

Submission
No 2

INQUIRY INTO ETHICAL CLOTHING EXTENDED RESPONSIBILITIES SCHEME 2005 (NSW)

Organisation: Construction, Forestry and Maritime Employees Union
(CFMEU) (Manufacturing Division)

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CFMEU Manufacturing
Level 2, 165 Bouverie St
CARLTON VIC 3053
Freecall: 1800 060 556
ABN: 34 183 611 895

NSW PARLIAMENT – LEGISLATIVE COUNCIL

MODERN SLAVERY COMMITTEE

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

SUBMISSION OF THE

**CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION
(MANUFACTURING DIVISION)**

(28 February 2024)

CFMEU (Manufacturing Division)	Contact Person: Vivienne Wiles Senior National Industrial Officer	Address: Level 2, 165 Bouverie Street Carlton VIC 3053	Tel: Email: industrial@cfmeumd.org	
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Dr Joe McGirr MP
Committee Chair
Modern Slavery Committee

By email: modern.slavery@parliament.nsw.gov.au

Dear committee members,

Thank you for the opportunity to provide a submission to the Modern Slavery Committee regarding the Inquiry into the *Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)* (**NSW Mandatory Code**).

INTRODUCTION

1. The Construction, Forestry and Maritime Employees Union - Manufacturing Division (**CFMEU-MD, We or Union**), and formerly the Textile, Clothing, and Footwear Union of Australia (**TCFUA**) prior to amalgamation¹, has played and continues to play a crucial role in representing the rights and interests of workers in the textile, clothing and footwear industry (TCF industry), including TCF outworkers. For many decades the Union has consistently advocated for reforms (both in awards and in legislation) which aim to comprehensively regulate supply chains in the TCF industry, thereby addressing systemic exploitation in the sector, particularly in relation to outwork.
2. The TCFUA was central to the development of the NSW Mandatory Code in the early 2000's and strongly advocated for the passage of the *Industrial Relations (Ethical Clothing Trades) Act 2001* (**ECT Act 2001**) and the NSW Mandatory Code made pursuant to it. The NSW Mandatory Code was rightly seen by the NSW Parliament at the time as a necessary tool in a suite of legislative and award protections required to effectively regulate the giving out of work in the clothing industry in NSW.
3. The Union acknowledges that there have been a number of relevant developments since the passage of ECT Act 2001 and the making of the NSW Mandatory Code, including:
 - the passage of the *Fair Work Act 2009* (Cth) (**FW Act**);
 - the referral by the NSW government of the majority of its industrial relations powers to the Commonwealth government, operative 1 January 2010. However, relevantly, the NSW

¹ The Textile, Clothing and Footwear Union of Australia (TCFUA) amalgamated with the CFMMEU as part its newly formed Manufacturing Division in March 2018.

Government's capacity to legislate about matters relating to outwork are preserved under section 27 (1)-(2) of the FW Act.

- the creation of modern awards under the FW Act, the majority of which commenced operation on 1 January 2010.²

4. Despite these changes to the federal statutory framework, we submit there remains utility in the retention of the NSW Mandatory Code. The Inquiry currently before the Modern Slavery Committee, is timely in considering what changes to the NSW Mandatory Code are necessary to ensure that it continues to meet its critical objectives, including its potential to mitigate risks of modern slavery in the clothing manufacturing industry in NSW (discussed further below).

TERMS OF REFERENCE OF THE INQUIRY

Clause 1 of the Terms of Reference of the Inquiry provide:

1. *That the Modern Slavery Committee inquire into and report on the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) (the Scheme) and its potential to mitigate the risks of modern slavery in the clothing industry in New South Wales, and in particular:*
 - (a) *The characteristics of the textiles, clothing and footwear (TCF) manufacturing industry in New South Wales, in particular:*
 - (i) *the size of the TCF industry including the numbers of outworkers*
 - (ii) *the number of workers in the TCF industry and their employment status*
 - (iii) *the demographic profile of workers in the TCF industry, including their gender, migration status and the language spoken at home and their workplace*
 - (iv) *the lived experience of workers in the TCF industry*
 - (v) *the nature and complexity of supply chains in the TCF industry*
 - (vi) *the risks of modern slavery present in the TCF industry*
 - (vii) *the extent of participation by different parts of the TCF industry in alternative voluntary codes*
 - (viii) *the nature and pattern of reporting of exploitation, abuse or modern slavery in the TCF industry.*

