and proud to be an outworker. They understand the updates of the wage coming every year and are improving English skills and computer skills by joining the classes organised by the union. I note that it was the

TCFUA and the classes are no longer available. Outworkers have gathering with their family and other outworkers on a picnic day excursion. They have been learning new technology such as outworker Zoom meetings, Facebook and other social media.

The CHAIR: Thank you both very much for those opening statements. You've outlined a little bit of your experience quite cogently there. We've heard the story of this legislation in New South Wales, coming into effect in 2005, and the system set up for compliance through an agreement between the industry and the union rather than enforcement of the mandatory code and that alternative system. We then had the Federal legislation that seemed to address this issue of the industrial instruments not being right and, perhaps in recent times, the current New South Wales scheme falling into a little bit of disuse.

In fact, I think we heard that there's only 17 businesses in New South Wales that are a part of the scheme or have signed up for the voluntary code. What we're exploring is the value of trying to reinvigorate, or the word has been used, "resuscitate" the scheme. To understand that a little bit, it would be good to know the current situation for outworkers. The impression I've got with the industrial instruments and the work of the union is that there have been improvements, but it seems to me that there may be much more work to do. Could you reflect on the current situation and, following on from that, what would be the value of resuscitating the system at the moment. Perhaps we could start with the current state of the situation.

ELIZABETH MACPHERSON: The key thing is that the New South Wales legislation starts at the retailer. The legislation in the Federal awards and the Fair Work Act start at the manufacturer. That's a big component for us because the retailers are the ones that can have control. A lot of them fall through the cracks because they say they are a retailer and that they don't fall under the category of "manufacturer". That's really challenging for us to try to navigate that. The New South Wales legislation means that we can start at the retailer. The current state of outworkers in New South Wales is the same as everywhere else—where we've been able to identify them, where we've had gatherings and where we've provided support and education, there's been a change.

Are there still huge levels of exploitation out there? Absolutely. Even some of the people sitting behind me today are people who are currently in that category. We can't just go in like a bull at the gate and try to fix it because that puts them at risk. We have to go through a whole process to make sure that they are protected in that. That might take us quite a bit of time, but we will finally get there. The most significant is the fact that we can start at the retailer level, which is different to the current Federal rights.

The CHAIR: Just to clarify what you're saying, where the union is able to identify the situation you can take action that will help?

ELIZABETH MACPHERSON: Yes.

The CHAIR: But I think you're flagging that there remains situations which are, effectively, hidden—I suggest perhaps because of the complexity of the supply chain arrangements and so on—and that resuscitating the code might enable those to come to light.

ELIZABETH MACPHERSON: One of the key things is that once somebody signs up to Ethical Clothing Australia as the voluntary code, it gives us another lever of pressure. If we're going down the supply chain—because generally outworkers aren't given work from the principal; it is down the supply chain—where we are able to identify it, we can go back to the top of the supply chain, the retailer, and say, "You're aware of this. We need to rectify this." We use that pressure point by the retailer to be able to rectify it. Without that pressure, it takes a lot longer. Because if we haven't got that particular pressure point, we have to go through the legal framework.

In that, we've got to make sure that the outworkers are protected and they are not identified as the one that's come to us; otherwise they are then black-banned within the industry. I think the key thing here is more about making sure that if it is invigorated, it means that people either—we found last time that more people opted into the voluntary, which gave us an option to be able to scrutinise those supply chains but also gave us that level of scrutiny and report back to the principal company or the retailer to be able to get that fixed a lot more quicker.

The CHAIR: Just to clarify again, the operation of the code in that voluntary arrangement makes it easier for you to reach workers and reduces the risk—I wouldn't say limit—of them being, I think you used the word "black-banned"?

ELIZABETH MACPHERSON: Absolutely, yes.

The Hon. Dr SARAH KAINE: Thank you both for appearing today and everyone for coming along as well. I have a question about engagement. You mentioned that you have outreach project workers, I forget the name. I wonder if I could hear a bit more about what that day-to-day work is. Then a related question is why might other individuals or organisations who want to do the right thing but don't have that same connection—what's

likely to happen if other organisations who do want to help but don't have that engagement come in and try to do something for these workers?

ELIZABETH MACPHERSON: The day-to-day work of an outwork outreach officer, which is the position that Nguyet holds, is basically focused on engagement with outworkers. There are outworkers that we've helped and they're on the correct wages and conditions. It's important that we continue to check on that and make sure that everything is still kosher, particularly when there's a change in the award rates of pay or superannuation, that's another follow-up that needs to be done. We get tip-offs all the time from various areas where outworkers are. Sometimes it's the outworkers themselves that notify us. So the outwork outreach team—their job is to engage and build rapport and trust within those communities and meet with the outworkers individually to bring onboard the concerns they have. They feed that back to the compliance officers. Then the compliance officers as a group will discuss about how we can rectify that.

The problem with another organisation trying to assist—the unions. I've done this role for 20 years, and we probably still haven't got it right, but we have made leaps and bounds. We now can say there's such a huge amount of outworkers that we've helped and assisted to get their rightful entitlements et cetera, and ones that have identified to us those other issues that I raised—just giving them the support and direction as to where they need to go to get that additional support, because we don't specialise in all of those different areas. I think it's really important to have someone that knows, culturally, the differences and can also speak their language.

We have previously had people that could speak Vietnamese but were Australian born. It didn't work. You have to understand the actual culture. It's very hierarchical, so you have to understand that and be able to navigate those difficulties. They also understand, within the family unit, how that operates. It's very different to the white culture, so to be able to understand that and navigate that without putting the worker themselves at risk—the majority of them are women, so that can put them at risk with their partners or elder sons in particular. It's them understanding all that cultural stuff. Also, one of the things to point out is that it's not just about the work; it's the whole community. Usually the person that's giving them the work is a senior person within the community. If they do something against that particular person, it's not just about, "I lose the work, life goes on." It actually fractures their whole community networks.

The Hon. Dr SARAH KAINE: Could I ask, Ms Nguyen, what are the hardest parts of making those connections and getting other workers to trust you?

