

Additional Evidence, including responses to questions on notice, for the Modern Slavery Committee Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).

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1. Funding sources

Ethical Clothing Australia is currently funded by the Victorian and Federal Governments.

We currently receive \$1 million per annum until June 2027 from the Victorian government to deliver the accreditation program. Please note: we recently received additional funding from the Victorian government, however, this is to deliver other projects such as research, developing and delivering a Women's Leadership Network, and capacity building training for accredited businesses across a range of areas including marketing and tendering for government contracts.

In April 2023, we received \$2 million per annum for a period of 3 years (until May 2026) from the Federal Government. This funding is to grow the accreditation in states beyond Victoria, and also includes a number of additional projects.

2. Fee structure



Ethical Clothing Australia 2024 Accreditation Fees

The annual fee covers the cost of the compliance audit as well as marketing benefits and administration involved in the accreditation process. The fee is based on a business's local manufacturing and considers the value of outsourcing and the number of in-house workers. Each year the fee will reflect the accredited business's current manufacturing circumstances and may change between years.

New Businesses & Sole Traders

Emerging Business Discount	\$384 + GST
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Sole Trader - No employees and all operations in-house (no outsourcing)	\$370 + GST
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To be eligible for the Emerging Business Discount, your business must fit the following criteria:

1. The ABN has been registered within the past 12 months AND;
2. Outsourcing less than \$50,000 worth of manufacturing to contractors including homeworkers AND/OR;
3. Employing less than 10 employees in-house.

Outsourcing

What is the annual value of your cut, make, trim and/or value-adding manufacturing that is outsourced to Australian suppliers?

None	\$0
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Less than \$25,000	\$496 + GST
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\$25,001 - \$50,000	\$744 + GST
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\$50,001 - \$200,000	\$1,232 + GST
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\$200,001 - \$500,000	\$1,848 + GST
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\$500,001 - \$1,000,000	\$2,465 + GST
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\$1,000,001 - \$5,000,000	\$3,697 + GST
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\$5,000,001 - \$10,000,000	\$4,930 + GST
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\$10,000,001+	\$7,394 + GST
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In-House Operations

How many in-house employees does your business have across all head offices and manufacturing locations including but not limited to design, pattern making, cut, make, trim and dispatch?

No employees	\$0
1-10	\$496 + GST
11-25	\$744 + GST
26-40	\$1,232 + GST
41-55	\$2,465 + GST
56 -70	\$2,465 + GST
70 or more	\$2,465 + GST

Combination of Outsourced and In-House Operations

If you outsource manufacturing and also have in-house operations, please review the two tables above to determine the two relevant fees. Your primary form of manufacturing is whichever fee is higher, and the secondary form of manufacturing is the lower fee. Then, you must calculate:

1. The fee associated with your primary form of manufacturing, PLUS;
2. 25% of the fee for the secondary form of manufacturing.

Other Additions & Discounts

- Businesses that have used Ethical Clothing Australia labels on their Australian made products for the last 12 months will qualify for a 10% fee discount.
- Marketing and administration fee for having more than one trading name under the same ABN accredited or more than one website listing under the same trading name +5% per listing.

Examples:

1. Business A has 75 in-house employees and no outsourcing, they will pay \$2,465 +GST annually
2. Business B outsources to the value of \$300,000 annually and has 11 in-house employees. They will pay the full outsourcing fee for that bracket (\$1,848 +GST) and 25% of the in-house fee (\$186 +GST) = \$2,024+GST annually
3. Business C is a sole trader making all items in-house with no employees or outsourcing. They will pay \$370+GST annually.

