

Premier's Department

# NSW Government Response - Modern Slavery Committee Inquiry Ethical Clothing Extended Responsibilities Scheme

## NSW Government response

---

October 2024



OFFICIAL

---

## Introduction

Firstly, the Government would like to commend the work of the Modern Slavery Committee.

The Government acknowledges the Report's Findings and supports all of the Recommendations either in full or in part, subject to consultation with industry stakeholders.

NSW Industrial Relations (a branch of the Premier's Department) will be the lead in developing and implementing the NSW Government response to the Modern Slavery Committee Inquiry Report Recommendations.

To this end, NSW Industrial Relations will work in close partnership with the NSW Anti-Slavery Commissioner to leverage unique subject matter expertise and strengthen the collaborative relationship between agencies particularly with respect to business intelligence information sharing and reporting, and ensuring that the provisions are consistent with the broader Australian regulatory framework and international obligations such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and relevant human rights and international labour standards.

---

## Recommendations

In summary, the NSW Government supports what could be described as the three headline recommendations made by the Committee (Recommendations 1, 3 and 8) to revive the ECERS; with regulatory responsibility for its administration to remain with NSW Industrial Relations; and to consider possible expansion to other at-risk industries in NSW.

The balance of recommendations relate to operational issues underpinning the ECERS and the proposed response notes that comprehensive consultation with stakeholders is required before the NSW Government can commit its full support.

This approach is supported by the NSW Anti-slavery Commissioner who has expressed a commitment to working collaboratively with the Government as it considers the detail of its response to the Report and agrees that there is a need to consult with industry stakeholders before any changes are made to existing policy settings and regulatory framework.

### **Recommendation 1: That the NSW Government revive the ECERS.**

NSW GOVERNMENT RESPONSE: *Supported*

Reviving the Ethical Clothing Extended Responsibility Scheme (ECERS) presents an opportunity to integrate contemporary modern slavery principles and align it within a regulatory framework which has evolved to encompass a targeted focus on identifying, preventing, mitigating and remediating modern slavery risks and harms in supply-chains since the ECERS was initially created in 2002.

NSW was the first Australian state or territory to enact modern slavery legislation. The *Modern Slavery Act 2018* (MS Act) has a specific focus on government supply chains and procurement practices and established an independent NSW Anti-slavery Commissioner with functions including managing modern slavery risks in supply chains.

The Government will consider options to integrate the ECERS with complementary provisions within the MS Act, including recognition of a Code of Practice issued by the Anti-slavery Commissioner under section 27 that can be used to help ensure retailers meet the standards of responsible business conduct required by Australia's commitment to the:

- UN Guiding Principles on Business and Human Rights
- OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, and
- 2014 Protocol to the ILO Forced Labour Convention.

NSW Industrial Relations will prepare a detailed *Project Plan* to guide the objectives, timeline, deliverables and milestones associated with reviving the ECERS. It is anticipated that implementation of policy and legislative reforms to give effect to supported recommendations could be completed by mid-2025.

**Recommendation 2: That the NSW Government, in reviving the ECERS, consider the following issues:**

- the evidence, findings and recommendations made in this inquiry
- the ongoing role of the Ethical Clothing Trades Council and the need for its reconstitution to consider amendments
- views of retailers within the textile, clothing and footwear industry
- updates to the Scheme that accurately reflect the views of union and government department stakeholders, industrial awards and instruments
- amendments to reflect the operation of the Scheme following referral of the state's powers to the Commonwealth, and
- incorporation of anti-slavery objectives and obligations, in particular, those proposed by the NSW Anti-Slavery Commissioner.

NSW GOVERNMENT RESPONSE: *Supported in principle.*

NSW Industrial Relations will prepare a comprehensive *Stakeholder Engagement Strategy* to guide consultation with peak industry stakeholders and to obtain feedback and suggestions regarding proposed policy and regulatory changes to the ECERS. Consultation is intended to commence in November 2024 and will include representatives from

- The Construction, Forestry, Manufacturing, Engineering Union (Manufacturing Division) of New South Wales
- Ethical Clothing Australia
- Australian Retailers Association, New South Wales Division
- Australian Business Limited
- The Australian Industry Group, New South Wales Branch
- Unions NSW
- Office of the Anti-slavery Commissioner
- NSW Treasury
- Multicultural NSW
- Department of Education and Training (TAFE)
- Fair Work Ombudsman (FWO)

The Government will re-constitute the Ethical Clothing Trades Council and appoint a Chairperson selected by the Minister for Industrial Relations. The Government will seek nominations for the 5 positions allocated to industry organisations. In addition, the Government will appoint the NSW Anti-slavery Commissioner as the 6th member representing consumer or community or other interests.

Further, NSW Industrial Relations will work closely with the NSW Anti-slavery Commissioner to create a new and explicit Object within the ECERS that reflects modern slavery principles, with a preference to incorporate language and definitions that are consistent with existing modern slavery provisions that are already operational in NSW and in the Commonwealth jurisdiction.

NSW Industrial Relations will also work closely with all industry stakeholders to explore various options to operationalise the intent of the new Object in terms of compliance policy and strategy, publication of formal Guidance, Mandatory Codes, Government Procurement Policy and possible remedies.