NGUYET THI NGUYEN: We have to have a lot of visits and a lot of communication. A lot of people don't talk to us straight at the first call or on the first visit, so we have to send them information about their rights. But then slowly, as I said before, we have to build the relationship and build the rapport. Once they trust us, then they can tell me everything—"Of course I'm telling you this, but don't make it known to the company." Of course, we have the team and we have the national compliance officer. We have the whole team discuss a way to help them. But there are different ways, like I mentioned before. If they are working in the ethical clothing supply chain, it is different. If they don't, we have to find different ways to deal. The hardest thing for me to engage with outworkers is that a lot of people are very fearful.

They talk to each other and say, "If you talk to union, then you'll be in trouble." We have to make sure that we keep our promise. We don't tell anyone. We have to help them instead of making it worse. We're here to help them. We're very patient. We have to work with them. If they ask to be meet somewhere else rather than at home—because usually we want to see how they operate so we can assist them about OHS and if they have something to ask about where they work. We have a lot of communication. But really patiently listening—not a lot of talking but listening to them first—about what they want and then also we discuss and help them. Sometimes I have to take my manager with me. Slowly, once they trust us, then it's a lot easier for us to resolve the problem.

The CHAIR: Would it be fair to say to both of you that one of the reasons you can get this engagement is that you have dedicated resources, though not a lot of dedicated resources, that are always available in that space? So if someone makes a call or someone they haven't met before comes in, it's that constant contact that allows that level of trust. Would that be fair?

ELIZABETH MACPHERSON: Yes, it takes time. It's not a random cold-call; it's built up. Usually we've exposed to the outworkers in their safe space. It might be at a community event. We always try to attend most of the community events and have a presence so that they get to see us around. So when we do make direct contact, they already know who we are; it's not as scary for them. That's why we do a lot of the exterior work—to build the knowledge of our existence but also to let them know that we are a safe space too. Sometimes that takes a lot longer than you would think. But over those years, we've built a really strong network in most of the States. Being able to use outworkers to talk to other outworkers has been one of the valuable keys now. It took a long time to get that base, but now we've got a good base in all the States. So we utilise those.

We have a Zoom meeting twice a year. We'll use outworkers who have gone through that process, come out the other side and been so much happier. They are able to tell their story to other outworkers who are really fearful and don't know whether to trust us or not. They're the sorts of things that we talk about on the Zoom meetings or when we have get-togethers. It might be a picnic or something like that, where outworkers can bring their families so that they're, again, in a safe space. That is discussed. There is never any major pressure put on outworkers. Obviously, they are a worker. It doesn't matter where you're working; you're a worker. We need to make sure that, when we're approaching outworkers, we remember that they are only a worker. They need to be respected as a worker, and we make sure that we respect them about when they're ready to come to us. That's generally how it works.

The Hon. GREG DONNELLY: Thank you both for coming along. I also acknowledge and thank you for the very dedicated and patient work you've done over many years for what are well acknowledged as very vulnerable workers in our community. Ms Macpherson, can you provide to the Committee some insight into, as of now—so we're talking about June 2024—the level of engagement with retailers in this State and any other State over the matters that are before us in terms of outworkers, bearing in mind the history that you're very well aware of? What is a snapshot of where we are today?

ELIZABETH MACPHERSON: At a manufacturing level we're good, but as a retailer we're not good. That's not just in New South Wales; that's more broadly. Like I pointed out before, it's a lot harder to work with a retailer versus a manufacturer. Some of the big retailers only identify as a retailer. We have to go through a legal process to make them realise that they are a manufacturer. They fall under the TCF award just like any other manufacturer, but we get challenged about that. It's not that all of a sudden they say, "Oh, I understand. I'm a manufacturer." They don't do that. So there are a lot more resources, processes and hoops we've got to jump through to make them identify that they fall under schedule F of the TCF award, which is the outwork provisions. It's a lot harder. Not just in New South Wales but in other States, we've got a number of retailers that are accredited to the Ethical Clothing Australia code. So we've been able to deal with it in that way, and it's easy and straightforward. But if an outworker came to us and said, "I'm doing a label", and we know it sells retail, we know we have a problem before us. Obviously, we'll still go through the processes, but it's a lot harder.

The Hon. GREG DONNELLY: If you're able to secure that cooperation and the coming under the umbrella, as you've described the code, is it your judgement that it is honoured and that they do, in fact, follow through?

ELIZABETH MACPHERSON: Yes.

The Hon. GREG DONNELLY: There is a genuineness about what they're doing.

ELIZABETH MACPHERSON: Yes. Once it's identified that they are captured by schedule F under the award, then the legal process kicks in anyway. There's a structure that they must follow under schedule F. Like I pointed out before, Ethical Clothing Australia accreditation is only based on the award and the Fair Work Act, and any other relevant legislation. It's nothing in addition anywhere—except for WA. In WA, obviously, non-constituted corporations have still got the State award. The liability of recovery of money wouldn't apply to them, but everywhere else it does. It's only in WA that they didn't hand over their powers. It's only for a very small group of people. We haven't found anybody under the TCF that falls into that category anyway. Nationally, everybody falls under the Federal award anyway.

The Hon. GREG DONNELLY: Forgive me, I don't know the definition within that schedule that you've referred to, but is that definition of retailer a broad definition that covers whether we're talking about a large enterprise that runs across all States and Territories, right through to maybe a small group that might only have, say, half a dozen stores in the State that covers the field?

ELIZABETH MACPHERSON: The problem is that it doesn't pick up the retail. It doesn't say anything about retailers. It talks about the manufacture of goods. That's the difference between the New South Wales—

The Hon. GREG DONNELLY: So that's the key.

ELIZABETH MACPHERSON: Yes. The Federal legal system does not pick up the retail.

The CHAIR: I just want to clarify this. The Federal legislation doesn't pick up the retailer as opposed to the manufacturer?

ELIZABETH MACPHERSON: For TCF.

The CHAIR: But you have pursued a legal process to do that.

ELIZABETH MACPHERSON: Yes. We have to do for every individual retailer.

