ADDITIONAL INFORMATION FOR THE COMMITTEE

At the Committee hearing on 7 June 2024, the Committee Deputy Chair asked the following question to the witness Igor Nossar:

"Ms JENNY LEONG: Thank you, Mr Nossar, for taking us through all of that. I wanted to focus a little bit on and follow up on the question from the Chair around the idea of how we might extend the powers of this. I particularly question where we have any accountability or responsibility for ensuring that this is being utilised. I think we would all agree that there are still outworkers and workers that are being exploited that are not covered and protected by what is this code and this scheme in New South Wales and beyond. **My question goes to three parts**. **The first is** that it's all well and good to say that there are certain individuals within the trade union movement who have moved on or experts in the area, but **who in government is supposed to be responsible for this? Where is the department, the people and the accountability that sits within government to ensure that this is functioning as it should have been? The second part of that question is where is the accountability in terms of whether it is being adhered to, used and applied and where do you think that should sit?"** (Bold type added.)

The above questions from the Committee Deputy Chair relate to governmental responsibility for the operation of the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) [For the purposes of this document, the Ethical Clothing Trades Extended Responsibility Scheme 2005 (NSW) will henceforth be referred to as "the TCF Mandatory Code".]

In order to answer these two (2) questions, it is first necessary to understand the fundamental goals of the TCF Mandatory Code – along with its relationship to other key legislative instruments and multi stakeholder initiatives. The TCF Mandatory Code was explicitly designed to aid compliance with outworker protections provided by **all relevant industrial awards – in particular, any federal clothing award** such as the *Textile, Clothing Footwear and Associated Industries Award 2020*. (See the definition of **"relevant industrial instrument"** – and the reference to "other legislation" – within Clause 5, Definitions, of the TCF Mandatory Code.) [For the purposes of this document, the *Textile, Clothing Footwear and Associated Industries Award 2020* will henceforth be referred to as "the TCF Federal Award".]

More specifically, the TCF Mandatory Code was explicitly designed to ".....prevent avoidance of.....industrial instruments with respect to.....outworkers.....within New South Wales....." (such as the TCF Federal Award).

The TCF Federal Award was itself developed in order to overcome substantial obstacles which faced vulnerable clothing workers attempting to obtain their legally required minimum pay and working conditions. The following analysis explains how the TCF Mandatory Code was designed to build on these TCF Federal Award developments.

Problems of Avoidance of Legal Regulation:
Fifty years ago, the Australian government's removal of tariff barriers against overseas imports resulted in a change from factory-based clothing manufacturing to an industry of interlocking pyramidal contracting arrangements and workforces heavily composed of outworkers. At the apex of these contractual chains, the 'effective business controllers' of these supply chains – a small number of commercially dominant retailers – typically entered into arrangements for the supply of clothing products with principal manufacturers and/or fashion houses. These principal manufacturers and fashion houses then contracted production from multiple smaller manufacturers or offsite contractors. In some instances, these production orders were successively handed down through a sequence of intervening parties until the goods were finally constructed by an outworker. The finished goods were then delivered back up the contractual chain to the original principal manufacturer or fashion house.

Each step down the pyramid involved an increasing number of commercial players, each of which exerted a lesser degree of commercial influence over the supply chain than those on the step above them. At the base were clothing outworkers, with little influence over their working conditions. The commercial power of major retailers enabled them to secure favourable terms (price, quality control and turnaround time), proactive rights of inspection for quality control and exacting indemnity provisions in their contractual arrangements with principal manufacturers, whether domestic or international. These arrangements gave the retailers considerable legal authority to intervene actively into key aspects of the operation of their supply chains, so that in the past major retailers have presided over contractual arrangements providing them with quickly produced, quality clothing and high profit margins - derived at the expense of outworkers who were sufficiently distant (in a legal sense) from the retailers to minimise the retailers' legal liability for workers' pay and conditions. [In the absence of government intervention, contractual 'governance structures' of this kind have rarely, if ever, provided effective protections for outworkers].

During the previous century, clothing outworkers' working conditions were predominantly regulated by federal and state (industry-specific) industrial award provisions, which were established by industrial tribunals (usually to cover employees).

This traditional labour law framework suffered from three systematic deficiencies limiting the effective regulation of working conditions for clothing workers - and for clothing outworkers in particular.
First, the traditional regulatory framework displayed an 'entitlement gap', because it generally only covered 'employees' directly employed by an 'employer' under a 'contract of employment'. In response to this feature of the traditional framework, clothing work providers sought to minimise their exposure to regulation by formally characterising outworkers as 'independent contractors', or even sometimes as 'trust unit holders', rather than as 'employees'. Such corporate structuring arrangements also enabled employers to avoid (or minimise) worker compensation insurance premiums (and to manipulate claims).

State and territory parliaments responded to these issues by inserting deeming provisions in workers' compensation and some state industrial relations and WHS statutes. These provisions assigned legal responsibilities and obligations of an 'employer' to parties that immediately and directly dealt with outworkers, who then became the 'deemed employees' of those work providers.
In the clothing industry, however, the majority of the direct work providers to outworkers were small commercial entities (with limited commercial power and resources to meet their labour law obligations). These entities tended to be transient, and outworkers were frequently unable to initiate and complete legal proceedings (for enforcing obligations or recovering debts) before these providers exited the industry. In addition, the use of strategies such as falsified business records, shelf companies and complex group company structures protected these entities from traditional enforcement proceedings.

The use of these strategies for evading the operation of awards and deeming provisions reveals the second deficiency of traditional regulatory frameworks – even workers who were formally protected found the mechanisms for enforcement to be inadequate. Government inspectorate regimes were traditionally designed for permanent employees, usually located at large workplaces. Inspectors were often confused about business responsibilities to subcontractors and other precarious workers under award provisions, a problem exacerbated by inadequate resourcing of government industrial inspectorates. Where there were complex subcontracting arrangements, inspectors struggled to identify the relevant employer, or otherwise determine the employment status of particular parties. In addition, inspectors had difficulty locating isolated, easily mobile home-based workers. Regulatory oversight was thus inhibited by workers' relative 'invisibility'. **Effective enforcement of minimum legal standards for vulnerable workers in supply chains requires regulators to be able to locate all work sites in a chain, so that they can physically inspect premises, check documentary records and determine the conditions under which each individual worker labours.**

The final systemic regulatory deficiency arose from the absence of any formal legal obligation upon the major retailers at the apex of the supply chains. Traditionally, retail sale activity fell outside the jurisdictional scope of clothing industry manufacture, and thus outside the scope of clothing trades awards, especially in the Commonwealth system. This deficiency provided an economic context in which parties further down the supply chain (IE below the level of the major retailers) could only survive commercial pressures by reducing their costs, often through non-compliance with their labour law or WHS obligations.