² The modern award made by the former AIRC for the TCF industry was the *Textile, Clothing Footwear and Associated Industries Award 2010*, operative 1 January 2010. The award has since been amended and is currently titled, the *Textile, Clothing Footwear and Associated Industries Award 2020*

SIZE OF & NUMBER OF WORKERS IN THE TCF INDUSTRY

5. In the Union's experience attempts to accurately capture the size of the general TCF industry in Australia, let alone NSW, are notoriously difficult. Understandably, reliance on ABS, Census and labour force data is traditionally used as a snapshot of the scale of the TCF industry including numbers of employees and businesses. However, in our submission, there are serious limitations to the traditional data sets typically used as they relate to the TCF industry, with respect to the characterisation/description of the TCF industry and the numbers of workers engaged within its multiple sectors.
6. The questions asked of respondents in the 5 yearly Australian census typically facilitate a self-selection process as regards job title or role potentially resulting in unknown numbers of workers in the TCF industry not being counted. For example, workers who would normally be considered to be 'in the TCF industry' as they undertake associated or ancillary roles to direct manufacturing, such as warehouse or para retail positions may not be counted. Previous reports on the TCF industry have variously estimated that the industry, as broadly understood, is up to twice the size of what is indicated by ABS census data.
7. More specifically, and of direct relevance to this Inquiry, outworkers in the TCF industry are almost uniformly mischaracterised in ABS data as not being employees, but rather considered contractors or 'sole businesses. This self-evidently operates to skew the total employment figures for 'employees' in the TCF industry nationally.
8. As part of this submission, we are not in a position to provide data to the Inquiry regarding the size of the TCF industry and its workforce specifically for NSW. However, we are able to provide a snapshot (subject to the significant qualifications outlined above) of the size and employment numbers of the TCF industry in Australia, based on research undertaken by the Union in 2021 for a proceeding in the Fair Work Commission (FWC).³
9. In the FWC matter, the Union filed evidence based on utilisation of the ABS on-line tool called 'Table builder' to construct tables of Census data relevant to the TCF industry nationally (based on 2016 ABS Census data within ANZSIC subdivision 13 – Textile, Clothing and Footwear Manufacturing, within Division C – 'Manufacturing'). In addition, further analysis was undertaken based on the ABS Publication 8165.0 Counts of Australian Businesses (Entries and Exits, FY 2016 to FY June 2021).

³ (AM2021/54) Casual Terms Award Review; Submission by the CFMEU-Manufacturing Division, including witness statement of Paris Nicholls – see link here: [Submission and witness statements \(fwc.gov.au\)](https://www.fwc.gov.au/submissions/AM2021-54-Casual-Terms-Award-Review)

10. The Union's data analysis based on the above identified, amongst other things, that nationally in the FY 2021:

- approximately 40,700 employees were employed in the TCF industry;
- the majority of employees in the TCF industry are women (58%);
- the TCF industry is ethnically and linguistically diverse;
- a language other than English is spoken at home by a significant number of TCF industry employees (nearly 45%);
- there are low levels of year 12 school education attainment (46%) amongst employees in the TCF industry;
- the TCF industry workforce is ageing (nearly 50% over the age of 50);
- the great majority of employees in the TCF industry (who work for an employing business) work for a small employer (less than 19 years) (90%);
- there is a significant number of part-time employees in the TCF industry (33%), noting the ABS data did not appear to distinguish between part-time employment and casual employment.

11. From the Union's long-standing knowledge and understanding, NSW has the second largest TCF industry in size and scale after Victoria. Since the early 20th century New South Wales has been a significant hub for the textile clothing and footwear (TCF) manufacturing industry.

CHARACTERISTICS OF THE TCF INDUSTRY

12. The TCF manufacturing industry in Australia (including NSW) encompasses a diverse range of sectors, including textile production, clothing manufacturing, and footwear production. These sectors operate in a range of settings, extending from factory-level production to work performed at home by outworkers. There is also a growing 'sweatshop' sector where workers labour under typically poor wage and health and safety conditions. There is also a significant but largely hidden outwork sector.