The CHAIR: I guess the key issue for the Committee is the value of having this code. You mentioned earlier it enables you to identify better where the supply chains are, but it sounds as though it actually makes the process of ensuring compliance better. Is that a fair observation?

ELIZABETH MACPHERSON: Absolutely. Yes, and particularly with the outworkers, because we've got a bit of leverage. We can go back up to the top of the supply chain and we can leverage that to get that rectified really quickly.

Ms LYNDA VOLTZ: I'm new to this Committee. With the processes that exist, that's a hangover from the industry 20 or 30 years ago, would you say? I actually worked in a clothing factory when I was 16. I know then we did the retailers—it was one job for everybody. We'd do Brian Rochford and we'd do Kmart, but they'd all come through the factory. So the legislation, possibly, is responding to the past rather than the future.

ELIZABETH MACPHERSON: Not necessarily. I think they're defined as completely different industries, so retail is retail and manufacturing is manufacturing. I think that's the divide. When we're talking to a retailer that actually does give out work potentially to an outworker, they say that they are recognised and go under the retail framework.

Ms LYNDA VOLTZ: As opposed to what has been happening for 50 years, which is they've actually been contracting the jobs into the industry.

ELIZABETH MACPHERSON: Yes, and that continues. I don't think that it's a hangover or anything like that. I think it's just that they're completely different industries. They're sitting over here saying, "I'm a retailer; I'm not manufacturer." But we're saying, "Actually, as a retailer, you're a manufacturer as well." We have had challenges in that and trying to get them to see that they are actually a manufacturer as well isn't as straightforward as just telling them.

Ms LYNDA VOLTZ: Yes, they're coming in with their exclusive design, their exclusive brand. They're deciding what the pattern and the product is, and the manufacturer is just fulfilling the job that they're outlining for them.

ELIZABETH MACPHERSON: That's correct, yes.

The CHAIR: The relevance to the modern slavery situation is, of course, the increasing complexity of supply chains and the disconnected nature of those relationships, which is why this examination is so pertinent.

ELIZABETH MACPHERSON: But I think, also, there are the other issues I raised around what outworkers are facing: some of those challenges around domestic violence and coercive behaviours, and the holding of the passports.

The CHAIR: Yes, absolutely. Thank you for pointing that out.

Ms LYNDA VOLTZ: Just one follow-up question, again, because I'm new. Obviously, there's an issue within the Vietnamese community. I used to work at the Workers Health Centre at Lidcombe. It was very common amongst Mediterranean communities. Are there any other communities? I'm the member for Auburn, so obviously we see communities shift as war and conflict comes. There's a susceptibility for newer-arrived people—refugees from conflicts. How difficult is it to grasp that? Is there a growing community, perhaps in the subcontinent diaspora and those communities?

ELIZABETH MACPHERSON: What we've seen is that there is a sprinkle of others, but only a small sprinkle. There are Korean outworkers and there are some Cambodian outworkers in New South Wales. The African countries—because it's not a learnt skill in their home country, we've seen them come over and move into our industry. We've found they go into the more formal sector rather than the informal sector, at this moment.

The Hon. Dr SARAH KAINE: Ms Macpherson, I've been doing some work on another committee on procurement and talking about labour conditions as well. One of the criticisms of codes et cetera is that it adds more red tape or it's more difficult for business. Just to reiterate, what you seek to enforce are simply legal minimums that every business should be abiding by. There is no additional—

ELIZABETH MACPHERSON: No. It's just what they would normally have to do under the laws of the land—nothing more.

The Hon. Dr SARAH KAINE: I wanted to ask about your current practice in New South Wales. There's a compliance officer and an outwork outreach officer. In terms of the companies that you go and do work with, given that the code is here but not operational, how do you target or triage which organisations your compliance officers goes and investigates?

ELIZABETH MACPHERSON: For our compliance team in New South Wales, they are only dealing with companies that are ECA accredited or pending. The outwork outreach position is different. They have to engage with all outworkers, because that's how we find the ones that haven't been identified in supply chains.

The Hon. Dr SARAH KAINE: Okay, so the compliance stuff is with those 17, or however many, and then the outreach is everyone else?

ELIZABETH MACPHERSON: Yes.

The CHAIR: Do you have any observations on what is now required to resuscitate the program? Does it sit with the department to simply get refocused on this because it's already there in the legislation? Or are there any other steps that need to be taken? Also, I think that there was a council that was established—

The Hon. Dr SARAH KAINE: Yes, the ethical clothing council.

The CHAIR: Yes, and my understanding is that's not in existence.

ELIZABETH MACPHERSON: It's not set up.

The CHAIR: It's not set up. But that clearly was an important part before?

ELIZABETH MACPHERSON: Yes.

The CHAIR: It was. So re-establishing that is clearly part of what would need to happen, do you think?

ELIZABETH MACPHERSON: Yes, because it needs to be properly managed so it doesn't fall off the perch like what already has happened.

The Hon. GREG DONNELLY: Just in the context of answering the last question about the past and the operation of the body when it was functional, were you associated? What insights can you provide about how it operated, and perhaps the good points and the not so good points about that?

ELIZABETH MACPHERSON: I can't answer that—

The Hon. GREG DONNELLY: Okay, that's fine.

ELIZABETH MACPHERSON: —only because, in 2005, the Textile, Clothing and Footwear Union of Australia had a State branch that managed that independently. I was in the Victorian branch. It wasn't until 2018 that I became the national compliance officer and dealt with everything nationally.

The CHAIR: Are there any further observations that you have or that you would like to make?

ELIZABETH MACPHERSON: I just think that it's really important for this legislation to be reenacted for all the reasons that I spoke about, but also for the reasons of the people sitting behind me. We live and breathe this and we know what happens out on the ground. We do the best we can in trying to identify and assist outworkers. The legislation would make it easier to fix it quicker and get those people the rights that they deserve.

The CHAIR: Just before we finish, you did make a really interesting observation about the nature of community relationships and that, in some circumstances—I hope I've got this right from what you've said—someone senior in the community might well be the in-between person.

