

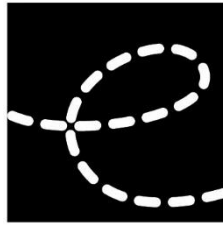
**Submission  
No 6**

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

**Organisation:** Ethical Clothing Australia

**Date Received:** 29 February 2024

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ethical  
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AUSTRALIA

# ETHICAL CLOTHING AUSTRALIA

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

THE MODERN SLAVERY COMMITTEE

February 2024

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## About Ethical Clothing Australia

Ethical Clothing Australia is a not-for-profit accreditation body which delivers a program designed to prevent exploitation of workers in the local textile, clothing and footwear industry, including outworkers. The accreditation program has been delivered since the year 2000, and ensures that Australian workers receive fair wages, all their legal entitlements and are working in safe conditions. This is achieved through an accreditation and labelling system which provides business, government, and consumers with a way to identify and support ethically made Australian Textile, Clothing and Footwear ('TCF') products.

Ethical Clothing Australia is a multi-stakeholder initiative which fosters a collaborative approach between business, industry and union. The Homeworker Code Committee Inc. ('The Committee') is the governance body overseeing Ethical Clothing Australia, and currently consists of representatives from the Construction, Forestry, Mining, Maritime, Energy Union Manufacturing Division ('CFMMEU MD'), Business NSW, Australian Industry Group, and Ethical Clothing Australia accredited businesses Blue Gum, Australian Defence Apparel and Citizen Wolf.

Ethical Clothing Australia currently has approximately 120<sup>1</sup> accredited TCF businesses. There are currently 15 accredited businesses whose head office is based in New South Wales. These businesses range from sole traders to major iconic Australian businesses producing a broad range of TCF products including uniforms, Personal Protective Equipment, first responder clothing and uniforms, defence clothing and apparel, as well as luxury fashion and everyday clothing items. In addition to Ethical Clothing Australia accredited businesses, Ethical Clothing Australia also works with approximately 218 many more compliant suppliers in the supply chain of accredited businesses. This means the scope of the Ethical Clothing Australia accreditation program goes well beyond the 120 accredited businesses.

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<sup>1</sup> This number is correct as of January 2024. Accreditation number fluctuate as new businesses get accredited and other businesses become de-accredited. In the body of the submission, we refer to 130 businesses, which is correct for the data set we were working from covering a 12 month period.

## Terms of Reference

This submission will address the following Terms of Reference of the Inquiry:

- (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 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 in 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
- (b) the current application of the Scheme in New South Wales
- (c) the conformance of the Scheme with Australia's commitment to relevant international standards and frameworks such as the United Nations Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Business Conduct
- (d) if changes are required to the current scheme to better mitigate the risks of modern slavery in the TCF industry in New South Wales
- (h) any other related matters.

## EXECUTIVE SUMMARY

The textile, clothing and footwear industry, both locally and globally, contains significant risk of products being manufactured using exploitative labour practices along the full continuum from breach of workplace laws through to products being made under conditions constituting modern slavery.

The complexity of the supply chain structure of the textile, clothing and footwear industry creates significant vulnerabilities for workers, particularly outworkers due to the nature of their working conditions and their invisibility in supply chain management and risk mitigation strategies.

Ethical Clothing Australia has been delivering an accreditation program to protect, uphold and safeguard the rights of local textile, clothing and footwear workers for more than 20 years. This program ensures local workers are paid the correct wage, receive all their legal entitlements and are working in safe conditions. The existence of the program is likely to reduce the risk of more serious forms of exploitation occurring within the industry, by ensuring a principal businesses entire supply chain is compliant, and working with businesses to remedy breaches when they occur. However, it must be noted, that this potential reduction in risk can only be applied to businesses and their suppliers who have voluntarily opted into the program.