Following campaigns by trade unions and community groups highlighting these issues, the federal industrial tribunal inserted innovative provisions into the federal clothing award in 1987/1988, enabling union and government regulatory agencies to track the contracting process from the level of principal manufacturers down, through each successive level of the supply chain, down to the outworkers themselves. The award required each employer who gave out clothing work to proactively provide a list of the destinations (both identity and location) of their garment manufacture work. Each employer was to provide the required list every six months and was also required to keep a record of the sewing time for each clothing product. The award provisions also empowered regulatory agencies to access records of work orders (most importantly, the number of goods ordered – known as "**volume**") and to crosscheck the validity of the assigned sewing time for each type of goods (by conducting time tests in comparable factory contexts). [All of these innovative award obligations applied to every business at each level of the supply chain from the principal manufacturers and fashion houses downwards.] Any failure to provide this information was automatically a breach of industrial law. [These award provisions were later supplemented (in 1995) by a federal industrial tribunal decision giving regulatory agencies access to contract details of pricing (for each of the goods ordered) at each level of the contracting process (known as "**value**") from the level of principal manufacturers downwards.] These new award provisions were soon incorporated into the counterpart state clothing awards in a number of state jurisdictions.

However, these new award provisions (in 1987/1988) failed to impose any enforceable obligations upon the most significant players in the clothing supply chains: the major retailers at the apex of the contracting chain pyramid. The "first tier" suppliers to these major retailers were the principal manufacturers and fashion houses, who were now each bound (by the new award provisions) to disclose (to the regulators – including the union) the "volume" of work being given out (by each of these principal suppliers) through further sub-contracting down the supply chain. But there was no ability for regulators to determine whether these principal suppliers were **fully** disclosing (to the regulators) the **full** volume of the work being given out (further down the supply chain) UNLESS the regulators could also cross check with information from the major retailers about the full amount of work ORDERED (from the "first tier" principal suppliers) by the MAJOR RETAILERS (as disclosed in the retailer supply contracts with the principal manufacturers and fashion houses). In short, the ability of the regulators to successfully implement the novel award provisions was considerably restricted in the absence of additional parallel obligations (upon the major retailers) for full contractual disclosure (of their retailer supply contracts) and the provision of regular supplier lists.

Furthermore, without full contractual disclosure (to the regulators) of retailer supply contracts, it was impossible for the regulators to determine whether the retailer contracts provided the retailers' "first tier" suppliers with sufficient contractual payment in order to ensure that all of the workers who ultimately performed the relevant work could receive their legally required minimum pay and working conditions. [For the purposes of this document, this specific issue about sufficient contractual payment will henceforth be referred to as an issue of "contract quantum adequacy".]

IN SUMMARY
PREVENTION OF AVOIDANCE **ONLY BY**:
(*) HARNESSING OF RETAILER CONTRACTUAL ARRANGEMENTS in order to
- **TRACK DOWN** ALL
LOCATIONS OF WORK
AND
NUMBERS AND IDENTITIES OF WORKERS AT EACH SUCH LOCATION
AND
- **TRACK** ALL SUB CONTRACTING ARRANGEMENTS down through all tiers of supply chain
IN ORDER TO ENSURE CONTRACT QUANTUM ADEQUACY for each level of the supply chain

AND
(*) **CROSS CHECKING**
- ALL CONTRACTUAL AND SUB CONTRACTING ARRANGEMENTS in order to ENSURE REGULATOR KNOWLEDGE ABOUT THE
VOLUME OF CONTRACTED PRODUCTION HANDLED BY EACH COMMERCIAL ENTITY within each level of the supply chain [to PREVENT each commercial entity FROM CONCEALING THE EXTENT OF FURTHER SUB CONTRACTING by each such commercial entity]
AND
- VALUE OF EACH CONTRACT ORDER [IN ORDER TO ENSURE CONTRACT QUANTUM ADEQUACY for each level of the supply chain]
AND
CROSS CHECKING
-WORK RECORDS FOR EACH WORKER at each such location IN ORDER TO ENSURE THAT **PRODUCTION OF EACH WORK ORDER** IS **ACTUALLY PERFORMED AT** THE DISCLOSED **LOCATION**
AND
- WORK RECORDS FOR EACH WORKER at each such location IN ORDER TO ENSURE THAT each worker is officially receiving minimum legal standards of pay and [**BY REGULATOR INSPECTION AT DISCLOSED LOCATION**] working conditions
AND ALSO IN ORDER TO ENSURE THAT these working/employment records for each (disclosed) individual worker are accurate [EG: **BY** the trade union **REGULATOR DIRECTLY COMMUNICATING WITH** each such disclosed individual **WORKER** in circumstances where that worker feels safe to disclose the relevant information]

AND
(*) REGULATOR **REPORTING BACK** to retailer about any concealment / discrepancy / disclosed breach of minimum legal standard
IN ORDER TO TRIGGER
COMMERCIAL REMEDY MECHANISM implemented by retailer
SO THAT: The commercial operators [AT THE **VERY TOP** OF THE SUPPLY CHAIN] can apply the required **"COMMERCIAL REMEDY MECHANISM"** to any offending commercial operator (who is not complying with legally required minimum standards)
IN ORDER TO solve the identified compliance problem [WITHOUT UNNECESSARY DELAYS OR EXPENSE and WITHOUT ANY NEED TO RESORT TO PROSECUTION PROCEEDINGS]

THUS PREVENTING AVOIDANCE OF TCF FEDERAL AWARD. [NOTE parallel Ethical Clothing Australia (ECA) capability to achieve this kind of compliance enforcement/prevention of award avoidance – but only for (ECA)accredited businesses!]

How the TCF Mandatory Code interacts with Ethical Clothing Australia (ECA):

Before the introduction of the TCF Mandatory Code, further trade union and community campaigning responded to the glaring regulatory loophole concerning the major retailers by inducing the industry bodies representing retailers and manufacturing employers to adopt voluntary codes of practice aimed at securing entitlements for outworkers. The retailer and manufacturing employer voluntary codes were united under the single umbrella of the **Homeworkers Code of Practice (HWCP)**, but both exhibited inherent regulatory flaws. The manufacturing employer code, for example, relied upon documentary assertions by the manufacturers themselves (in the form of statutory declarations). The various versions of voluntary retailer codes adopted by the retailer representative body were even weaker – as evidenced in the 1996, 1997 and 1998 versions of the Homeworkers Code of Practice (HWCP).

By contrast, on 28 July 1995, only one major retailer (**Target** Australia Pty Ltd) adopted a different kind of voluntary retailer code. The form of voluntary retailer code agreed to by Target facilitated effective enforcement of outworker entitlements by the regulators. This **Target Code** included provisions (resembling those in the federal award) obliging this retailer to proactively provide (to inter alia the union) regular lists of suppliers - along with reactive obligations (upon this retailer) for disclosure (to the union) of all supply contracts. Most importantly, this particular voluntary retailer code of practice (adopted by Target) also created a specific commercial incentive mechanism for the effective commercial remedy of supply chain failures to comply with outworkers' entitlement obligations. More specifically, the retailer Target was obliged to designate a specific corporate officer to whom the relevant signatory trade union could bring specific instances of outworker exploitation and Target was also obliged to respond to proven instances of outworker exploitation by means of a range of commercial disciplinary measures aimed at the relevant supplier of clothing. In particular, this innovative voluntary retailer code of practice obliged the signatory major retailer Target to consider discipline of the relevant supplier by terminating the contract for supply between that retailer and that supplier, and by refusing to enter into further contracts of supply (with the offending supplier), if that supplier failed to remedy the disclosed breaches of the outworker legal protections. This kind of **Target Code** was subsequently adopted by only a handful of other effective business controllers, including Country Road, Ken Done and Australia Post.