13. The industry sits within broader TCF supply chains. TCF supply chains (the clothing sector in particular) characteristically include cascading levels of workers with increasingly lower rates of pay for each level down the chain. These supply chains are often extremely complex, with large fashion houses or TCF brands at the top, numerous contractors operating as intermediaries and concluding in the systemic practice of outsourcing work to outworkers and requiring them (as a condition of obtaining work) to establish a "business" as an independent contractor.

14. The demographic of the TCF workforce is one characterised by a relatively high percentage of workers from a culturally and linguistically diverse (CALD). Workers across this sector come from a range of

backgrounds but are predominantly, migrants/refugees, women, and many have limited English language and written literacy skills. Of particular relevance to this inquiry is that work which is performed by outworkers. The profile of the TCF workforce has traditionally reflected the makeup of the migrant and refugee populations. In the last 20-25 years, this includes a significant percentage of workers of Vietnamese, Chinese, Timorese, Korean origin, and more recently from various African nations.

15. The TCF industry is highly award dependent and low paid. Even in workplaces with enterprise agreements in operation, wage rates tend to be very modest, such that many workers covered by agreements remain low paid compared to many other industries and sectors. The low rate of enterprise bargaining in the industry reflects the minimal bargaining power of workers covered by and reliant on awards.
16. Safety net wages and conditions in the TCF industry is persistent and widespread. As part of its day to day organising and compliance activities, the CFMEU-MD regularly uncovers breaches of award provisions, for example, in relation to hourly rates of pay, overtime and penalty rates, annual leave entitlements and unpaid superannuation. Health and safety conditions are often poor and employee records are typically incomplete or inadequate making it difficult to undertake straightforward compliance audits.

PATICULAR CHARACTERISTICS OF THE TCF OUTWORK

17. The nature of TCF outwork in Australia and the factors contributing to outworker exploitation have been extensively documented in Australia since the 1980s by government inquiries into the garment industry and research reports by academics, civil society, community organizations and the union.⁴
18. In addition, industrial tribunals and courts have also acknowledged that TCF outworkers (also known as homeworkers), as a class of worker, face particular vulnerabilities, including being subject to widespread sham contracting, underpayment of minimum statutory wages and conditions, excessive working hours and poor workplace health and safety conditions. This form of vulnerability occurs in

⁴ See for example:

- TCFUA; *The Hidden Cost of Fashion*: Report of the National Outwork Information Campaign (March 1995)
- Senate Economics Reference Committee Report on 'Outworkers in the Garment Industry' (1996)
- Cregan, C; *Home Sweat Home: Preliminary Findings of the first stage of a two-part study of outworkers in the textile industry in Melbourne, Victoria*; University of Melbourne (2001)
- Ethical Clothing Trades Council; *Outworkers' Lawful Entitlements Compliance Report* (2004)
- Brotherhood of St Lawrence (Diviney, E & Lillywhite, S); *Ethical Threads – Corporate Social Responsibility in the Australian Garment Industry* (2007)
- Cregan, C and Johnston, P; *Wages and Conditions of Outworker in the Clothing Industry (Part 1)* (June 2014); and Cregan, C and Johnston, P; *Wages and Conditions of Outworkers in the Clothing Industry (Part 2)* (December 2016)

context of the nature of the working arrangement itself (that is, outworkers working from home or other non-traditional business premises), the complexity of TCF supply chains in Australia (typically long and operating both vertically and horizontally), and the common demographic profile of many outworkers in the sector (predominantly female, migrants and refugee women). As a consequence, industrial tribunals have consistently determined that outworkers in the TCF require additional, and outwork specific legislative and award protection.⁵