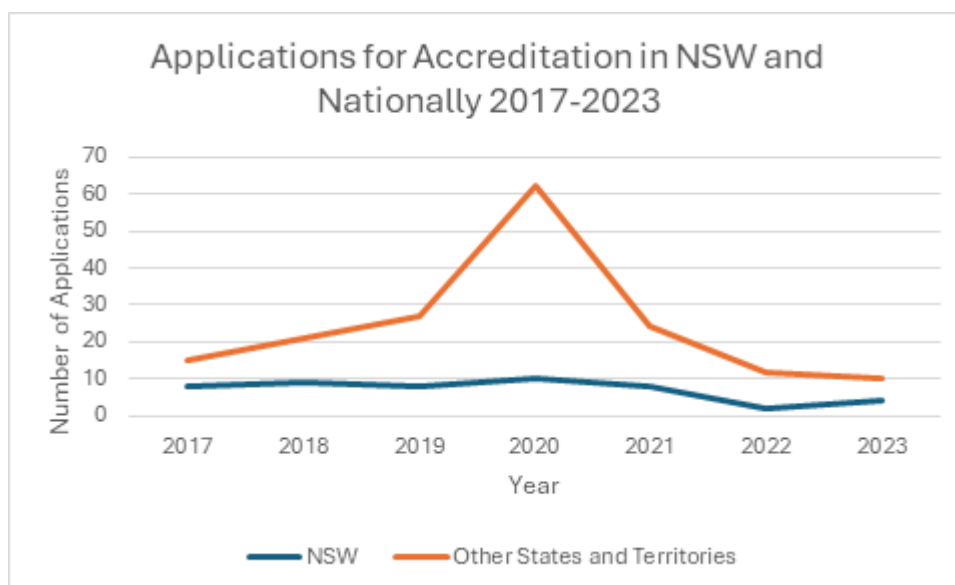
PLEASE NOTE: This is an information resource available to businesses considering applying for Ethical Clothing Australia accreditation.

3. NSW Accreditation Program Information

3.1 Applications for Accreditation in New South Wales 2017-2023

Between 2017 – 2023, 49 businesses in NSW applied for accreditation meaning they paid their accreditation fee and commenced the compliance audit, with 8 businesses applying for accreditation in NSW in 2017, and this number staying consistent over the time period. In other states and territories, 171 businesses applied for accreditation in this time frame.

As can be seen in Graph 1 below, in the year 2020 there was a large spike in applications (n=62) for accreditations nationally, with the majority of these applications being in Victoria. This result was a direct response to the Victorian Government's Ethical Procurement Policy in 2018 and the Covid-19 pandemic in early 2020 which provided procurement opportunities to businesses that were manufacturing face masks and PPE locally. To secure these tenders a business was required to apply for accreditation by Ethical Clothing Australia.



Graph 1: Applications for Accreditation in NSW and Nationally 2017 - 2023

3.2 Closed Applications in New South Wales 2017 – 2023

Of these applicant businesses, during this time frame, 21 businesses in NSW were not successful in the completion of the initial audit. The reasons for not succeeding in an application for accreditation are divided into three categories:

- *No longer manufacturing* – occasionally a business will close down their operations or decide to take their manufacturing operations offshore while they are in the process of the audit.
- *Non-Compliance* – this occurs when significant non-compliance is found during the initial audit which will lead to closure of the application. In this instance, the compliance team will address the matters outside the parameters of the program.
- *Opted Out* – there are various reasons that a business may opt out of the program during their initial audit however if non-compliances have been found, the non-compliance process above will be followed. We have started capturing better data around this category.

Chart 1 below displays the number of closed applications and the reasons for the closure



Chart 1: Closed applications in NSW 2017 – 2023

3.3 De-accreditations

Similarly to when an applying business application is closed, the reasons that a business will become de-accredited are divided into No Longer Manufacturing, Non-Compliance and Opted Out. As you can see from Chart 2 below, over the past 3 years, most de-accreditations have been for either non-compliance or the generic reason for opting out.