Following the adoption of the Target Code (by Target Australia Pty Ltd), most major retailers (and their retailer representative body) failed to follow suit. Indeed, they adamantly refused to enter into the kind of voluntary arrangements required to assist regulators to achieve effective enforcement of outworker entitlements. The subsequent NSW Pay Equity inquiry conducted by Justice Glynn focused (inter alia) upon the plight of exploitation faced by outworkers (especially immigrant female outworkers). In her final report, Her Honour drew attention to the crucial role played by major retailers in the operation of modern clothing supply chains and the need for the commercial power of these retailers to be strategically harnessed in support of the necessary effort by regulators to counter such exploitation.

Trade unions and community groups (notably the Fairwear campaign) campaigned against the refusal of major retailers to accept their appropriate responsibility for combatting outworker exploitation and together these social organizations lobbied the NSW state government to remedy this regulatory loophole. In response, the NSW state government legislated the Industrial Clothing (Ethical Clothing Trades) Act 2001 NSW. [For the purposes of this document, the Industrial Clothing (Ethical Clothing Trades) Act 2001 NSW will henceforth be referred to as "the Act"].

In relation to major retailer obligations, the statutory provisions of the Act created a multi stakeholder consultation process with a fixed timetable triggering the potential exercise of ministerial statutory powers unilaterally to proclaim mandatory retailer obligations. (This multi stakeholder consultation process was conducted within the Ethical Clothing Trades Council of NSW.) [For the purposes of this document, the Ethical Clothing Trades Council of NSW [as constituted pursuant to the Industrial Clothing (Ethical Clothing Trades) Act 2001 NSW] will henceforth be referred to as "the Council".]

More specifically, the statutory provisions of the Act created a multi stakeholder consultation framework by constituting the Ethical Clothing Trades Council with a membership of seven (7) part-time members. Aside from the particular part-time member who was to be appointed as the Council's Chairperson, the Council's membership consisted of three (3) stakeholder representatives of businesses involved in domestic Australian clothing supply chains, sitting alongside three (3) other stakeholder representatives of key organizations involved in the campaign against outworker exploitation.

The Council's three (3) business stakeholder members consisted of a major retailer representative nominated by the Australian Retailers Association (ARA), New South Wales Division – along with another business member (representing inter alia a large NSW principal clothing manufacturer) nominated by The Australian Industry Group (AIG), New South Wales Branch, as well as a third business member (representing other NSW clothing manufacturers) nominated by Australian Business Limited.

The Council's three (3) other stakeholder members representing key organizations involved in the campaign against outworker exploitation consisted of a member nominated by The Textile Clothing and Footwear Union (TCFU) of New South Wales – along with another member nominated by Unions NSW and a third member (representing the Fairwear campaign) who was chosen by the relevant Minister to represent community interests. [The Council's Chairperson was chosen on the basis of that particular Council member having expert knowledge of outwork practices in the clothing trades. Indeed, the relevant Minister chose (as the Council's Chairperson) the member of the federal industrial tribunal who had personally inserted the innovative clothing supply chain provisions into the federal clothing award in 1987/1988.]

The Council's TCFU representative was Mr. Barry Tubner, the State Secretary of the TCFU NSW. The Council's Fairwear representative was Ms. Debbie Carstens, who had extensive experience and skills in relation to the issue of exploitation in the clothing industry as a result of her leading (founding) position in the organization "Asian Women at Work".

The Council's Unions NSW representative was Ms. Nancy Carl, with Mr. Igor Nossar nominated as the Council's alternative member representative of Unions NSW, and Mr. Nossar attended every meeting of the Council in that capacity.

The Council was **never intended to be a permanent ongoing** multi stakeholder representative **body**, as is revealed in the various relevant provisions of the Act [and accompanying Second Reading Speeches in the NSW Parliament]. The Council was **only ever intended to** evaluate, and **report** to the relevant Minister, **on** action (whether voluntary or otherwise) taken by **the clothing industry during the period of 12 months after the commencement of the Council's operations** to improve compliance in the industry with obligations to ensure outworkers in the clothing trades receive their lawful entitlements. [The Act's section 9, Report on implementation of ethical clothing industry practices, is especially pertinent to this point – as is section 8, Quarterly reports.] For this reason, each of the Council's members were only appointed for a strictly limited term [of no more than three (3) years].

In other words, **the Council's central objective** was the **delivery** (**to** the relevant **Minister**) **of** this particular report – known among Council members as **the twelve (12) month report** – with the explicit focus of this twelve (12) month report being "the Council's recommendations as to:
(a) whether, if a **mandatory code** were made, it would improve" such "compliance, and (b) the content and suggested penalties for failure to comply with such a code." [This twelve (12) month report was to be forwarded to the Minister as soon as practicable after the end of the twelve (12) month period.]

Furthermore, the Council's production of this twelve (12) month report was preceded (and aided) by the statutory requirement (under the provisions of the Act) for the Council's prior production of a limited series of (**preceding**) **quarterly reports** (to the Minister) about the Council's findings as to whether outworkers in the clothing trades were receiving their lawful entitlements – by (inter alia) reporting on the activities of clothing industry retailers (and manufacturers) in relation to their obligations under the (already existing) Homeworkers Code (HWCP) and **especially focusing on** the **willingness of** clothing industry **retailers to adopt** voluntary retailer agreements "such as the **Target Code**". [Under the provisions of the Act, the Minister was empowered to waive the requirement that the Council make a quarterly report for any period specified by the Minister.]

Negotiations between Stakeholder Representative Council Members:

Even before the expiry of the timetable for this multi stakeholder process, the dynamic created by these statutory provisions (and most notably by the limited timetable prior to potential proclamation of mandatory retailer obligations) rapidly produced, in the private sector, a new improved voluntary retailer code of practice – now promptly embraced by most major Australian retailers. [Mr. Nossar and Mr. Tubner and the ARA Council representative were centrally involved in the crucial negotiations for this new improved voluntary retailer code of practice.]

This new improved voluntary retailer code of practice was initially embodied in the "**NSW Retailers/TCFUA Ethical Clothing Code of Practice 2002**". [See **Appendix 1 of Submission** No. 7 provided by Mr. Nossar, Mr. Owen and Mr. Amoresano to the Committee inquiry. (For the purposes of this document, this particular submission by Nossar, Owen and Amoresano will henceforth be referred to as "the Submission".)] Within one month, this new improved voluntary retailer code of practice was also adopted at a national level in the mirror form of the "National Retailers /TCFUA Ethical Clothing Code of Practice" (see Appendix 2 of the Submission) - which shortly thereafter was subsequently signed by all the major retailers (see, for example, Appendix 3 and Appendix 4 of the Submission). [**The latest manifestation of this (nationally operative) new improved voluntary retailer code of practice currently appears as Part 2 (Retailers) of Ethical Clothing Australia's Code of Practice (incorporating the previous Homeworkers Code of Practice).** (See Appendix 5 of the Submission.)] **All of these improved voluntary retailer codes incorporate all of the key features of the 1995 Target Code**.