ELIZABETH MACPHERSON: Yes.

The CHAIR: So when someone speaks up, that fractures not just one relationship but also a range of relationships in the community.

ELIZABETH MACPHERSON: Yes.

The CHAIR: From what you've said—I'm just going to put this back to you—if you had a system in which the retailers voluntarily worked together with yourselves to achieve genuine accreditation and do that in a positive way, then it seems to me that would lessen the impact of a negative interaction there.

ELIZABETH MACPHERSON: Absolutely, because it takes the pressure off the outworker. It's coming from the top down rather than them identifying it down here and we're working our way up. It actually gives them a whole other level of protection that isn't gained any other way.

The CHAIR: I think that's an interesting point.

The Hon. GREG DONNELLY: Do you have any contact, association or dealings with the Australian Retailers Association, which is the peak body for retailers?

ELIZABETH MACPHERSON: ARA are actually a founding member of Ethical Clothing Australia. But me personally, no. I haven't had any.

The Hon. GREG DONNELLY: Because that body has evolved and changed over time.

ELIZABETH MACPHERSON: I can't speak on that because I don't know enough about them at all.

The Hon. GREG DONNELLY: That's fine. Thank you.

The CHAIR: Thank you for appearing today. We might have supplementary or follow-up questions, and any answers to those might be included in evidence. Are you happy to provide an answer to those?

ELIZABETH MACPHERSON: Yes, absolutely.

(The witnesses withdrew.)

(Short adjournment)

Dr JAMES COCKAYNE, NSW Anti-slavery Commissioner, affirmed and examined

Ms JUSTINE CONEYBEER, Research Consultant and PhD Candidate, Office of the Anti-slavery Commissioner, affirmed and examined

The CHAIR: Thank you very much for giving evidence today. Would you like to start by making a short statement?

JAMES COCKAYNE: Ms Coneybeer will start. Ms Coneybeer was employed by my office as a research consultant to prepare the submission that you have before you. She will present certain aspects of that submission and then I will take a minute or two to present the policy aspects.

JUSTINE CONEYBEER: Good afternoon. I am grateful for the opportunity to speak today in front of the Committee. I am well accustomed to the risk of modern slavery in the fashion industry, having spent nearly a decade looking at labour exploitation in fashion supply chains. Most recently, my PhD thesis and related research projects have focused on the risk of modern slavery in the industry. The nature and structure of the fashion industry is uniquely susceptible to exploiting workers. TCF supply chains are often expansive, complex and opaque. Subcontracting is a consistent trait of TCF supply chains in Australia and around the world. Subcontracting and fragmented supply chains make it increasingly complex to monitor and remedy labour conditions. This is further evidenced by the several submissions that reiterate that the size of the TCF industry and the number of outworkers in the industry are not well understood.

Yet the industry is heavily reliant on outworkers, who are particularly vulnerable to exploitation. Worker situations exhibit several indicators of forced labour, including abuse of vulnerability, deception, isolation, intimidation and threats, withholding of wages and excessive overtime. Outworker vulnerability to modern slavery is further compounded by their personal characteristics, the nature of the TCF industry and the current environment in which they operate. Outworkers are not easily visible supply chain actors, and they are often disconnected from their colleagues as they work in private spaces. For this reason, their work is more easily hidden from inspectors and collective voice is hampered.

Since outworkers work in private homes there is an additional concern that children may be relied upon to complete orders. Since the industry predominantly employs workers from migrant backgrounds, often with limited English language skills, workers are less likely to understand their rights. I also understand that there is a common perception that there are limited alternative job opportunities, so when their rights are violated it can be difficult for workers to voice their concerns as they fear retribution through job loss, deportation or other perceived penalties.

While we have strong laws protecting workers' rights in Australia, workers must first be aware of their rights to feel empowered to exercise these rights in order for these laws to operate effectively. This is why we need laws such as this scheme to support supply chain tracing, enabling the union and labour inspectors to monitor and engage workers to inform them of their rights and empower their capacity to exercise such rights. The union has extensive experience and a strong record of supporting workers to voice their concerns. However, the union does face various challenges. I will pass to the commissioner to speak to that now.

JAMES COCKAYNE: For the reasons that Ms Coneybeer has explained, TCF outworkers are rendered invisible to regulators: physically, because they're working at home and isolated; economically, because they're often working off the books; and politically, because they're atomised and often non-unionised. The scheme offers and, we would argue, continues to offer a potentially powerful instrument to render those workers visible to regulators. That power is in no small part due to the significant role that unions play in the scheme and, in particular, their outreach and engagement capabilities, as attested to just now by the evidence presented by Ms Macpherson and Ms Nguyen.

In the way it combines a mandatory due diligence and reporting scheme with a voluntary conduct of code, this scheme was ahead of its time. It was a forerunner of what is often now in the business and human rights space called a "regulatory smart mix", combining different forms of regulatory leverage to incentivise responsible business conduct. But from the particular perspective of my mandate as the NSW Anti-slavery Commissioner, there are three issues around the scheme that I think the Committee may wish to consider. First, whatever is promised on paper, the scheme is basically non-operational, and the Committee's earlier hearings have explored why that might be the case. What that points to, though, is that the anti-slavery potential of the scheme, as it stands, is hostage to the political will of scheme participants, including the government of the day.

I welcome the indication at the earlier hearing that the department of industrial relations intends to reanimate inspections under the scheme. But for the scheme to come into full effect, the governance system, the council, might also require reanimation by the Minister. As the recent history of the scheme makes clear, this

makes the ongoing effectiveness of the scheme dependent on changing priorities of government, business and unions. We think this could be addressed by rethinking the membership of the scheme, not to remove anyone but simply to include the independent Anti-slavery Commissioner as an additional participant, to serve as a watchdog against the same kind of lapse of implementation that has occurred under the scheme over the last decade.