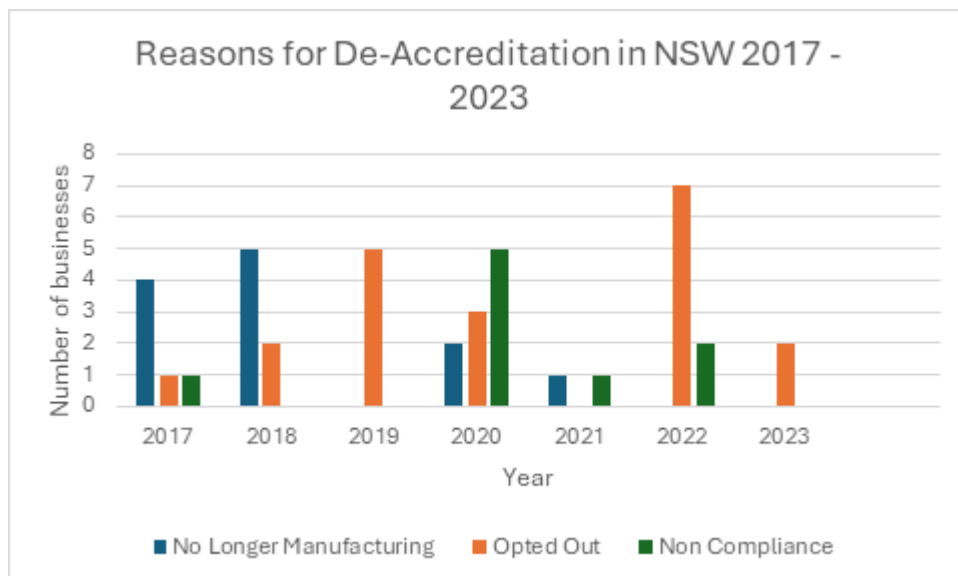


Chart2: Reasons for De-accreditation in NSW 2017 - 2023

3.4 Participating supply chain members in New South Wales and potential growth of the accreditation program

As part of a business's audit when obtaining their accreditation, their local supply chain also undergoes the same audit. The businesses in their supply chains are known as participating suppliers and each of these businesses are eligible for accreditation in their own right.

There are 17 currently accredited businesses in New South Wales (protecting 175 individual workers) and within these supply chains are an additional 107 participating suppliers (protecting an additional 47 workers) in New South Wales who have opted to not be accredited in their own right.

This means the participating supplier businesses cannot be verified as accredited. Therefore, if the government implemented a procurement verification program to say they were purchasing from an ethical company, these suppliers would not currently be able to participate.

This number also provides an indicative number of the potential size of the industry in NSW, although it would be much larger than this as this number only represents supply chain members attached to accredited businesses.

While this again highlights the benefits of the program, that is, that while only 17 businesses are accredited in their own right, an additional 107 businesses are audited for compliance against relevant Australian workplace laws, it also highlights how further incentives to undertake the voluntary accreditation could protect more workers.

While the audit is currently protecting the workers in-house at the participating supply chain, it does not necessarily protect the workers in the participating suppliers own supply chain – i.e. if they are then giving out work to a business not related to the principal business which is accredited, then that new supply chain member is potentially not audited. (this is all dependent on who else they are receiving work from and if they are accredited or not).

If these businesses had more of an incentive to become accredited, their local supply chains would also be audited, meaning that there would be a cascading effect of more workers being protected. The size of these participating businesses and the number of workers currently protected as part of the 17 accredited businesses is outlined in Table 1.

Size of business (number of employees)	Number of businesses
1	57
2-5	30
6-10	11
10-20	5
More than 20	2

Table 1: Size of businesses in participating supply chains in New South Wales

4. Integration of the Office of the NSW Anti-Slavery Commissioner (OASC)

4.1 What role can the OASC play in the TCF industry?

Firstly, the TCFAI 2020 Award is structured in a way which enables the legal mapping of a supply chain. Further to this, there is a specific Union which has oversight of this industry. Lastly, the existence of Ethical Clothing Australia creates an additional, voluntary regulatory framework to prevent modern slavery and protect workers from exploitation. As noted, to further address this, support needs to be provided to expand the Ethical Clothing Australia program.