The multi stakeholder consultation process (within the Council) culminated in a decision by the Council to recommend that the relevant minister unilaterally proclaim mandatory retailer obligations. Most importantly, this recommendation by the Council was supported by five out of the (total of) six stakeholder organisations represented on the Council. More specifically, this recommendation of the Council was supported by the stakeholder organisation representing the major retailers on the agreed condition of a **"two tier"** arrangement whereby the TCF Mandatory Code explicitly refrains from applying its mandatory provisions to any retailer or manufacturing supplier that is signatory to – and is compliant with – the **new improved voluntary retailer code** or the (then) current manufacturer provisions of the Home Workers Code of Practice (HWCP) [which now **currently appears as Part 2 (Retailers)** in Ethical Clothing Australia's (**ECA**) Code of Practice.] The text of this recommendation could originally be found at <http://www.industrialrelations.nsw.gov.au/resources/ethicalclothingtcouncil.pdf> under the title 'New South Wales Ethical Clothing Trades Council (Twelve Month Report) 2003' as 'Recommendation One' from pages 36 to 52. [These five (5) stakeholder representatives on the Council agreed that Mr. Nossar should draft this recommendation – including all of the provisions of a fully developed proposed mandatory code – on behalf of this overwhelming majority of the Council members.]

This majority recommendation of the Council [as contained in the 'New South Wales Ethical Clothing Trades Council (Twelve Month Report) 2003'] was later effectively adopted by the relevant ministers and the resulting mandatory retailer obligations were proclaimed by order in gazette as a delegated legislative instrument entitled the "Ethical Clothing Trades Extended Responsibility Scheme" (the TCF Mandatory Code). This legislative instrument took effect in New South Wales on 1st July 2005. Attention is particularly drawn to the legal obligations owed by retailers (to the relevant trade union) by virtue of clauses 11, 12(3), 12(4), and 20 – especially 20(8).

The TCF Mandatory Code **"two tier"** approach exempting compliant retailer ECA signatories from the application of the TCF Mandatory Code provisions has completely transformed the practical enforceability of the ECA provisions. Failure, by either retailers or suppliers, to comply with the "voluntary" ECA provisions now incurs the full application of the entire mandatory code regime, which is tougher in the scope – and severity – of the obligations imposed and is also enforceable in court with substantial financial penalties upon conviction. (See Appendix 9 of the Submission.) Thus, by one instrument or the other, all national Australian retailers are now compelled to provide details of their clothing supply contracts to NSW and union regulators.

Therefore, in essence, the TCF Mandatory Retailer/Supplier Code and the ECA Code of Practice are in no way competitor regulatory regimes – they are effectively complementary to each other.

In addition, it is most important to note the highly significant cross jurisdictional application of the TCF Mandatory Retailer/Supplier Code. (See Appendix 13 of the Submission.) As a result of this cross jurisdictional feature, the benefit provided by the TCF Mandatory Code as an incentive in favor of the ECA Code of Practice cannot be simply assessed by solely referring to the number of ECA accredited manufacturers in NSW. In other words, the TCF Mandatory Code has operated in such a way that interstate suppliers of clothing products to NSW retailers have also been induced into ECA accreditation in order to avoid the operation of the TCF Mandatory Code.

In summary, therefore the **ECA** (which represents manufacturers and retailers along with the relevant union) is the **only currently existing multi stakeholder framework** which today addresses the problem of compliance with outworker legal protections – and even then only in relation to ECA signatory/accredited businesses. The TCF Mandatory Code is not a multi stakeholder initiative – rather, it is a regulatory compliance mechanism (empowering the relevant union and government department) designed to interact together with both the TCF Federal Award and the ECA multi stakeholder framework to prevent avoidance of legal minimum standards for outworkers.

The TCF Mandatory Code is currently a valid legislative instrument which can today be effectively implemented by the TCFU's successor union organization and the relevant NSW Government Department by means of exercise of their respective powers pursuant to the provisions of the TCF Mandatory Code.

In order to finally (and fully) answer the specific two (2) questions posed by the Committee Deputy Chair (in relation to governmental responsibility for the operation of the TCF Mandatory Code), it should be noted that virtually all of the expertise relating to the history and operation of the TCF Mandatory Code rests with both the TCFU's successor union organization and the three (3) co-authors of the Submission.

Accordingly, it is recommended that this body of expertise should be considered by the relevant NSW Government Department as a training resource in relation to the future operation of the TCF Mandatory Code. This reality should strongly suggest that the relevant NSW Government Department seriously consider offering a service level agreement (SLA) to the TCFU's successor union organization in order to access the cooperation and expertise of this union in relation to the future operation of the TCF Mandatory Code. [Such a proposed SLA between this union and the relevant NSW Government Department could well be informed by the existing SLA entered into by Ethical Clothing Australia (ECA) with this union (whereby this union provides the compliance services underpinning the ECA accreditation model). More specifically, such a proposed arrangement could well involve the provision of NSW Government funding to this union in order to train NSW Government Department personnel in the effective operation of their respective powers pursuant to the TCF Mandatory Code and/or to obtain expert compliance services from this union].

It is foreseen that no reason exists to reconvene the bureaucratically unwieldy multi stakeholder Council for the purpose of somehow administering the provisions of the TCF Mandatory Code – a function whose exercise the Council was never intended to engage in. Rather, any practical administration of the TCF Mandatory Code functions would preferably rest with the relevant NSW Government Department and/or this union (as would any "housing" of resources or data associated with the future operations of the TCF Mandatory Code provisions).

The **only remaining** intended **function of** the **Council is** to be reconvened for the purpose of **consultation by** the relevant **Minister prior to** that Minister "**amending or revoking**" the TCF Mandatory Code].

Any such amendment of the TCF Mandatory Code should be preferably be based on the recommendations of the TCFU's successor union organization in its submission to the Committee Inquiry (See Submission No. 2 on the Committee's inquiry website.)

After the Committee Deputy Chair had asked the two (2) specific above questions to the witness Igor Nossar (at the Committee hearing on 7 June 2024), the Committee Deputy Chair then asked him (and then later also asked Mr Luigi Amoresano) the following further questions:

"Ms JENNY LEONG: .....Then, going to those two points and then **extending it to other potential risks in other workplaces, what could we be looking at in terms of extending and expanding what was a very strong and groundbreaking intention into other areas of risk for workers in the State?** ..... Mr Amoresano, I would be keen to hear your thoughts about how we might look to extending the code to apply to other areas.....
IGOR NOSSAR: Can I follow up on that?
Ms JENNY LEONG: Mr Nossar, if you want to follow up and provide additional information on that, I am happy for you to take any of the questions that we have asked on notice and provide additional details. In that way, we can get it on record....."

The attention of the Committee Deputy Chair is accordingly drawn to the evidence given by Mr. Amoresano and Mr. Nossar to the NSW Parliament Legislative Council Social Affairs Committee Inquiry into NSW government procurement. (That Legislative Council Committee Inquiry is currently chaired by Dr. Kaine.) More specifically, the attention of Deputy Chair Ms. Jenny Leong is specifically drawn to both the written submission of Mr. Amoresano and Mr. Nossar along with the oral evidence given by both of them to that Legislative Council Committee Inquiry.