Through an agreement with the Union, Ethical Clothing Australia also delivers an Outworker Outreach Program. This program aims to connect with outworkers, build their knowledge and awareness of their rights as well as work on building rapport with workers so they can feel comfortable disclosing any exploitative work conditions they may be subject to, providing the outreach workers the opportunity to remedy the issue, if possible.

ECA understands that the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) has not been consistently enforced since it was issued in 2005. The Scheme imposes a range of mandatory obligations on retailers and suppliers/contractors in TCF supply chains in NSW, to create transparency and to ensure that clothing workers, including outworkers receive their lawful wages and entitlements. The Scheme is also structured to encourage businesses to voluntarily sign on to Ethical Clothing Australia's voluntary Code of Practice as an alternative to being required to meet the obligations of the Scheme. This aspect of the design of the Scheme supports the TCF industry as a whole to voluntarily take active and practical steps to ensure their supply chains are ethical from the retailer down. Ethical Clothing Australia believes it is important that any policy setting in this area supports NSW businesses to become accredited with Ethical Clothing Australia and sign on to the Code of Practice.

We believe that further investment into Ethical Clothing Australia to grow the ECA accreditation program in NSW would be appropriate in support of an ethical local textile, clothing and footwear industry. Further, a policy which mandates Ethical Clothing Australia accreditation to tender for public procurement can support the NSW government in mitigating risk of modern slavery in public procurement.

## RECOMMENDATIONS

**RECOMMENDATION 1:** THAT THE NSW GOVERNMENT FUND ETHICAL CLOTHING AUSTRALIA TO GROW THE ACCREDITATION PROGRAM IN NSW TO PROTECT MORE LOCAL TEXTILE CLOTHING AND FOOTWEAR WORKERS, INCLUDING OUTWORKERS.

**RECOMMENDATION 2:** THAT THE NSW GOVERNMENT ADOPT A POLICY WHICH MANDATES ETHICAL CLOTHING AUSTRALIA ACCREDITATION AS A REQUIREMENT TO TENDER FOR PUBLIC PROCUREMENT.

### Part A: the characteristics of the textiles, clothing and footwear (TCF) manufacturing industry in New South Wales

This section will address the following Terms of Reference

- (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 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 in 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

- (i) The size of the TCF Industry including numbers of outworkers

Data pertaining to the size and scope of the local industry is difficult to establish. Ethical Clothing Australia only captures data relating to accredited businesses and their supply chain. We do not and cannot capture information on businesses which sit outside of the accreditation program. The data below is national data, unless otherwise specified.

Over the past 12 months, Ethical Clothing Australia has:

- worked with 282 individual businesses, with 9 businesses having 21 additional sites, totalling 303 individual site operations;
- of this, 130 of the businesses were individually accredited by Ethical Clothing Australia; and,
- 173 businesses were in the supply chain of an accredited businesses but were not accredited themselves.

There are currently 15 accredited businesses who's head office is located in NSW and we have two pending applications.

While we are able to provide the number of businesses located in NSW, it is important to note that the nature and complexities of supply chains in the TCF industry means that a NSW accredited businesses operations are not contained within the borders of NSW.

Additionally, our records indicate that there are 703 outworkers whom Ethical Clothing Australia has engaged with over the past year. This would be a gross under-representation of the number of outworkers we are working with, and only a small fraction of how many outworkers are working in the community. We do not have the specific number of outworkers located in NSW.

- (ii) the number of workers in the TCF industry and their employment status

Working within the operations of the 282 businesses across 303 individual sites, were 3,225 individual workers with the following employment status recorded:

- 1,846 internal full-time (this could also capture outworkers)
- 635 internal casual;
- 585 internal part-time;
- 166 Internal labour-hire workers;
- 13 fixed term contract; and,
- 3 external part-time workers (likely to be outworkers).