4.2 What role can the OASC play in other industries?

This would depend on the industry and what, if any Award or legal frameworks exist to protect workers. It also depends on whether there is a specific Union and whether the workers are in agreement with having this sort of involvement

4.3 Additional comments about the OASC submission

We have spoken to the co-author of the Office of the Anti-Slavery Commissioners submission ahead of their evidence at the hearing to clarify several statements made about Ethical Clothing Australia accreditation program in their submission. Some of this has been addressed in our own evidence, and they may have also clarified some statements during their evidence, however, we would like to note the following:

a. Supplier challenge adhering to the Code of Practice

The Ethical Clothing Australia Code of Practice is based on existing Australian workplace laws. All suppliers are being asked to do is to comply with their legal obligations. It is problematic that this statement has been included in the submission.

b. Limited accountability mechanism

The involvement of the Union in the accreditation program provides a robust accountability mechanism, should a business be unwilling to comply with their legal obligations. If a business does not comply voluntarily under the accreditation program, then the Union can otherwise use its existing powers under the Fair Work Act to investigate award breaches and take action prosecute contraventions.

c. No grievance mechanism

Australia lacks a national compensation/restitution scheme for victims and survivors of modern slavery.

The official support services for victims and survivors of modern slavery are contingent on their participation in the criminal justice system. Even if they participate, if a case cannot be raised, then the victim and survivor is unable to remain on the support program. They lose access to legal support and other social support services.

In understanding the human rights definition of an adequate grievance mechanism, as defined under the UN Guiding Principles on Business and Human Rights, the role of the Union in the Ethical Clothing Australia accreditation program is one of the most effective grievance mechanisms available to exploited workers in the local textile, clothing and footwear industry.

Even if a business opts out of the program, the Union can draw on existing powers under the Fair Work Act to remediate for loss of wages and entitlements, including prosecuting.

Subsequently, as Australia strengthens its responses to situations of modern slavery, this should be considered a very strong grievance mechanism.

d. Cutting off suppliers

The OASC states that there has been a move away from “cutting off suppliers” when non-compliant. While this is true and necessary in the context of transnational or offshore supply chains to support business operations to develop in (predominantly) Global South countries, this statement is problematic and misunderstands the legal framework which underpins the Ethical Clothing Australia accreditation program.

As a joint business-union and industry initiative, the program has been designed to be collaborative. This means that any non-compliance a business has in their in-house operations or within their supply chain is remedied and/or resolved. It is only in circumstances where a business or a supply chain member has refused to remedy the issue that they are forced out of the supply chain and/or de-accredited. This is because they are operating unlawfully and have refused to rectify this issue to become compliant with Australian workplace laws. They cannot maintain the accreditation if they are legally non-compliant with domestic laws. This approach has been endorsed by the ACCC’s consistent authorisation of the ECA Code of Practice

e. OASC to go and talk to outworkers

Building trust and rapport with outworkers takes a long time. While they are an incredibly at-risk cohort of workers, we do not consider it appropriate for the OASC to do this work. This statement seems to misunderstand the complexities of the intersecting forms of discrimination outworkers face and the risks they face in their work and community. The OASC going and talking to outworkers may in fact increase risks they face, as the people engaging in exploitative labour practices find new ways to execute this exploitation.

f. Declining Union membership

The Ethical Clothing Australia accreditation program is able to support workers irrespective of whether they are a union member or not. Given the low wages and the demographic profile of a large proportion of workers in the industry, some workers remain fearful of unions due to union status in their country of origin, including so called ‘yellow unions’, or an absence of established unions in their country of origin or because they may know or have even experienced persecution for being a member of a union. Many workers remain unaware of the role the unions play in Australia and the legal and independent status they have. This is another reason why the Ethical Clothing Australia program is required as it provides an avenue for non-unionised workers to have their voices heard and breaches remedied, irrespective of their union status.

Further to this, additional protections are provided to the most at risk workers through the outworker outreach program, which again, while funded, can support outworkers irrespective of whether they have a union membership.