19. Outworkers can be engaged at any point or level in a TCF supply chain, including being directly engaged by the principal/fashion house or by a second-tier maker or at the bottom of the chain by a last line subcontractor. Outworkers, play a significant role in the TCF industry in NSW perform various tasks such as sewing, cutting, and finishing garments or textiles from their own homes. The phenomenon of clothing sweatshops is also a feature of the TCF industry It is relevant too, that TCF outworkers are known to move between outwork and sweatshop work (and back again) when work is slow or stops for periods of time.
20. Further, outworkers are extremely unlikely to report instances of exploitation due to the insecure and hidden nature of their work. This reluctance is due to a complex range of factors but includes for example, that often the employer/direct engager/subcontractor is the outworker's sponsor in Australia or is otherwise a prominent person in the outworker's community. Alternatively, their employer may commonly also own the house where the outworker is living or have lent them money. Further, the outworker may not be an Australian citizen, have permanent residence or hold a valid work visa and is fearful of deportation if they make a complaint about their work wages and conditions. In the Union's long experience, outworkers' fear losing work from the entity or person who engages them if they speak or seek assistance, is very common.
21. These particular vulnerabilities, as noted above, give rise to exploitation and abuse of TCF outworkers as a specific cohort of worker. They also combine to represent a risk of what would be understood to be a form of modern slavery in the industry alongside other deprivations of liberty including forced marriage and enslaved labour. However, in the Union's experience, outworkers would typically be very reluctant to disclose such a situation unless they had complete and unconditional trust in the person or organisation they were disclosing to.

⁵ For example, important Federal courts decisions include:

- *Re: Clothing Trades Award 1982* [1987] 19 IR 416
- *Re: Clothing and Allied Trades' Union of Australia v J. and J. Saggio Clothing Manufacturers Pty Ltd* [1990] FCA 279
- *TCFUA v Lotus Cove Pty Ltd* [20014] FCA 43
- *TCFUA v Southern Cross Clothing Pty Ltd* [2006] FCA 325
- *TCFUA v Morrison Country Clothing Pty Ltd (No 2)* [2008] FCA 1965

Lived experience of outworkers

22. The following are illustrative statements provided by two outworkers to the Union (pseudonyms are used in lieu of actual names). They represent a small but representative glimpse at the lived experience of outworkers in NSW:

Lou's Story

Lou contacted the Union to get information about her rights at work. It was identified that Lou had been working for a company for several years, however, the company had not included this worker on their FWC BOR registration or the subsequent BOR forms that are required quarterly under the Textile, Clothing, Footwear and Associated Industries Award 2020.

Lou was paid per piece; the work consisted of the making of skirts and dresses. On average two garments were completed per hour, and she received a payment of \$3 - \$7 per each garment depending on the style.

This was below the hourly TCF Award rate of pay; Lou should have received the hourly Award rate of pay. There was no arrangement for set hours of work.

The payment for the work undertaken was paid to Lou 2-3 weeks after the completion of the work. Lou did not receive accruals for annual leave and personal carers leave. No payment of superannuation was made on her behalf into a nominated Super fund.

Lou told the Union that she had been working sporadically - at times working long hours and needing to work on Saturday and Sunday to complete the order, but at other times it would be weeks without work.

This meant that she was living on her credit card during the low periods and paying back when work was provided. The long hours impacted her family life, with the responsibility of running the home,

preparation of meals and childcare responsibilities meant that she would be working long into the night.

Jenny's Story

Jenny arrived in Australia approximately 30 years ago. She worked in a takeaway cafe to make ends meet, until she became pregnant with her daughter. As she still needed to earn money, a family member connected her to a person that gave her work to sew at home.

She did not have good sewing skills at this stage and spent long hours fixing mistakes that she was not paid for. She was receiving on average \$1 - \$3 per hour for this work. Over time she taught herself and became highly skilled which increased her rate per garment to \$5 per hour on average. She was pleased with this as she was not aware of her rights to an hourly rate of pay at this time.

During this time her daughter was diagnosed with autism and to help provide services for her daughter much more money was needed. Jenny would take any work that was available, work long hours, whatever was required to bring extra money into the household. Also, with caring responsibilities for her daughter it meant that her working hours were whenever she was able to sew around her daughter's needs.

At an Asian Women at Work event, Jenny got the opportunity to speak with the Union and told the union of her story. Jenny received low rates per piece for the work she was sewing. She did not receive any lawful entitlements including superannuation or leave. Jenny then went on to speak to others within her community so that they too could share their stories and receive assistance from the Union.

Extent of participation by different parts of the TCF industry in alternative voluntary codes

23. The primary voluntary code for the TCF industry in Australia is the Ethical Clothing Australia's Code of Practice, including Homeworkers (**ECA Code of Practice**)⁶ administered by Ethical Clothing Australia (**ECA**)⁷ with governance provided by the Homeworkers Code Committee Inc. (**HWCC Inc**). The HWCC Inc.