In summary, Mr. Amoresano and Mr. Nossar propose that a strategic co-enforcement regulatory oversight model be applied to NSW government procurement arrangements, whereby relevant unions are offered a suite of investigative opportunities (empowered by appropriate NSW government procurement contractual provisions).

This proposed regulatory oversight model would be progressively applied – in a "Step by Step" approach – to a succession of industries characterised by similar supply chain dynamics to those found in the TCF industry.

It Is proposed that industries should be considered for the application of this proposed strategic co-enforcement regulatory oversight model were the current operation of a specific industry poses a high risk of exploitation for vulnerable workers (within the relevant supply chain) and also imposes a high cost of that exploitation upon those workers – especially where this specific industry also poses high risks to member of the general public.

Procurement suppliers operating in the industries to which this proposed regulatory oversight model is applied would further be encouraged to develop "best practice models" jointly in conjunction with the relevant government procurement agencies and the relevant union. This kind of "two tier" approach could be embedded in government procurement contractual arrangements which favour business adopters of such "best practice models" as preferred tenderers.

This strategic co-enforcement regulatory oversight model could also be applied to contract networks other than supply chains. For example, digital platform networks involving the supply of labour by vulnerable workers could be subject to the application of parallel types of regulatory oversight model which offer regulators (including trade union regulators) the opportunity to exercise the following types of powers (and to fulfill the following types of obligations towards government procurement agencies):

IN SUMMARY:

TRACKING the flow of work down through the supply chain
IE. Full access to each successive contract (for the giving out of work) down through each level of the supply chain
[to confirm "CONTRACT QUANTUM ADEQUACY" for each level of contracting out
AND
LOCATION of each individual workplace in which the work is performed
ALONG WITH IDENTIFICATION of each individual performing the work at that location
PLUS
CROSS CHECKING for each level of the supply chain (from the very top downwards)
FIRST: whether each commercial party is accurately disclosing (to the trade union regulator) the FULL **VOLUME AND VALUE** of all of the work being given out by that commercial party (to be performed outside of the premises of that commercial party)
AND:
ALSO: Whether the working/employment records for each (disclosed) individual worker are accurate [EG: by the trade union regulator directly communicating with each such disclosed individual worker in circumstances where that worker feels safe to disclose the relevant information]
AND: Whether the number of workers disclosed by the commercial operator (at each disclosed work location) are approximately sufficient to perform all of the work [which the commercial operator's (officially disclosed) records claim to be performed at that disclosed work location]
PLUS
REPORTING BACK (by the trade union regulator) [TO THE **VERY TOP** OF THE SUPPLY CHAIN] about any failure (down at any level of the supply chain) to comply with legally required minimum standards of pay / working conditions / WHS
SO THAT: The commercial operators [AT THE **VERY TOP** OF THE SUPPLY CHAIN] can apply the required **"COMMERCIAL REMEDY MECHANISM"** to any offending commercial operator (who is not complying with legally required minimum standards)
IN ORDER TO solve the identified compliance problem [WITHOUT UNNECESSARY DELAYS OR EXPENSE and WITHOUT ANY NEED TO RESORT TO PROSECUTION PROCEEDINGS]

One example of a proposed regulatory model of this type can be found in the following scholarly publication: Nossar, I., 2020. Protecting 'Gig Economy'Workers through Regulatory Innovation: Controlling Contract Networks within Digital Networks. In *The Regulation and Management of Workplace Health and Safety* (pp. 100-122). Routledge.

MAIN SUBMISSION TO INQUIRY INTO THE PROCUREMENT PRACTICES OF GOVERNMENT AGENCIES IN NEW SOUTH WALES AND ITS IMPACT ON THE SOCIAL DEVELOPMENT OF THE PEOPLES OF NEW SOUTH WALES

Igor Nossar and Luigi Amoresano 15 March 2024

DEFINING "VALUE FOR MONEY" IN GOVERNMENT PROCUREMENT

The fundamental goal of securing **"value for money"** through government procurement can **never** justify cost reductions which are derived from (or obtained by way of) **illegality**.

Therefore, ethical government procurement practices and requirements can never encourage, condone or rely on contracting practices which profit from illegality.

Government procurement must therefore be designed around **a zero-tolerance approach to the circumvention or avoidance of legally required minimum standards of pay and conditions** for any workers throughout the supply chains performing work required to fulfill government procurement contracts.

Most especially, government procurement must be designed to **strictly avoid endangering** the health and safety of any of these workers (or any members of **the** broader general **public**).

Indeed, government procurement should preferably be aimed at promoting health (as well as appropriately treating illness and injury) in the most cost effective manner possible. (In parallel to these considerations of promoting health and appropriate treatment, government procurement should also aim at cost effective promotion of social, environmental and economic sustainability.) In these particular respects, attention is especially drawn to the insightful analysis contained in the following authoritative expert commentaries on the potential for healthcare sector procurement:

(*) Graham R., Miller F. and Moloney K. (2016) 'Value-based procurement: The tip of the iceberg', Healthcare Management Forum, 19 September. Available at: https://healthcaremanagementforum.wordpress.com/2016/09/19/value-based-procurement-the-tip-of-the-iceberg/

(*) Health Care Without Harm (HCWH) Global (2023) 'The role of the health care sector in climate change mitigation', 3 July. Available at: https://noharm-global.org/articles/news/global/role-health-care-sector-climate-change-mitigation

THE PROPOSED GOVERNMENT PROCUREMENT MODEL

Government procurement strategy, policies and contractual practices will ensure appropriate, fiscally responsible **regulatory oversight** of the provision of goods and services supplied to government.

In particular, suppliers of such goods and services – and the supply chains which perform the work required for such supply – will be contractually obliged to disclose specified details (of such supply) to nominated third party agencies with a reliable interest in ensuring that the workers performing this work receive no less than the minimum legally required standards of pay, conditions and safety.

THE PROPOSED SYSTEM OF SUPPLY CHAIN REGULATORY OVERSIGHT

Government procurement contracts with suppliers will oblige these suppliers to fully disclose (to these third party agencies) the relevant information which will enable these third party agencies to locate (and check on) all the people performing this work throughout each supplier's respective supply chains.

More specifically, these third party agencies will be contractually empowered to access those details of such supply which will enable these agencies to track and access the locations and records of this work (and the identities and numbers and remuneration of workers performing this work).

These third party agencies will be obliged to **report back** to government procurement authorities about pertinent unresolved (or persisting) breaches of relevant procurement contract conditions. (More specifically, these third party agencies will be obliged to report back about breaches of procurement contract conditions relating to minimum legally required standards of pay, conditions and safety.)

THE PROPOSED SYSTEM OF "REPORTING BACK"

These third party agencies will be empowered in this manner in order to provide government with a "low cost/no cost" mechanism of regulatory oversight over government procurement supply chains, with the third party agencies being obliged to report back to government if they uncover any relevant breaches of legally required minimum pay/conditions standards in these supply chains.

