

Submission  
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## INQUIRY INTO ETHICAL CLOTHING EXTENDED RESPONSIBILITIES SCHEME 2005 (NSW)

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# Submission

Parliament of New South Wales  
Modern Slavery Committee

Inquiry on the Ethical Clothing Extended  
Responsibilities Scheme 2005 (NSW)

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We appreciate the opportunity to engage with the Modern Slavery Committee on the Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) (the Scheme). This submission draws on industry data, literature, and regulatory frameworks to highlight the Scheme's continuing relevance in mitigating labour standards non-compliance within New South Wales's textile, clothing, and footwear (TCF) industry.

## The TCF Industry

The industry comprises 7,727, predominantly small businesses: 26% of TCF businesses employ between 1 to 19 employees, and a 55% of businesses generate less than \$200,000 annually.<sup>1</sup> The industry employs 5,985 workers in NSW alone, although the number of workers in the industry is likely severely underestimated.<sup>2</sup> Data show that 28% of TCF workers clock in more than 39 hours a week.<sup>3</sup> The TCF workforce is predominantly female and highly culturally and linguistically diverse: nearly half of TCF trade workers born outside the country. Of these, the largest groups are from Vietnam (20%) and China (9%).<sup>4</sup> 38% of workers speaking a language other than English at home. The sector also faces challenges with English proficiency, as 11% of the workforce report speaking English less than very well or not at all.<sup>5</sup>

The TCF industry is characterised by 'fissured' business structures consisting of hierarchical contractual relationships and labour arrangements predominantly involving the engagement of workers as subcontractors rather than as employees, which denies them protections under employment law. At the top of this structure are 'lead firms', that is, a few large retailers who wield significant commercial power, establishing supply agreements with main manufacturers or fashion brands. These primary entities then subcontract work to a cascade of smaller manufacturers or external contractors.

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<sup>1</sup> 'Microdata and TableBuilder | Australian Bureau of Statistics' (8 November 2021), <https://www.abs.gov.au/statistics/microdata-tablebuilder> (accessed 26 February 2024).

<sup>2</sup> Textile Clothing and Footwear Union of Australia, *Submission: Productivity Commission Review into the Workplace Relations Framework* (2015).

<sup>3</sup> 'Census of Population and Housing | Australian Bureau of Statistics' (15 February 2022), <https://www.abs.gov.au/statistics/detailed-methodology-information/concepts-sources-methods/labour-statistics-concepts-sources-and-methods/2021/methods-four-pillars-labour-statistics/household-surveys/census-population-and-housing> (accessed 26 February 2024).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

Major retailers use their dominant position to negotiate advantageous terms, such as pricing, quality assurance, and swift production times, ensuring their ability to actively oversee the supply chain's operations. This control has historically allowed retailers to achieve high profit margins by producing quality garments quickly at the cost of the outworkers, who are legally distanced enough from the retailers to limit the latter's liability for the workers' compensation and working conditions.<sup>6</sup>

## Working Conditions in the TCF Industry

The landscape of employment is often marked by instability. Workers in the TCF industry have expressed a clear preference for permanent positions, which offer both security and consistency. Workers are often casually employed and long periods of unemployment or underemployment are common.<sup>7</sup> The industry is characterised by low wages that are typically dependent on awards.<sup>8</sup> It is not uncommon for workers to receive less than the legal minimum award, with many not fully compensated for overtime, public holidays, or casual loading.<sup>9</sup>

Fear of reprisal is another shadow cast over many workers in the TCF industry. Workers are often hesitant to voice their concerns or assert their rights to legal wages due to the fear of losing their jobs or facing workplace hostility.<sup>10</sup> Older migrant women, in particular, feel trapped due to perceived limited employment opportunities or alternative skills.<sup>11</sup> These factors would be compounded for those who face various barriers such as financial constraints, language barriers, a history of unemployment or underemployment, which would form barriers to improve their working conditions.<sup>12</sup>

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<sup>6</sup> Igor Nossar, Richard Johnstone, and Michael Quinlan, 'Regulating supply-chains to address the occupational health and safety problems associated with precarious employment: The case of home-based clothing workers in Australia' (2003); Igor Nossar, Richard Johnstone, Anna Macklin, and Michael Rawling, 'Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains' (2015) 57:4 *Journal of Industrial Relations* 585–603.

<sup>7</sup> Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division), *Submission to the 'Casual Terms Award Review 2021'* (2021).

<sup>8</sup> Ibid.

<sup>9</sup> Textile Clothing and Footwear Union of Australia, *Submission: Productivity Commission Review into the Workplace Relations Framework*.

<sup>10</sup> Asian Women at Work Action Group, *Cries from the Workplace - 20 WOMEN, 20 Stories - Stories of migrant women workers in Sydney* (2008).

<sup>11</sup> Ibid.

<sup>12</sup> Justine Nolan and Martijn Boersma, *Addressing modern slavery* (University of New South Wales Press, 2019); Martijn Boersma and Justine Nolan, 'Modern slavery and the employment relationship: Exploring the continuum of exploitation' (2022) 64:2 *Journal of Industrial Relations* 165–76.

# Regulatory principles to support decent work in fissured business arrangements

Research on ‘fissured’ business arrangements such as those that characterise the TCF industry, as described above, suggests there are two core principles underpinning effective regulation to support decent work.<sup>13</sup>

First, ‘lead firms’, that is, the large commercially powerful organisations who sit at the apex of supply chains, need to be held accountable for the labour standards among their suppliers and subcontractors who lead firms rely upon to develop their products. The terms of commercial contracts established between lead firms and their suppliers and subcontractors are often a major cause of poor labour practices experienced by workers at the bottom of supply chains. Even if lead firms are not the legal employers of workers engaged by suppliers and subcontractors, extending responsibility to lead firms for labour standards will help to ensure workers at the bottom of the supply chain are afforded decent work.