Second, the scheme may have the effect of preventing modern slavery by addressing TCF outworker exploitation, but this anti-slavery impact is currently a by-product of the scheme as designed. It's not an explicit objective of the scheme. The scheme is not framed as an anti-slavery scheme because it predated that work, frankly. This flows through to the substantive aspects of what is required of retailers and what is not. The information they are required to share speaks narrowly to workplace awards and workplace entitlements. It doesn't go to some of the other factors relevant to assessing the presence of forced labour and modern slavery, such as the recruitment process, the charging of fees for equipment, restrictions on mobility out of the home and so forth. The regulators here are not regulating for modern-slavery risk per se but for enforcement of the award, which is a narrower set of issues.

While government and union officials are undoubtedly highly skilled and bring critically important capabilities to these tasks, such as the involvement of former TCF outworkers and specialist capability to engage vulnerable people, these officials, again, are not necessarily trained in or mandated to look for modern-slavery risks per se. Regulators are not focused on modern-slavery risks under the scheme. It's not the explicit objective of the scheme, although it may have the by-product impact of helping to prevent modern slavery. Related, the scheme doesn't contemplate how such cases should be handled or reported once identified—for example, where a case of modern slavery is currently identified under the scheme, there's no requirement to refer that person to the Federal Government's Support for Trafficked People Program, for example. Again, integrating the scheme with the existing New South Wales and Federal anti-slavery infrastructure could be one way to address these lacunae.

The third issue is perhaps the most deep seated. While the extension of responsibilities to retailers was groundbreaking 20 years ago, the substantive obligations created by the scheme are arguably now weaker than what is currently expected under Australia's international commitments of all businesses under, for example, the UN Guiding Principles and the OECD due diligence guidance. What I mean by this is the following: the international standards make clear that the responsibility to respect human rights, including international labour standards, is incumbent on all businesses—not just manufacturers, not just retailers but all businesses. This helps avoid some of the challenges of demarcation about whether a firm is a manufacturer or a retailer, for example, that Ms Macpherson referred to in her evidence earlier today.

Secondly, the accepted interpretations of these international standards make clear that businesses have due diligence obligations that go beyond asking questions of suppliers and sharing information with regulators. They also have positive obligations to actively create and use leverage with suppliers to address modern slavery risks. That's not reflected in the scheme. They have obligations to provide or enable access to grievance mechanisms to very specific internationally stated effectiveness standards. Again, that's not reflected in the scheme. While unions and government provide access to certain reporting and grievance channels, that's only part of what is envisaged by the requirement of providing and enabling access to effective remedy under the UN Guiding Principles and OECD's Guidelines, and indeed in line with Australia's ratification of 2014 ILO Protocol to the Forced Labour Convention.

Similarly, the scheme doesn't cover the retailer's responsibility to provide or enable remedy of harms to which they are directly connected. What the scheme provides for is efforts to ensure that workers get access to unpaid wages and entitlements. That's important, but it's not the full picture. It doesn't speak to how retailers will ensure that victims of modern slavery receive other aspects of remedy to which they might be entitled, such as removal to alternative, less abusive accommodation or living situations; psychological counselling; compensation as victims of crime; or medical treatment.

What that means is, to bring the scheme up to date with Australia's international obligations in the anti-slavery area, the substantive obligations on retailers would need updating and, I would argue, expansion. In the submission we suggest a way that this could be done relatively straightforwardly—essentially by bringing the reasonable steps standard that the Parliament has imposed on the public sector in New South Wales into the scheme. To be clear, this wouldn't require a wholesale makeover of the scheme, and it would leave government, business and union actors playing the key governance and oversight roles that they play under the scheme. But it would fold in an additional, complementary role for my office, and it would integrate the normative standards across the two areas.

Finally, the Committee has also shown interest in the question of whether or how this model could be applied to other sectors. The short answer here is that it depends on the sector, because the structure of incentives

for the use of coercion varies across supply chains. Thus effective policy responses may need to vary in different supply chains. But I would caution that there's a danger in creating individual structures for each sector, not least because it would lead to demarcation disputes, which we heard Ms Macpherson attest to earlier this morning—the question of whether the award applies to retailers as manufacturers, since it excludes retailers. A more generalised approach may be needed, but that will probably require reflection by the Parliament on how to combine regulatory levers to foster responsible business conduct more broadly. I'd be very happy to engage in that discussion with the Committee or the Parliament, today or in the months ahead.

The CHAIR: We'll have a number of questions from Committee members as we go through. I will start that process. Thank you very much for that statement and also for your evidence, and for thinking through for us the link of this legislation to modern slavery. As you've pointed out, we've heard that there's clearly a case to "resuscitate" the scheme. Some of that points to the issues around supply chain, and the invisibility and opaqueness that you have talked about. But you've clearly gone one step further and said, "How does it link to modern slavery?"

As I understand it, your suggestions about linking that more clearly, in a revised scheme, would be perhaps to have the Anti-slavery Commissioner on a revitalised council. At the moment, the anti-slavery impact is a by-product of the scheme and it's related to the industrial mechanism. So it would be used to get more information in relation to practices so that perhaps the sort of information being provided would be greater. Thirdly, and as you said, probably the key issue and perhaps the most difficult issue, is to bring in some of our obligations under international treaties and mechanisms that we've agreed to. In that, you've talked about extending beyond just award conditions, and remedies around wages, back pay, consultation, counselling services and so on.

The first two steps are, as I look at them, not such a big ask. But the third one does represent a significant shift for the retailers. In your experience and work—and you've done work for a couple of years in this space—and in your expertise more broadly, how do you think it would be received? How would you go about convincing retailers who don't want to see any more regulation than they need and for whom modern slavery is already perhaps a vague concept?

A number of these businesses don't meet the threshold for producing modern slavery reports and have been kept out of the cycle. How do you think they would react to this? How would you engage them in a positive approach to this?

JAMES COCKAYNE: Our experience in engaging with retailers, including the Australian Retailers Association that Mr Donnelly referred to earlier, is that they're actually looking for greater specificity on exactly what information government wants from them, not less. They are aware that they have to make modern slavery statements under the Federal Modern Slavery Act. The kind of guidance that we've recently provided to public sector actors—on what reasonable steps to remove modern slavery risks from their supply chains look like here in New South Wales—has been really welcomed even by the private sector and retailers because it provides them greater clarity and specificity as to how they meet their expectations under the UN Guiding Principles on Business and Human Rights, and under Australia's commitments under international law.