**Recommendation 3: That the NSW Government appoint NSW Industrial Relations as the agency responsible for ensuring the Scheme remains operational.**

NSW GOVERNMENT RESPONSE: *Supported.*

Administration of the ECERS will continue to be a shared responsibility between NSW Industrial Relations and the CFMEU (Manufacturing Division).

Section 14 of the MS Act provides that government agencies must work in cooperation with the Anti-slavery Commissioner in the exercise of the Commissioner's functions. This duty includes the disclosure of information that is likely to be of assistance, and to provide reasonable assistance and support in the exercise of functions with respect to modern slavery and victims of modern slavery.

With this in mind, the Government will consider options to incorporate the NSW Anti-slavery Commissioner into existing governance arrangements.

**Recommendation 4: That the NSW Government, in reviving the Scheme, develop and implement a supply chain database that is shared with relevant stakeholders, including the relevant unions and the NSW Anti-Slavery Commissioner.**

NSW GOVERNMENT RESPONSE: *Supported in principle.*

NSW Industrial Relations will work with third party vendors to explore options of expanding existing Customer Relationship Management (CRM) system architecture to support the creation of a bespoke, fit for purpose database to capture TCF industry intelligence, monitor trends and produce regular reporting/metrics. The database will be the intellectual property of NSW Industrial Relations as the regulatory agency responsible for the administration of the ECERS. Access and release of business records will be consistent with prevailing information and privacy legislation and record keeping obligations.

The Government intends to provide periodical reporting to the Ethical Clothing Trades Council (ECTC) and will publicly release relevant data and statistics on the NSW Industrial Relations website.

Further, the Government will explore mechanisms to facilitate information sharing and data collection including a Memorandum of Understanding between NSW Industrial Relations, the NSW Office of the Anti-slavery Commissioner, the CFMEU and FWO.

**Recommendation 5: That the NSW Government assess the funding and resourcing requirements of relevant stakeholders to ensure industry compliance with the Ethical Clothing Extended Responsibilities Scheme (NSW). The assessment should include consideration of funding and resourcing for gathering, mapping and sharing supply chain data; ensuring compliance with the Scheme; promoting and aiding compliance with other relevant awards and instruments; and any anti-slavery objectives in the Scheme.**

NSW GOVERNMENT RESPONSE: *Noted. Consultation is required.*

NSW Industrial Relations will consult with industry stakeholders to develop a new *Education and Compliance Strategy* to underpin a revived ECERS. NSW Industrial Relations will consult with NSW Treasury with respect to the availability of project specific funding to support a positive compliance culture in the TCF industry including:

- initial investment in a new supply chain database
- ongoing resourcing for the NSW Industrial Relations Inspectorate, and
- implementation of a targeted industry information and education campaign.

**Recommendation 6: That the NSW Government:**

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

NSW GOVERNMENT RESPONSE: *Noted. Consultation is required.*

The Government will consult with industry stakeholders to explore various options to boost awareness of the revived ECERS and promote a positive compliance culture in the TCF industry. NSW Industrial Relations has a dedicated Stakeholder Engagement team with expertise and experience in developing and implementing contemporary e-learning modules and digital credential compliance programs and would be willing to work in partnership with Ethical Clothing Australia in terms of delivery to its members.

**Recommendation 7: That the NSW Government establish culturally and linguistically sensitive programs for outworkers to improve their English and literacy skills, financial knowledge, and understanding of their workplace rights and entitlements.**

NSW GOVERNMENT RESPONSE: *Noted. Consultation is required*

The Government will consult with internal government stakeholders to identify existing programs and pathways that may be leveraged to achieve these objectives. This could potentially canvass new strategic partnerships between NSW Industrial Relations and:

- Education and Training (TAFE)
- Multicultural NSW
- Migrant Resource Centres

**Recommendation 8: That the NSW Government, following the Scheme's revival, assess its potential to be expanded into other industries with similar characteristics and risks of modern slavery. The assessment should focus on the implications of an industry-specific approach like the Scheme, compared to a more generalised approach.**

NSW GOVERNMENT RESPONSE: *Supported.*

While the Government supports the expansion of the scheme to industries in NSW with similar characteristics to the TCF industry, time and resource commitment to work in this space will form a future 'phase 2' of the Government's response to the Inquiry Report. Priority will be given to developing and implementing all necessary policy and legislative actions to revive the ECERS in the first instance.

---

## 2 Contacts

Marina Rizzo, Executive Director – NSW Industrial Relations

[marina.rizzo@industrialrelations.nsw.gov.au](mailto:marina.rizzo@industrialrelations.nsw.gov.au) T 02 9228 5095

# The Cabinet Office and Premier's Department

52 Martin Place  
Sydney NSW 2000

GPO Box 5341  
Sydney NSW 2001

T: 02 9228 5555  
W.[nsw.gov.au/the-cabinet-office](http://nsw.gov.au/the-cabinet-office)  
[nsw.gov.au/premiers-department](http://nsw.gov.au/premiers-department)



OFFICIAL