5 Relationship between Ethical Clothing Australia and the state of NSW

In the late 90's (and before and arguably still to this day), there were high rates of exploitative labour practices in the local industry across Australia. At the time, NSW had a much larger local industry, and the rates of exploitation reflected this.

It was because of the high rates of exploitation that all parties – industry, unions and businesses wanted solutions to address the issues. Unions wanted workers protected, and businesses who were doing the right thing wanted transparency and a way to set them apart from businesses who were profiting from exploitation. At the time, an enormous amount of time and energy was put into addressing this in states across Australia by the different stakeholders. Ethical Clothing Australia was established during this time, and NSW also legislated *the Industrial Relations (Ethical Clothing Trades) Act 2001* which made provisions for: (1) the establishment of the Ethical Clothing Trades Council; and (2) the issuing of the Ethical Clothing Trades Extended Responsibility Scheme (20025) (i.e. the mandatory code).

The NSW Scheme was designed to encourage businesses, including retailers, to become a signatory to or become accredited to the e Ethical Clothing Australia voluntary Code of Practice. All of these frameworks had the shared goal of addressing exploitation in the local clothing industry and more poignantly, to protect outworkers who were overwhelmingly being exploited.

The Governance Committee for Ethical Clothing Australia has always been known as the Homeworker Code Committee, reflecting the fact that we were established to protect outworkers. At the time, the trading name for the organisation was the “No Sweatshop Label”. We rebranded in 2010. The Code of Practice, which businesses sign onto was, up until 2018, known as the Homeworker Code of Practice. In 2018, with the renewed ACCC authorisation, this was changed to the Ethical Clothing Australia Code of Practice. In the Act and Scheme referred to above, the Homeworker Code of Practice is the Ethical Clothing Australia Code of Practice.

Given this background, Ethical Clothing Australia governance body, the Homeworker Code Committee has founding members located in NSW. This includes Business NSW (known at the time as Australian Business Limited trading as Australian Business Chamber), the Council of Textile and Fashion Industries of Australia Limited (now known as the Australian Fashion Council), Australian Industry Group (AiG), businesses with local operations and supply chains as well as the Textile, Clothing and Footwear Union of Australia.

It is our understanding that, despite some activity in the years after being legislated, the NSW Scheme and the Act were never fully operationalised to achieve the Scheme's important objectives. In this context, the Ethical Clothing Australia accreditation program acted as the co-regulatory framework to try and address exploitative labour conditions in NSW. It could be reasonably assumed, given the NSW Scheme seems to have been inadequately enforced, that businesses with operations in NSW did not see the need to adhere to the existing laws to protect outworkers, which has resulted in low levels of voluntarily take up of the Ethical Clothing Australia accreditation program.

Further to this, and as noted above, the TFIA, now known as the Australian Fashion Council, and who were a founding member of Ethical Clothing Australia campaigned against Ethical Clothing Australia in 2010 to remove our federal funding. They were successful with their campaign. This

resulted in them being removed from the Homeworker Code Committee (Board) and a number of very difficult years for Ethical Clothing Australia to survive. The Victorian government stepped in at this point and provided funding to Ethical Clothing Australia, and continues to do so to this day. Given the AFC are headquartered in NSW, there has always been an additional barrier for growth in NSW.

It is believed that AFC and some of their members continue to support the idea that principal businesses should not have responsibilities to ensure their supply chain is compliant with relevant Australian workplace laws, despite their legal obligations to do so.

It is important to note that the above position is not held by all members of the AFC, and further, some AFC members are also accredited with Ethical Clothing Australia, and are strong supporters for the work we do.

Further information about the relationship between Ethical Clothing Australia and NSW can be found in the supplementary evidence provided by Vivienne Wiles from the CFMEU-Manufacturing Division.

Appendix A: Ethical Clothing Australia Code of Practice

The Ethical Clothing Australia Code of Practice can be found [here](#).