These are questions that they're already being asked by major investors, for example. The big retailers in New South Wales are already being asked by investors, "What are you doing to address modern slavery risks in your supply chain?" but they don't have clarity from government about exactly how they demonstrate that they're doing what they should in this area. I think, actually, there would be a level of receptivity in the business community in New South Wales to have this conversation about aligning this arrangement with the broader expectations under Federal modern slavery arrangements.

The CHAIR: Just to take that a step further, I suppose having it as part of a voluntary scheme of accreditation, in which there is their own input—and we've heard evidence that that scheme has worked well with the union in relation to its awards. It also potentially provides a sort of badging or something that they could add to the brand for an Australian product and so on, that might add value to them as well. That might be another reason for receptivity is what I'm suggesting, with a voluntary approach as opposed to simply a mandatory code.

JAMES COCKAYNE: Yes. From the retailer's perspective here, this is mainly downside risk. They don't want modern slavery in their supply chain. Certainly, they want to be able to sell high-quality products at low prices, but they don't want to do that at the risk of carrying a lot of modern slavery risk. The scheme as it's set up is potentially a very powerful way to empower retailers to get actors in their supply chain to remove that risk from the books of the retailers.

The CHAIR: That's that smart regulatory mix that you referred to?

JAMES COCKAYNE: Yes, the combination of the mandatory extended responsibilities scheme and the voluntary Ethical Clothing Australia code is an example of that smart mix.

The Hon. Dr SARAH KAINE: Thank you both for appearing and engaging on this issue, which Ms Coneybeer and I have in other contexts as well. I have great sympathy for the idea of any kind of code considering international obligations, but I have a few questions around that, including what are the current enforcement mechanisms for our international obligations? How are they currently enforced on businesses in Australia or in New South Wales?

JAMES COCKAYNE: At present, under the existing instance of the Federal Modern Slavery Act, businesses with an annual consolidated revenue of \$100 million or more have to report annually a modern slavery statement to the Attorney-General's department, outlining against a set of defined criteria what they're doing to identify and address modern slavery risks.

That Modern Slavery Act is being reviewed; a review was commissioned from Professor McMillan which was handed down about a year ago. The Federal Government's response to that is expected sometime this year, my understanding is. That may then lead to changes in the enforcement arrangements. Under the existing arrangements, the Minister has the power—not yet exercised—to write to a business to ask questions about their modern slavery statement.

The Hon. Dr SARAH KAINE: As I said, I have great sympathy for the idea of expanding whatever we do from here and into other industry with, making sure we align. But to be frank with you, and I don't think I'd probably be alone with this, that kind of enforcement regime is not very thorough or very frightening, to be honest, for a business. It only captures a certain amount of business. For example, in your recommendation, when you talk about including an obligation to reasonable steps to ensure that goods and services aren't produced as a product of modern slavery, I guess I'm thinking about the tin tacks of it. The ethical code that we have gets very specific about how we find out whether working conditions are exploitative. Methods came up, including considering value and volume, to make sure that we knew what was reasonable productivity, so it's very specific about how we identify that and how businesses can be shown that they're not compliant.

My concern with the expanse and the inclusion of parts of guidelines which haven't been developed to that level of specificity is, one, it allows for businesses to be—let's charitably call it "vague" in response about what reasonable steps are. Two, that makes enforcement much harder because you don't have those measurable aspects that you do. Thinking about expanding to other industries, you could do the equivalent of value and volume, for example, in how quick a cleaner has to clean an office setting. There would be very specific things that you could measure. A concern that I would love to hear your response to is that enforcement piece with what are still fairly motherhood statements that we would like to see organisations comply with. How would we marry that, in a very practical sense, in any version of a code?

JAMES COCKAYNE: I would make two points, Dr Kaine. The first is that we need to be clear that we're not suggesting to displace the existing standards through the incorporation of reasonable steps. The point that Ms Coneybeer and I were making in our evidence is that the award, the code and the scheme cover deeply a narrow range of conduct and information related to the award that the scheme allows for the provision of information about. That doesn't cover the field of everything that is relevant to assessing whether modern slavery is present in a supply chain. There are other aspects of conduct in the workplace, or outside the workplace, that might be relevant to assessing whether a person is in forced labour, to do with whether they're incurring fees outside the workplace, treatment by people outside the workplace and so on. The reasonable steps would complement—not displace but complement—the existing normative standards by bringing in the expectation of also providing information on these other additional areas of behaviour.

The second point I would make is that the enforcement question is a separate one from the question of the substantive standard against which the behaviour of retailers and their supply chains is being assessed. For Parliament to decide what the appropriate enforcement mechanism is—and I don't disagree with you that the current arrangements at the Federal level are not stringent, and I'm on the record reflecting this. But there's nothing to prevent this jurisdiction aligning with Australia's international commitments and going further, deeper, in a particular area in implementation. That's what we're seeing internationally. While there is a commitment to aligning with these shared international standards, jurisdictions are, in particular sectors, going much deeper and providing the level of specificity that this scheme already does in a particular area.

The Hon. Dr SARAH KAINE: With the role that you have and the Act that we ended up with, you talk about political machinations and where they end up. Well, the particular Act that we have is a result exactly of that, which means that your office doesn't have enforcement capability.

JAMES COCKAYNE: We do not.

The Hon. Dr SARAH KAINE: Again, just being super practical, last hearing we had NSW Industrial Relations saying they're ready to go in terms of their role in the scheme. If we included modern slavery

components, we're getting very practical about—we do have that enforcement component sitting with NSW IR. Would you anticipate that they would pick up that aspect of it? Or would it be a more normative inclusion, that we're including these aspects to encourage businesses, but they're not the aspects of the scheme that we would then seek to enforce?