This "report back" arrangement will provide a powerful commercial incentive for each supplier to promptly remedy any such breaches (well in advance of any costly, time consuming litigation outcomes). This "report back" mechanism will also create a powerful commercial incentive for each supplier to proactively increase cooperation with these contractually empowered third party agencies in jointly creating the necessary "culture of compliance" throughout each respective supply chain performing this procurement work.

THE "STEP-BY-STEP" IMPLEMENTATION OF THIS PROCUREMENT MODEL

This regime of regulatory oversight will be trialled in pilot arrangements focused initially upon specific **Australian domestic industry sectors**, as a precursor to rolling out the regulatory oversight mechanism more widely.

These pilot trials will enable government procurement authorities – as well as the nominated third party agencies – to jointly confirm (and implement) desirable protocols for the mutually satisfactory operation of this type of supply chain regulatory oversight. Jointly agreed protocols will include procedures (and timetables) for appropriate protection of commercially sensitive information. Jointly agreed protocols will **not** constrain existing rights to pursue compliance enforcement through existing judicial avenues. (In particular, these jointly agreed protocols will **not** prohibit either the government agencies or the nominated third party agencies from pursuing compliance enforcement of minimum legal working conditions through existing judicial avenues.)

THE ROLE OF AUSTRALIAN TRADE UNIONS IN THE PROPOSED PROCUREMENT MODEL

Recent investigations have conclusively exposed the repeatedly scandalous behaviour exhibited by many private sector business operators in their dealings with government – especially various private sector firms operating in the overlapping commercial sectors of consultancy and accountancy.

In the case of many of the "Big Four" firms (and many of their business competitors), numerous intractable conflicts of interest have plagued their supply of services to government authorities – resulting in massive costs, expenses and delays imposed on those same government authorities.

By contrast, Australian trade unions clearly exhibit a strong vested interest in resisting any attempt to evade compliance with minimum labour law entitlements. Accordingly, these trade unions are the obvious candidates to be contractually authorised as the nominated third party monitors of compliance with labour law minima throughout supply chains supplying government procurement contracts. (Australian trade unions could exercise this role simultaneously with the granting of parallel supply chain regulatory oversight powers to government public sector agencies.)

EXAMPLES WHERE AUSTRALIAN INDUSTRIES HAVE ALREADY CONTRACTUALLY AUTHORISED RELEVANT TRADE UNIONS TO ACT AS NOMINATED THIRD PARTY MONITORS OF COMPLIANCE WITH LABOUR LAW MINIMA THROUGHOUT CONTRACT NETWORKS (SUCH AS SUPPLY CHAINS):

(*) NSW Retailers / TCFUA Ethical Code of Practice Agreement, 2002
(*) National Retailers / TCFUA Ethical Clothing Code of Practice Agreement
(*) National Retailers / TCFUA / David Jones Ethical Clothing Code of Practice Agreement (2002)
(*) National Retailers / TCFUA / Coles Myer Stores Ethical Clothing Code of Practice Agreement (2002)
(*) National Retailers / TCFUA / Big W (A Division of Woolworths) Ethical Clothing Code of Practice Agreement (2002)
(*) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Nike Australia Pty Ltd (2003)

(*) (Transnational Supply Chains) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Reebok Australia Pty Ltd (2003)
(*) (Transnational Supply Chains) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and RM Williams
(*) Kaine, S. and Rawling, M., 2019. Strategic 'Co-enforcement'in supply chains: The case of the cleaning accountability framework. *Australian Journal of Labour Law*, *31*(3), pp.305-334. In particular, see pp. 323-324.
(*) Star Track Express Sydney Branch Enterprise Bargaining Agreement November 2002 – November 2005 [ENTERPRISE AGREEMENT NO: EA04/43]. In particular, see clause 27.0, Chain of Responsibility.
(*) Toll Group – TWU Enterprise Agreement 2013-2017 at cl. 33 and 45 and at Part E. In particular, see clause 33, Site inductions, and clause 45, Fleet operators, at subclause 45.1, Engagement of Fleet Operators, and at subclause 45.3, Compliance, and at subclause 45.4, Consultation, and especially at subclause 45.5, Notification and reporting. Also, in particular, see Part E, FREIGHT CARTAGE AGREEMENT CLAUSES [especially at subclause 1.Records Audit, and also at subclause 1.Compulsory Induction Training].
(*) Nossar, I. and Amoresano, L., 2019. Delivering "safe rates" in today's road transport supply chains. *International Transport Workers' Federation (ITF)*, *20*. In particular, see pp. 11-12.
(*) Nossar, I. "The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications", Keynote Presentation to 'Better Health and Safety for Suppliers', International Labour Organisation Workshop in Toronto, Canada, 17 April 2007. [THIS PAPER IS REPRODUCED IN FULL AS AN APPENDIX TO THIS SUBMISSION.] In particular, see p.15. THIS PAPER ALSO DESCRIBES EXAMPLES OF AUSTRALIAN INDUSTRIES WHOSE CONTRACTING PRACTICES HAVE BEEN LEGISLATIVELY REGULATED TO AUTHORISE RELEVANT TRADE UNIONS TO ACT AS NOMINATED THIRD PARTY MONITORS OF COMPLIANCE WITH LABOUR LAW MINIMA THROUGHOUT CONTRACT NETWORKS (SUCH AS SUPPLY CHAINS). In particular, see Annexure A, "N.S.W. ETHICAL CLOTHING TRADES EXTENDED RESPONSIBILITY SCHEME" at section 5 (definition of "authorised person") and section 12(3) and section 20(8) and at SCHEDULE 2 – PART A (especially at "UNDERTAKING AS TO THE EMPLOYMENT OF OUTWORKERS UNDER RELEVANT AWARD: TO BE COMPLETED IN RESPECT OF CLOTHING PRODUCTS MANUFACTURED TO RETAILER'S SPECIFICATIONS"). Also, in particular, see Annexure B; "N.S.W. TRANSPORT INDUSTRY – CASH – IN – TRANSIT (STATE) AWARD" at clause 27, Contract Work – Chain of Responsibility (especially at subclause 27.6). Also, in particular, see Annexure C: "N.S.W. OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (LONG DISTANCE TRUCK DRIVER FATIGUE) REGULATION 2005" at clause 81B, Duty to Assess and manage fatigue of drivers, and at clause 81C, Duty of consignors and consignees to make inquiries as to likely fatigue of drivers, and at clause 81F, Records [especially at subclauses 81(1) and (2) and (5) and (6)].

PARALLEL DEVELOPMENT OF PROCUREMENT SUPPLIER "BEST PRACTICE MODELS"

This proposed regime of pilot trials for trade union regulatory oversight over government procurement supply chains will also create the opportunity for jointly agreed development of "best practice" models for government procurement suppliers. In particular, both government procurement agencies and those relevant trade unions responsible for coverage of the trial Australian domestic industry sectors will be able to jointly develop "best practice models" for procurement suppliers who wish to obtain a preferential status in the government procurement tender process.

Such "best practice models" will be designed to proactively reinforce a productive cooperative relationship between suppliers and their third party monitors aimed at establishing (and maintaining) a "culture of compliance" throughout the procurement supply chains.