⁶ Formerly known as the Homeworkers Code of Practice. The name was changed as part of the ACCC Determination process in 2018 – see ACCC Final Determination issued 30 August 2018.

⁷ [Ethical Clothing Australia | Buy Ethical, Buy Local](#)

is constituted under registered Rules of Association and has equal 50% union and industry representation.

24. ACCC Determinations were provided to the HWCC Inc. in relation to conduct under the ECA Code of Practice (as renamed) in July 2018 (Interim Determination) and August 2018 (Final Determination).⁸ In short summary, the ACCC Determination provides legal protection to the HWCC Inc. in order to achieve the following enabling purpose:

'The Code assists businesses in the textile, clothing and footwear industry in Australia to ensure compliance with the legislative requirements applying to homeworkers or outworkers by providing education and imposing obligations on participants in the supply chain to provide award wages and conditions.

Businesses under the code are able to promote their credentials to consumers by displaying the Ethical Clothing Australia license mark and trade mark. Businesses may be audited under the Code and boycotts can be imposed on businesses which do not observe their legal requirements. A form of the Code has been authorised by the ACCC since 2000.

*On 30 August 2018 the ACCC released a determination re-authorising the proposed conduct until 21 September 2028.'*⁹

25. Relevantly, ACCC authorisation with respect to the Homeworkers Code of Practice/ECA Code of Practice has been consistently applied since approximately 2001.
26. We understand that ECA intends to lodge its own submission to this Inquiry. However, in summary, the ECA Code of Practice was, and remains a joint union/industry initiative established formally in 2021 with the aim of increasing award and legal compliance regarding workers' rights and entitlements, including with respect to outworkers.
27. The HWCP is grounded on an internationally recognised accreditation model underpinned by a rigorous compliance process with respect to TCF products manufactured in Australia. By seeking accreditation, TCF manufacturers/businesses commit to having their entire (domestic) supply chain audited for compliance with the relevant modern award (TCF Award), superannuation obligations and workplace health and safety.¹⁰

⁸ ACCC Determination issued 30 August 2018 – see link : [AA1000418 - Homeworkers Code Committee Incorporated - Final Determination - 30.08.18 - PR.pdf \(acc.gov.au\)](#)

⁹ Summary extracted from the ACCC website with respect to the Determination for the ECA Code of Practice - [Homeworker Code Committee Incorporated | ACCC](#)

¹⁰ [Steps To Accreditation | Ethical Clothing Australia](#)

28. In doing so, the achievement of ECA accreditation status for a business, signals to both the TCF industry, consumers and state and federal governments (with respect to procurement policies and practices) that the particular accredited business is operating ethically with respect to workers' wages and conditions in its supply chains. At the time of preparing this submission, there were over 116 TCF businesses accredited with the HWCP (Manufacturers Code).¹¹ ECA's accreditation program and associated functions are currently supported financially by the Victorian and federal governments.
29. It is significant that the ECT Act 2001¹² was intentionally designed in such a way, that failure to comply with the NSW Mandatory Code by a particular TCF industry participant was not a contravention if it was established that the :
- 'the person being a signatory to, or accredited under, the Homeworkers Code of Practice and acting in compliance with that Code.'*¹³
30. That is, in practical terms, the NSW Mandatory Code applies to a TCF industry participant as defined¹⁴ (retailer, supplier, contractor, sub-contractor etc.) unless the particular TCF participant is otherwise accredited, or a signatory to, the voluntary HWCP. We can see that the clear intention here is to encourage TCF businesses/participants to seek voluntary accreditation with the HWCP, rather than be bound by the NSW Mandatory Code. The Union considers that this approach, in policy terms, remains sound. It sends a clear signal to the TCF industry (individually and as an important sector in the NSW economy) to take initiative and direct responsibility for ensuring that TCF supply chains are transparent and ethically based.
31. As is apparent from the above, ECA's voluntary accreditation scheme for the TCF industry is now well established having now been in operation for over 20 years. It is anticipated that with the recent funding from the federal government, the reach of the ECA Code of Practice will expand and attract more TCF businesses seeking accreditation as part of their commitment to an ethical and sustainable TCF industry in Australia.