JAMES COCKAYNE: I think it could be both. Imagine a scenario where the scheme is amended so that one of its objectives is anti-slavery, alongside the other objectives. Then you include, for example, the New South Wales Anti-slavery Commissioner in the council. What that means is that the enforcement actors, whether it's unions or government officials—NSW Industrial Relations—could turn to the Office of the Anti-slavery Commissioner for support and advice. For training, to ensure that when they're doing enforcement they are fully understanding indicators of modern slavery or forced labour that are in front of them. Advice on a case-by-case basis—how does this measure up against the ILO forced labour indicators?

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

Ms LYNDA VOLTZ: I just want to ask some questions because I'm new to the Committee. In summary, what do you perceive as the indicators of slavery?

JAMES COCKAYNE: When I referred to indicators, I was referring to the ILO's 11 forced labour indicators, which go to issues such as discrimination in the workplace, harassment, restriction of mobility and debt bondage. They are articulated and enforced by—

Ms LYNDA VOLTZ: No, I understand those things. I am the member for Auburn—a very diverse community. At least 3 per cent of my electorate has households with no income. When you're talking about indicators, you wouldn't say to a union, "This area has a high number of people with no income. Is that indicative?" It's more about the protocols that are laid down by the ILO.

JAMES COCKAYNE: The indicators are used on a case-by-case basis, not at the population level. They would be looking at a given individual's case, and then there's a methodology for how you look for the presence of those indicators to then assess whether there is a likelihood of forced labour in that particular case. Lack of income on its own would not make out a case for forced labour or any of the other modern slavery offences under schedule 2 of the New South Wales Modern Slavery Act.

Ms LYNDA VOLTZ: In your role, in terms of detection, who is doing the actual detection?

JAMES COCKAYNE: I have a role to promote effective detection, but I don't have an investigative mandate under the Modern Slavery Act. The investigative mandate falls to law enforcement authorities or other regulatory authorities such as SafeWork NSW and others. We do receive quite a bit of information from both the general community and people who are victims of modern slavery. We have referral authority and regularly pass information on to law enforcement actors.

Ms LYNDA VOLTZ: And how many prosecutions were there in the past 12 months under those?

JAMES COCKAYNE: Prosecutions are generally handled by the Federal Government under the National Policing Protocol and the national action plan on modern slavery. I couldn't speak to the number on foot at the Federal level, but there have only ever been about 30—or I think it's now 34—convictions for modern slavery offences in the 20 or so years that there have been modern slavery offences on the books in Australia. We currently get about 340 reports to the Australian Federal Police each year, but the best estimates are that there are around 41,000 cases of modern slavery in Australia. There is a huge reporting gap.

Ms LYNDA VOLTZ: You get 340. Do you know if any of those have resulted in prosecution?

JAMES COCKAYNE: We do not receive those. Those go to the Australian Federal Police.

Ms LYNDA VOLTZ: Sorry—you said you do referrals. So they're not your referrals?

JAMES COCKAYNE: They are referred to the Australian Federal Police by a range of actors: State police, Australian Red Cross, ourselves and others. We do receive reports of modern slavery, and some of those find their way to the AFP. We've assisted over 80 people directly who have come forward for support and assistance in the around a year that I've had that capability up and running. I'm the first in the role and I have only been in the role for just under two years. I've only had staff for about 18 months, Ms Voltz, so it's still very much a work in progress developing our capabilities here in New South Wales.

The Hon. Dr SARAH KAINE: Thank you both for the analysis in the submission about the code relative to those international schemes. I don't know if I'm going to be putting you completely on the spot, and you both

might curse me under your breath for this. We're going to have to come out with recommendations from this inquiry. You seem to have given it thought but I wonder if we could get a list of the key updates that you think would be required to be included in any resuscitated code for us to consider in terms of recommendations? I don't think it's in here. I think it's just the analysis of the comparison.

JUSTINE CONEYBEER: Dr Kaine, I can point you to the annex of our submission, which has a—

The Hon. Dr SARAH KAINE: Appendix E?

JUSTINE CONEYBEER: I believe so. Yes, appendix E, which has some more information with regard to conformance to the OECD guidelines, comparing the gap between the scheme and the code. I think that could be a really good starting point by means of a list.

JAMES COCKAYNE: And we could certainly take that on notice and come back to you with the specification. But, as Ms Coneybeer explains, we're starting from the work that she did lying behind appendix E.

The Hon. Dr SARAH KAINE: I appreciate that. We will obviously take all of that into account, but if there's anything a bit more pointy, that would also be helpful as we finalise things.

The CHAIR: Can I follow on from that with the permission of the Committee? There's a mandatory code, a voluntary scheme. The voluntary scheme, as you said earlier, is a smart regulatory mix. You've got this joint commitment to compliance with the industrial instruments, and you're saying we could expand that to be focused around modern slavery. It means, as you have indicated, Dr Kaine, probably introducing some more specific elements and trying to actually enumerate those so that they're not vague, they're helpful. But who is going to check on those? Do we see that the union will check on those? Will it be up to the retailers to check on those? Obviously we've got to do the standard first and put them in the scheme, I get that.

But this scheme, as it currently operates, as I understand it—or we'd like it to operate, and it used to operate—has the union going into places, engaging with workers specifically around their industrial arrangements, with the agreement of the retailers and the people in the supply chain. That's seen as the powerful part of that. We're now going to add a piece of work there. Someone's got to check on that work. Is that going to be something the unions might consider? Would it be up to the retailers to self-report? Will that be a problem, asking them to do that? Or will it need someone else in that mix, such as the Office of the Anti-slavery Commissioner? And is that appropriate, or is that just asking too much?

JAMES COCKAYNE: I think that's a very good question, because the way the scheme operates is it gives a really strong incentive for people to go through the ECA code. So the first question is, where would we add work? Would we add work actually in the code and in the enforcement of the code? If that's what the Parliament adds, that's a discussion to have with the ECA as a voluntary space. But the other way to do it would be to say it's not for Parliament to interrupt the way the code operates. What we're trying to do is add a component over in the scheme part of the process. Then it's open to the Parliament to design how that extra work would be done. It could be done by government officials, as I said, through the way that NSW Industrial Relations exercises its powers of inspection, engagement and information collection. It could be done through the unions, not under their ECA mandate, but through the scheme mandatory aspect of the work. It could potentially be done by my office. In any of those cases, there's going to be a capability and resourcing question, no doubt. Extra work means extra resourcing.