EXAMPLES OF AUSTRALIAN INDUSTRIES WHERE SUCH SUPPLIER "BEST PRACTICE MODELS" HAVE ALREADY BEEN DEVELOPED AND IMPLEMENTED:

(*) Rawling, M.J., 2014. Cross-jurisdictional and other implications of mandatory clothing retailer obligations. *Australian Journal of Labour Law*, *27*(3), pp.191-215.

(*) Rawling, M., Kaine, S., Josserand, E. and Boersma, M., 2021. Multi-Stakeholder frameworks for rectification of Non-compliance in cleaning supply chains: The case of the cleaning accountability framework. *Federal Law Review*, *49*(3), pp.438-464.

(*) Nossar, I., 2020. Protecting 'Gig Economy' Workers through Regulatory Innovation: Controlling Contract Networks within Digital Networks. In *The Regulation and Management of Workplace Health and Safety* (pp. 100-122). Routledge. In particular, see pp.106-112 at "Australia's Model of Social Protection through Supply Chain Regulation".

(*) Johnstone, R., McCrystal, S., Nossar, I., Quinlan, M., Rawling, M. and Riley, J., 2012. Beyond employment: The legal regulation of work relationships. The Federation Press. In particular, see pp.159-162 at *"Supply Chain Regulation"*.

(*) Star Track Express Sydney Branch Enterprise Bargaining Agreement November 2002 – November 2005 [ENTERPRISE AGREEMENT NO: EA04/43]. In particular, see clause 27.0, Chain of Responsibility.

(*) Toll Group – TWU Enterprise Agreement 2013-2017 at cl. 33 and 45 and at Part E. In particular, see clause 33, Site inductions, and clause 45, Fleet operators, at subclause 45.1, Engagement of Fleet Operators, and at subclause 45.3, Compliance, and at subclause 45.4, Consultation, and especially at subclause 45.5, Notification and reporting. Also, in particular, see Part E, FREIGHT CARTAGE AGREEMENT CLAUSES [especially at subclause 1.Records Audit, and also at subclause 1.Compulsory Induction Training].

STANDARDISED GOVERNMENT PROCUREMENT CONTRACT PROVISIONS

All of the above mentioned **features of the proposed** government procurement **model** (**along with contractual authorisation for** the **operation** of these features of the proposed model) should be incorporated into the contractual provisions of all relevant government procurement arrangements.

EXAMPLES OF RELEVANT MODEL CONTRACTUAL CONDITIONS:

(*) NSW Retailers / TCFUA Ethical Code of Practice Agreement, 2002. In particular, see cl.3, 4, 5 and 6.
(*) National Retailers / TCFUA Ethical Clothing Code of Practice Agreement. In particular, see cl.3, 4, 5 and 6.
(*) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Nike Australia Pty Ltd (2003). In particular, see cl.4.7 and 6.
(*) (Transnational Supply Chains) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Reebok Australia Pty Ltd (2003). In particular, see cl.1 "Australasia", 4.7 and 6.

(*) Nossar, I. "The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications", Keynote Presentation to 'Better Health and Safety for Suppliers', International Labour Organisation Workshop in Toronto, Canada, 17 April 2007. [THIS PAPER IS REPRODUCED IN FULL AS AN APPENDIX TO THIS SUBMISSION.] In particular, see p.15. THIS PAPER ALSO DESCRIBES EXAMPLES OF AUSTRALIAN INDUSTRIES WHOSE CONTRACTING PRACTICES HAVE BEEN LEGISLATIVELY REGULATED TO AUTHORISE RELEVANT TRADE UNIONS TO ACT AS NOMINATED THIRD PARTY MONITORS OF COMPLIANCE WITH LABOUR LAW MINIMA THROUGHOUT CONTRACT NETWORKS (SUCH AS SUPPLY CHAINS). In particular, see Annexure A, "N.S.W. ETHICAL CLOTHING TRADES EXTENDED RESPONSIBILITY SCHEME" at section 5 (definition of "authorised person") and section 12(3) and section 20(8) and at SCHEDULE 2 – PART A (especially at "UNDERTAKING AS TO THE EMPLOYMENT OF OUTWORKERS UNDER RELEVANT AWARD: TO BE COMPLETED IN RESPECT OF CLOTHING PRODUCTS MANUFACTURED TO RETAILER'S SPECIFICATIONS"). Also, in particular, see Annexure B; "N.S.W. TRANSPORT INDUSTRY – CASH – IN – TRANSIT (STATE) AWARD" at clause 27, Contract Work – Chain of Responsibility (especially at subclause 27.6). Also, in particular, see Annexure C: "N.S.W. OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (LONG DISTANCE TRUCK DRIVER FATIGUE) REGULATION 2005" at clause 81B, Duty to Assess and manage fatigue of drivers, and at clause 81C, Duty of consignors and consignees to make inquiries as to likely fatigue of drivers, and at clause 81F, Records [especially at subclauses 81(1) and (2) and (5) and (6)].

(*) Nossar, I., 2020. Protecting 'Gig Economy' Workers through Regulatory Innovation: Controlling Contract Networks within Digital Networks. In The Regulation and Management of Workplace Health and Safety (pp. 100-122). Routledge. In particular, see pp.106-114 at "Australia's Model of Social Protection through Supply Chain Regulation" and also at "Lessons from Australia's Model of Supply Chain Regulation". Also, in particular, see pp. 118-120 at "Conclusion".

(*) Star Track Express Sydney Branch Enterprise Bargaining Agreement November 2002 – November 2005 [ENTERPRISE AGREEMENT NO: EA04/43]. In particular, see clause 27.0, Chain of Responsibility.
(*) Toll Group – TWU Enterprise Agreement 2013-2017 at cl. 33 and 45 and at Part E. In particular, see clause 33, Site inductions, and clause 45, Fleet operators, at subclause 45.1, Engagement of Fleet Operators, and at subclause 45.3, Compliance, and at subclause 45.4, Consultation, and especially at subclause 45.5, Notification and reporting. Also, in particular, see Part E, FREIGHT CARTAGE AGREEMENT CLAUSES [especially at subclause 1.Records Audit, and also at subclause 1.Compulsory Induction Training].

POTENTIAL TRIAL AUSTRALIAN INDUSTRY SECTORS

One potentially strategic pilot trial for this proposed government procurement model might focus upon the supply (to government agencies) of a single chosen category of Australian manufactured goods. This type of pilot trial would offer the opportunity to test (and develop) the proposed model for procurement of both goods **and** services. For example, such a pilot trial could involve trade union regulatory oversight **both** of the **manufacturing** process (of this particular chosen category of goods) **and also** of the consequential provision of **transport** services (whether the transport of components required for the manufacturing or the transport of the finished goods themselves).

POTENTIAL TRIAL OVERSEAS INDUSTRY SECTORS

Attention has already been drawn to existing contractual arrangements which have been developed in Australia to regulate supply chains extending outside Australia, such as the Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Reebok Australia Pty Ltd (2003).
There is no obvious impediment to inclusion of appropriately adopted parallel standard contractual provisions into government procurement arrangements for goods and services which originate from outside Australia.

Attention is further drawn to the existing operations of relevant Scandinavian and British public sector procurement arrangements which already incorporate parallel contractual obligations.