Second, independent parties, such as labour inspectorates, trade unions or independent auditors, have a critical role in ensuring that contractors comply decent work principles. Contractors themselves cannot be relied upon to voluntarily report on their compliance because many have a commercial interest in non-compliance, and lead firms typically lack the capacity to enforce compliance and may also be commercially conflicted. Independent oversight of compliance with decent work principles is therefore an essential for effective regulation in industries characterised by fissured work arrangements including the TCF industry.<sup>14</sup>

## The Scheme’s Application

Due to factors outlined above, the TCF industry necessitates stringent regulatory oversight to combat potential labour standards non-compliance and worker exploitation. The Scheme was introduced as a pivotal response to widespread non-compliance with award obligations, marking a significant advancement in protecting outworkers from exploitative employment practices. The Scheme mandates transparency and accountability from retailers, suppliers, and contractors regarding outworkers’ conditions, aiming to ensure compliance with existing labour laws.

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<sup>13</sup> For example, David Weil, *The Fissured Workplace* (2014) Cambridge: Harvard University Press

<sup>14</sup> Igor Nossar, Richard Johnstone, Anna Macklin, and Michael Rawling, ‘Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains’ (2015) 57:4 *Journal of Industrial Relations* 585–603

The responsibilities primarily involve maintaining and sharing data related to clothing production and ensuring this data is available for review. Retailers are required to submit information biannually to the NSW Office of Industrial Relations regarding all their Australian clothing manufacturers and whether they employ outworkers. Additionally, suppliers are mandated to give retailers comprehensive agreements on the provision of clothing items, including specific details regarding the locations of production, any involved contractors and their details, and the use of outworkers in the clothing supply process.<sup>15</sup> These stipulations aim to enhance the visibility of the supply chains in the industry to encourage ethical conduct within the sector.

## Alignment with Existing Legislation

Despite the evolving legislative landscape, especially with the introduction of Commonwealth regulations through the Fair Work Act 2009, the Scheme remains relevant. It serves as a complementary mechanism, alongside the Textile, Clothing, Footwear and Associated Industries Award 2010, the Ethical Clothing Australia Code of Practice, and the Modern Slavery Act 2018 to protect outworkers. Each of these instruments contributes to a layered approach to combat exploitation and unethical labour practices, with the Scheme specifically focusing on responsibilities across the supply chain and the enhancement of transparency among smaller entities.

The Modern Slavery Act 2018 requires entities with annual revenue in excess of A\$150 million to report on the risks of modern slavery in their operations and supply chains, as well as actions taken to address these risks. This criterion excludes numerous smaller businesses and manufacturers, which are often integral parts of the supply chains in the textile and clothing industry and where risks of exploitation might be significant, potentially overlooking the complexities and indirect relationships that characterise these chains, especially at the lower tiers where outworkers are engaged.

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<sup>15</sup> Lachlan McKnight, 'Ethical Clothing Trades Extended Responsibility Scheme - Explained!' (15 April 2014), <https://legalvision.com.au/supplier-nsw-clothing-industry-ethical-clothing-trades-extended-responsibility-scheme-impact/> (accessed 26 February 2024).

The Scheme addresses this gap by mandating greater transparency and reporting from these smaller entities, enhancing the discoverability of non-compliance and unethical practices that might otherwise go unnoticed. This complements the broader objectives of the Modern Slavery Act by ensuring that even businesses and manufacturers not meeting the reporting threshold are subject to scrutiny regarding their labor practices. Its focus on smaller entities is crucial because these are often the points in the supply chain where exploitation is most likely to occur and least likely to be detected.

## Recommendations

### 1. Promote Supply Chain Mapping

The Scheme, with its focus on the entire supply chain from retailer to outworker, is unique in its ability to identify vulnerabilities and instances of modern slavery that Commonwealth legislation may miss. This kind of mapping is currently not mandated at the Commonwealth level for smaller entities, and thus presents a clear opportunity for state action.

### 2. Create a Supply Chain Database

A comprehensive database should be developed that captures detailed supply chain information and makes this information readily accessible. This database could serve as a crucial resource for various stakeholders, including the NSW Office of Industrial Relations, the Fair Work Ombudsman, and the (NSW) Anti-Slavery Commissioner.

### 3. Articulate Collaboration between Government Agencies

Supply chain mapping and database creation aligns with the broader NSW and Commonwealth government objective to combat modern slavery. Enhanced collaboration between agencies at NSW and Commonwealth level can directly supporting existing policy goals. State-level legislation can effectively complement Commonwealth legislation, even when direct enforcement power is limited, with effective sharing of information and resources, which can lead to comprehensive oversight and targeted action against modern slavery practices within supply chains.

## 4. Explore Extension of the Scheme

The Scheme can serve as a model for extending oversight and responsibility in other industries by laying the groundwork for enhanced transparency, accountability, and worker protection. It would be advisable to explore how other industries could benefit from increased transparency, in particular industries exhibiting similar supply chain characteristics, those that have a high risk of labour standards non-compliance and modern slavery, and industries with a high number of entities that currently do not meet the reporting threshold of the Modern Slavery Act (2018).