The current application of the Scheme in NSW

¹¹ [Find An Ethical Manufacturer | Ethical Clothing Australia](#)

¹² See Section 11(4) *Industrial Relations (Ethical Clothing Trades) Act 2001*

¹³ Clause 8(1)(e), Ethical Clothing Trades Extended Responsibility Scheme

¹⁴ Clause 5 (Definitions), Ethical Clothing Trades Extended Responsibility Scheme

32. It is important to recognise that the NSW Mandatory Scheme sits within the broader federal legislative and regulatory regime regulating the TCF industry. Vital reforms were made to the federal statutory framework by the *Fair Work Amendment (Textile, Clothing and Footwear Industry) 2012* (Cth) (**TCF Reform Act 2012**) which amended the FW Act to include a suite of enhanced protections for TCF outworkers.¹⁵ These reforms, in summary, included the following:

- extending the operation of most of the provisions of the FW Act to TCF contract outworkers;¹⁶ (i.e., deeming contract outworkers to be employees for certain purposes under the FW Act);
- providing a mechanism for outworkers to recover unpaid amounts up the supply chain (i.e., against entities other than the direct employer/engager);¹⁷
- extending TCF industry specific union right-of-entry powers to TCF “sweatshop” premises;¹⁸
- enabling the government to issue a national TCF outwork code of practice.¹⁹

33. Section 789EA confirms that Part 6-4A is not intended to exclude or limit the operations of a law of a State or Territory (including an instrument made under a State or Territory law) to the extent that the law or instrument relates to outworkers and is capable of operating concurrently with Part 6-4A of the FW Act.²⁰

34. Notably, whilst the capacity to issue a federal TCF outwork code of practice remains in the FW Act, one has not been made by the federal government since it was legislated for in 2012. It is within the context of these reforms and as a result of the lack of a national code of practice, that the strength, enforceability and existence of a NSW Mandatory Code which seeks to protect outworkers from exploitation becomes deeply necessary. The NSW Mandatory Code seeks to meet this evident necessity but has been unsuccessful due to a number of limitations within the current scheme particularly in relation to compliance and enforcement.

35. The objectives of the NSW Mandatory Code are:

(2) *The Code will:*

¹⁵ See Part 6-4A (Special Provisions About TCF Outworkers) of the *Fair Work Act 2009* (Cth). For a more detailed understanding of the history and operation of these provisions see WEIGO Organizing (Law) Brief No 14: *Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector* (August 2023) (Wiles, V and Macpherson, E) – link here: [wiego-organizing-brief-no.14.pdf](https://www.wiego.org.au/wp-content/uploads/2023/08/wiego-organizing-brief-no.14.pdf)

¹⁶ Ibid; Part 6-4A (Division 2) – TCF contract outworkers taken to be employees in certain circumstances

¹⁷ Ibid; Part 6-4A (Division 3) – Recovery of unpaid amounts

¹⁸ Ibid; Part 3-4 (Subdivision AA) – Entry to investigate suspected contraventions relating to TCF Award

¹⁹ Ibid; Part 6-4A (Division 4) – Code of practice relating to TCF outwork

²⁰ Ibid; section 789EA

- (a) aid in monitoring the use of outworkers in the manufacture of clothing products for retail sale within New South Wales; and*
- (b) prescribe practices and standards that will aid in compliance with, and prevent avoidance of, the Clothing Trades (State) Award and other industrial instruments with respect to the engagement and performance of work by outworkers in the supply of clothing products for retail sale within New South Wales; and*
- (c) prescribe reporting practices and conduct to prevent the use of legal structures and other commercial arrangements as a means of avoiding the payment of remuneration and other lawful entitlements to outworkers in the clothing trades; and*
- (d) facilitate and compliment initiatives by the Government of New South Wales to prevent circumvention of laws regarding the employment conditions of outworkers in the clothing trades; and*
- (e) complement and encourage compliance with the Homeworkers Code of Practice by signatories to that code.*

36. In summary, the provisions of the NSW Mandatory Code impose obligations on retailers in regard to their sale of domestically manufactured TCF products. The Code promotes accountability for suppliers, contractors, sub-contractors, and transferees involved in the production process. By extending responsibility to retailers and thus comprehensively throughout the supply chain the scheme aims to uphold fair labor practices and protect vulnerable workers in the TCF industry in NSW, in particular clothing sector outworkers.