EXAMPLES OF RELEVANT OVERSEAS MODELS WHICH HAVE ALREADY BEEN DEVELOPED AND IMPLEMENTED:

(*) Sustainable public procurement: a collaboration between the Swedish regions. Code of conduct for suppliers, valid from 2013. Available at: https://www.regionstockholm.se/globalassets/6.-om-landstinget/hallbarhet/supplier-code-of-conduct.pdf .
(*) South-Eastern Norway Regional Health Authority. Ethical guidelines. Available at: South-Eastern Norway Regional Health Authority - Helse Sør-Øst RHF (helse-sorost.no) .
(*) Jaekel, T., Swedwatch, S.A. and Santhakumar, A., 2015. Healthier procurement: improvements to working conditions for surgical instrument manufacture in Pakistan. *Stockholm: Swedwatch & British Medical Association*.

(*) Bhutta, M.F., 2017. Time for a global response to labour rights violations in the manufacture of health-care goods. *Bulletin of the World Health Organization*, *95*(5), p.314.

EXAMPLES OF PROPOSED RELEVANT MODEL CONTRACTUAL CONDITIONS:

(*) Nossar, I. “The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications”, Keynote Presentation to ‘Better Health and Safety for Suppliers’, International Labour Organisation Workshop in Toronto, Canada, 17 April 2007. [THIS PAPER IS REPRODUCED IN FULL AS AN APPENDIX TO THIS SUBMISSION.] In particular, see proposed ‘INTERNATIONAL ETHICAL CLOTHING SUPPLY DEED’ at pp 22-36.

CONCLUDING Q & A

Question 1: Can we effectively minimize any underpayment of wages for workers producing goods or services ultimately supplied for Government procurement?

Answer 1: Yes we can.

Question 2: What kind of regulatory system do we need to produce this kind of result?

Answer 2: When it comes to suppliers of goods and services to the Government, we need to keep these suppliers honest.
We need access to the information which allows us to check on the actual wages and conditions provided to every worker involved in creating those goods and services.
So we need the information which allows us to locate and identify every one of those workers – and to check on their real wages and conditions.
And, when that worker is not performing this work at the supplier's premises, we need a system which can reliably track where the procurement work is going – so that we can track down the locations where that work is performed and also the identities of the workers and under what conditions they perform that work.

Question 3: What would this kind of a system look like?

Answer 3: This kind of system would involve government procurement agencies imposing standardised procurement contractual provisions embodying mandatory contractual legal obligations (upon government procurement suppliers) of the type found in the legal instruments listed (or described) as follows:

(*) NSW Retailers / TCFUA Ethical Code of Practice Agreement, 2002. In particular, see cl.3, 4, 5 and 6.
(*) National Retailers / TCFUA Ethical Clothing Code of Practice Agreement. In particular, see cl.3, 4, 5 and 6.
(*) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Nike Australia Pty Ltd (2003). In particular, see cl.4.7 and 6.
(*) Star Track Express Sydney Branch Enterprise Bargaining Agreement November 2002 – November 2005 [ENTERPRISE AGREEMENT NO: EA04/43]. In particular, see clause 27.0, Chain of Responsibility.
(*) Toll Group – TWU Enterprise Agreement 2013-2017 at cl. 33 and 45 and at Part E. In particular, see clause 33, Site inductions, and clause 45, Fleet operators, at subclause 45.1, Engagement of Fleet Operators, and at subclause 45.3, Compliance, and at subclause 45.4, Consultation, and especially at subclause 45.5, Notification and reporting. Also, in particular, see Part E, FREIGHT CARTAGE AGREEMENT CLAUSES [especially at subclause 1.Records Audit, and also at subclause 1.Compulsory Induction Training].
(*) Nossar, I. and Amoresano, L., 2019. Delivering "safe rates" in today's road transport supply chains. International Transport Workers' Federation (ITF), 20. In particular, see pp. 11-12.

(*) Rawling, M.J., 2014. Cross-jurisdictional and other implications of mandatory clothing retailer obligations. Australian Journal of Labour Law, 27(3), pp.191-215.
(*) Nossar, I., 2020. Protecting 'Gig Economy' Workers through Regulatory Innovation: Controlling Contract Networks within Digital Networks. In The Regulation and Management of Workplace Health and Safety (pp. 100-122). Routledge. In particular, see pp.106-114 at "Australia's Model of Social Protection through Supply Chain Regulation" and also at "Lessons from Australia's Model of Supply Chain Regulation". Also, in particular, see pp. 118-120 at "Conclusion".
(*) Johnstone, R., McCrystal, S., Nossar, I., Quinlan, M., Rawling, M. and Riley, J., 2012. Beyond employment: The legal regulation of work relationships. The Federation Press. In particular, see pp.159-162 at "Supply Chain Regulation".

In order to maximise the provision of sufficient contractual sums to ensure the possibility of proper payment of legal minimum wages (and the provision of legal minimum labour standards) throughout the relevant contract networks (as well as the effective utilization of trade union expertise), the proposed kind of system should exhibit standard government procurement contractual provisions which incorporate most (if not all) of the elements of mandatory contractual legal obligations exhibited in the above mentioned legal instruments. Such proposed government contractual provision should also be combined with the development of government procurement tender "best practice models" based upon such successful examples as the TCFUA Supply Chain Strategy (SCS) (see Appendix 10 in the Submission) and the Cleaning Accountability Framework (CAF), as described in the following scholarly reference:
(*) Kaine, S. and Rawling, M., 2019. Strategic 'Co-enforcement' in supply chains: The case of the cleaning accountability framework. Australian Journal of Labour Law, 31(3), pp.305-334. In particular, see pp. 323-324.
The most effective arrangement for the proposed government procurement contractual arrangement might involve a two-tier relationship between the contractual mandatory legal obligations and the respective forthcoming "best practice models", as proposed by the authors of the following scholarly reference:
(*) Rawling, M., Kaine, S., Josserand, E. and Boersma, M., 2021. Multi-Stakeholder frameworks for rectification of Non-compliance in cleaning supply chains: The case of the cleaning accountability framework. Federal Law Review, 49(3), pp.438-464.
IN RELATION TO OVERSEAS SUPPLY CHAINS WHICH PROVIDE GOODS OR SERVICES TO NSW GOVERNMENT PROCUREMENT AGENCIES:
(*) Sustainable public procurement: a collaboration between the Swedish regions. Code of conduct for suppliers, valid from 2013. Available at: https://www.regionstockholm.se/globalassets/6.-om-landstinget/hallbarhet/supplier-code-of-conduct.pdf .
(*) South-Eastern Norway Regional Health Authority. Ethical guidelines. Available at: South-Eastern Norway Regional Health Authority - Helse Sør-Øst RHF (helse-sorost.no) .
(*) (Transnational Supply Chains) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Reebok Australia Pty Ltd (2003). In particular, see cl. 4.7 and 6.
(*) Nossar, I. "The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications", Keynote Presentation to 'Better Health and Safety for Suppliers', International Labour Organisation Workshop in Toronto, Canada, 17 April 2007. [THIS PAPER IS REPRODUCED IN FULL AS AN APPENDIX TO THIS SUBMISSION.] In particular, see proposed 'INTERNATIONAL ETHICAL CLOTHING SUPPLY DEED' at pp 22-36.