The Hon. Dr SARAH KAINE: A question on that. I'm literally thinking about this as we're speaking, trying to brainstorm and work through it as we go. With the scheme, retailers are required to provide those regular reports to NSW IR.

JAMES COCKAYNE: Yes.

The Hon. Dr SARAH KAINE: So, potentially, an inclusion in that.

JAMES COCKAYNE: Exactly.

The Hon. Dr SARAH KAINE: That deals with those who haven't opted for the voluntary side of things, who would be the ones that we would be more concerned about generally, because they don't have that tight audit which is likely to identify. So it would be feasible that, in that reporting system and what's required—which would probably need updating—that's something that could be included and does then get reported to NSW IR. Then, in consultation with you, the skills could be developed about how to assess that.

JAMES COCKAYNE: Exactly. I picked up earlier on a question you asked an earlier witness, Dr Kaine, the gathering of that information on an aggregated level might then allow for strategic targeting of use of limited enforcement capabilities to parts of the supply chain that appear to be most risky. So my office could assist—that's probably how I would put it—NSW IR in the analysis of that information, and in upskilling their teams on

a continuous basis to be able then to inspect effectively, if that's the correct term. I'm not sure if that is the correct term.

The CHAIR: So focus on the mandatory code, and then that provides the direction for the voluntary system and the council to start working that through. You may even lead that work or leave it up to them to start working that through themselves, but there will be a resource implication.

Mrs TINA AYYAD: My question is a follow on from the member for Auburn's questions. How can the Anti-slavery Commissioner's powers under section 27 of the Modern Slavery Act be effectively integrated into the scheme with the goal for the scheme to be more effective and to better mitigate the risks of modern slavery in the TCF industry? I'm happy for this one to be taken on notice, if needed.

JAMES COCKAYNE: I will venture an answer now; I might need to take it also on notice. But the short answer is that section 27, which you have very helpfully drawn our attention to, is the code of practice power—the power to issue codes of practice on these kinds of issues. We're currently exploring issuing codes of practice in relation to two other industrial sectors; one dealing with renewable energy value chains and one dealing with investment asset management and lending. That power allows the Anti-slavery Commissioner to develop codes or, indeed, refer or incorporate other existing codes into a New South Wales code of practice, but the provision leaves blank, frankly, how those codes are then enforced.

That's a central question for development with those affected actors in any of these discussions. What I think this means for this sector is there would be the possibility to rely on that provision in bringing the New South Wales Anti-slavery Commissioner into the picture here. But what I will take on notice, if you don't mind, is to think through the practical implications of reliance on that provision. It's not obvious to me at first instance, but I and my team would be happy to give that further thought.

The Hon. Dr SARAH KAINE: I guess now it's getting a bit more specific about your role in terms of government supply chains. As you know, I've got a procurement inquiry at the same time looking at what we might be doing there. Could you speak a bit more about your considerations about the textile supply chain—uniforms et cetera—in terms of your role in the government sector and whether this scheme assists or could potentially assist in any way there?

JAMES COCKAYNE: Yes. I believe I will have the privilege and opportunity to brief the Committee on the work we've been doing to provide guidance to the public sector on these reasonable steps questions later in the year. In brief, one of the tools we provide to the public sector now is an inherent risk identification tool that allows public buyers to assess the inherent modern slavery riskiness, to coin a term, of purchasing particular types of products. Uniforms, which is how these things show up in the New South Wales Government procurement taxonomy, have been identified as high risk because of the inclusion of commodities such as cotton, which are known to have strong links to forced labour in particular, in various contexts.

What that means is it puts the public buyer on notice that they have to take certain heightened due diligence steps, and we lay those out in great detail in the guidance, in order to manage that risk. It does not work as a "thou shalt not buy" arrangement. It sets a standard for the due diligence steps that need to be taken to effectively manage the risk. The buyer can still buy that product, just as they can enter into a high-risk procurement transaction for, say, a transport infrastructure development, where the risk comes from financial risk. They can still do that, but they need to put certain safeguards in place.

It is the same here for modern slavery risk. The opportunity here might be to create a crosswalk between the guidance that we provide to public buyers on how to manage risk in the TCF supply chain and the existence of this scheme. So it could be that we indicate to government buyers that it's open to them. It's not in my gift to mandate it, but it would be in the gift of the Procurement Board, for example, to mandate it. For it's open to buyers to participate in the ECA or to give preference to retailers or suppliers that are somehow participating in the ECA code or compliant in some way with the scheme. I'd need to think about the technicalities there and could take that on notice, if useful. But that would be the basic crosswalk that would be open.

The CHAIR: And could arguably provide an additional incentive to comply with the code.

JAMES COCKAYNE: Very much so.

The CHAIR: That would be an example of how the New South Wales Government could be using its significant procurement capacity.

JAMES COCKAYNE: An interesting question, if I may, Chair, might be for the Committee to ask NSW Procurement what percentage of TCF suppliers—uniform suppliers to New South Wales government—are currently ECA participants or members.

The Hon. Dr SARAH Kaine: I think we asked that of AFC at my hearing yesterday. I can't remember if they were taking it on notice, but I think that information will be available to us.

The CHAIR: If not, we should certainly note that as a question. Given that it's only 17 in New South Wales, there may be a bit of a gap there. Thank you very much, Dr Cockayne and Ms Coneybeer. We really appreciate your evidence. We have a couple of items on which you're going to come back to us. We may have some further questions. Your answers form part of the evidence. It sounds as though you would be prepared to provide those. We have a seven-day turnaround on those once you get the transcript, as I understand it, so could you be mindful of that? On that note, we'll bring the session to a close. Once again, thank you very much.

(The witnesses withdrew.)

The Committee adjourned at 13:00.