37. Through this framework, the NSW Mandatory Code seeks to promote transparency at all levels of the supply chain and enhance accountability and ethical conduct within the clothing industry in NSW, fostering a fair and sustainable environment for all stakeholders involved.

Enforceability of the NSW Mandatory Code

38. However, in the Union's understanding and experience, the provisions of the NSW Mandatory Code have been left relatively unenforced for an extended period of time and little has been done to ensure compliance with its obligations. This is unfortunate given the original consideration and commitment to drafting the terms of the NSW Mandatory Code and its potential to reduce exploitation of clothing workers, particular outworkers in the TCF industry in the state.

39. Relevantly, alongside the federal legislative regime and the NSW code, the CFMEU Manufacturing Division performs a vital role in ensuring compliance with legislative instruments within the TCF industry. The union has a discrete compliance team which includes both Compliance and Outwork Outreach Officers (bilingual) supported by Industrial/Legal officers employed by the union.
40. Compliance and Outwork Outreach Officers through community-based relationships promote knowledge by outworkers of their rights and encourage safe reporting practices of breaches of legislative instruments. Further, the Union is a founding member of the HWC Inc. and works in collaboration with ECA to support the objectives of ECA and the ECA Code of Practice.

RECOMMENDATIONS

41. It remains the Union's view, that the NSW Mandatory Code is an important regulatory instrument in principle, but it falls short when it comes to practically ensuring compliance with its terms.
42. We submit the NSW Mandatory Code should be retained and strengthened in the following respects. Some of the proposed changes are minor amendments to update references etc. Other recommendations are more substantive in form and go to addressing the compliance underpinning that needs to occur if the NSW Mandatory Code is to achieve its key objectives.
- (a) Amend the references to 'the Homeworkers Code of Practice' where it appears in the NSW Mandatory Code to reflect the changed name (resulting from the ACCC Determination in 2018) to 'Ethical Clothing Australia's Code of Practice, including Homeworkers' (**ECA Code of Practice**).
 - (b) The 'Ethical Clothing Australia's Code of Practice, including Homeworkers' (**ECA Code of Practice**) to continue to be the named alternative voluntary Code by which a TCF participant covered by the NSW Mandatory Code can be exempted from complying with its obligations, subject to that participant:
 - (i) being a signatory to, or accredited under the ECA Code of Practice; and
 - (ii) acting in full compliance with the ECA Code of Practice.
 - (c) Amend references to the 'TCFUA' where it appears in the NSW Mandatory Code to reflect the changed name of the federal registered employee organisation which represents employers in the TCF industry the CFMEU-Manufacturing Division (or any legal successor).

- (d) Extend the provisions of the NSW Mandatory Code beyond the clothing industry in NSW to the TCF industry more broadly in NSW.
- (e) Effective referencing to both the relevant State Award and the applicable federal modern award, the *Textile, Clothing, Footwear and Associated Industries Award 2020* (TCF Award) to ensure that the framework of the NSW Mandatory Code applies to all TCF industry workers across NSW at risk of abuse and exploitation.
- (f) Amendment of the NSW Mandatory Code to require a database of TCF manufacturers operating in NSW who use outworkers in their supply chains and to ensure companies who manufacture for retailers are compliant with all relevant award and legislative requirements.
- (g) Consideration be given to funding the CFMEU- Manufacturing Division be funded to ensure compliance with the NSW Mandatory Code through its Compliance and Outwork Outreach Officers.
- (h) The Committee should further consider what other protections the NSW government has the capacity to introduce which ensures that TCF work being imported into Australia is manufactured in a manner consistent with the aims of the Code and the provisions of the *Modern Slavery Act 2018* (NSW).

CONCLUSION

43. The CFMEU-MD hopes that this submission assists the Committee in its deliberations in this important Inquiry of specific relevance to the TCF industry in NSW. We would welcome the opportunity to support this submission with a further oral presentation should the Committee has any questions or requires any further information with respect to its contents.

**Lodged on behalf of the
CFMEU-Manufacturing Division**

**Jenny Kruschel
TCF National Secretary
CFMEU-Manufacturing Division**

*NSW Legislative Council, Modern Slavery Committee
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Vivienne Wiles
Senior National Industrial Officer
CFMEU-Manufacturing Division

(29 February 2024)