- (iii) The demographic profile of workers in the TCF industry, including their gender, migration status, and the language spoken at home and in their workplace

Ethical Clothing Australia does not capture migration or visa status, gender, age or language spoken for all workers we come into contact with as it is not a necessary data point to deliver the program. However, anecdotally, we can note the following:

- the industry is heavily gendered, with a recent survey indicating that 77% of workers were female.<sup>2</sup>
- It is an ageing workforce, with many workers having worked for the same business for many years.
- Workers are largely from migrant, refugee and asylum-seeking backgrounds, with some additional temporary visa holders such as people on student visas also working in the industry.
- Ethnicity and nationality mimic broader migration patterns to and within Australia. The most common nationalities found to be working in local TCF manufacturing are:
  - Vietnamese;
  - Chinese; and,
  - European backgrounds such as Italian, Greek and Turkish.

More recent migration patterns have seen an increase in people from Korean backgrounds, as well as a broad range of African nationalities.

Outworkers are overwhelmingly female and from Vietnamese backgrounds, however, there are outworkers from diverse backgrounds.

English is often an additional language rather than the primary language.

- (iv) Lived experience of workers in the TCF industry

Oftentimes, TCF workers may not be aware of their social rights, and if they are, they may not know where to turn to access a remedy, should they recognise they have or are experiencing exploitation. Like many industries, and fuelling exploitative working conditions, workers often don't speak out about issues due to fear of reprisal and potentially losing work altogether. Further, and aligning with existing knowledge and research about people experiencing exploitation, it takes time to build rapport with workers to feel safe and comfortable to disclose situations of exploitation.

The CFMMEU MD, as part of the Service Level Agreement ('SLA') to deliver the Ethical Clothing Australia accreditation program employs bi and multilingual workers to undertake the audits on accredited and applying businesses. This assists in breaking down some of the physical and psychological barriers for workers to be able to discuss concerns with their employment conditions.

Further, and unique to the TCF industry, are outworkers. Outworkers can often be invisible in the supply chain, working in isolation from their homes. Outworkers are exceptionally prone to experiencing exploitation due to the lack of visibility over the conditions in which they are employed.

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<sup>2</sup> AFC reference.

They are often incorrectly paid per piece rather than per hour as per the Textile, Clothing and Footwear and Associated Industries Award 2020 (TCFAI Award), and face unrealistic demands in getting their work done.

Again, as part of the SLA, the CFMMEU MD delivers an Outreach to Outworkers program. The purpose of the program is to build relationships and connections with outworkers across Australia to build their knowledge and awareness of their rights. The bi and multilingual team connect with outworkers through word of mouth, presenting at events, hosting events, attending community centres and community-based initiatives among other things. Due to the isolating conditions in which outworkers are employed, it is a consistent challenge to connect with outworkers.

**Case Study 1: Underpayment of Vietnamese Outworker and non-compliance with the Award**

Hoa\* received the sewing orders directly from the garment company. Kim\* who is an outworker, received sewing orders from Hoa and Kim did not know the name of the garment company.

Hoa paid Kim per product unit. Wages were paid quarterly and delivered via bank transfer.

For the unit with 1\$/pcs, she could sew 10 to 12 pieces in one hour; for the unit with 2.5\$/pcs, she could sew 4 to 5 pieces in one hour.

That meant she was paid \$10 to \$12 per hour. She did not receive any other benefits such as leave entitlements and Superannuation besides the unit price paid per garment product.

She had a notebook in which she recorded all the sewing orders she completed.

*\*Names have been changed to protect the identity of the worker.*

(v) the nature and complexity of supply chains in the TCF industry

The supply chains in the TCF industry are complex. Businesses can have in-house operations, however, they can also outsource work to another business who then may outsource this work further. In addition to this, as already noted, are outworkers, who are often far down the supply chain, and often invisible. The complexity of giving work out can make oversight of the complete supply chain of the principal business challenging. Additional suppliers are often uncovered during Ethical Clothing Australia audits. Image 1 below is an example of the supply chain in the local TCF Industry.

## Supply Chain Mapping Example

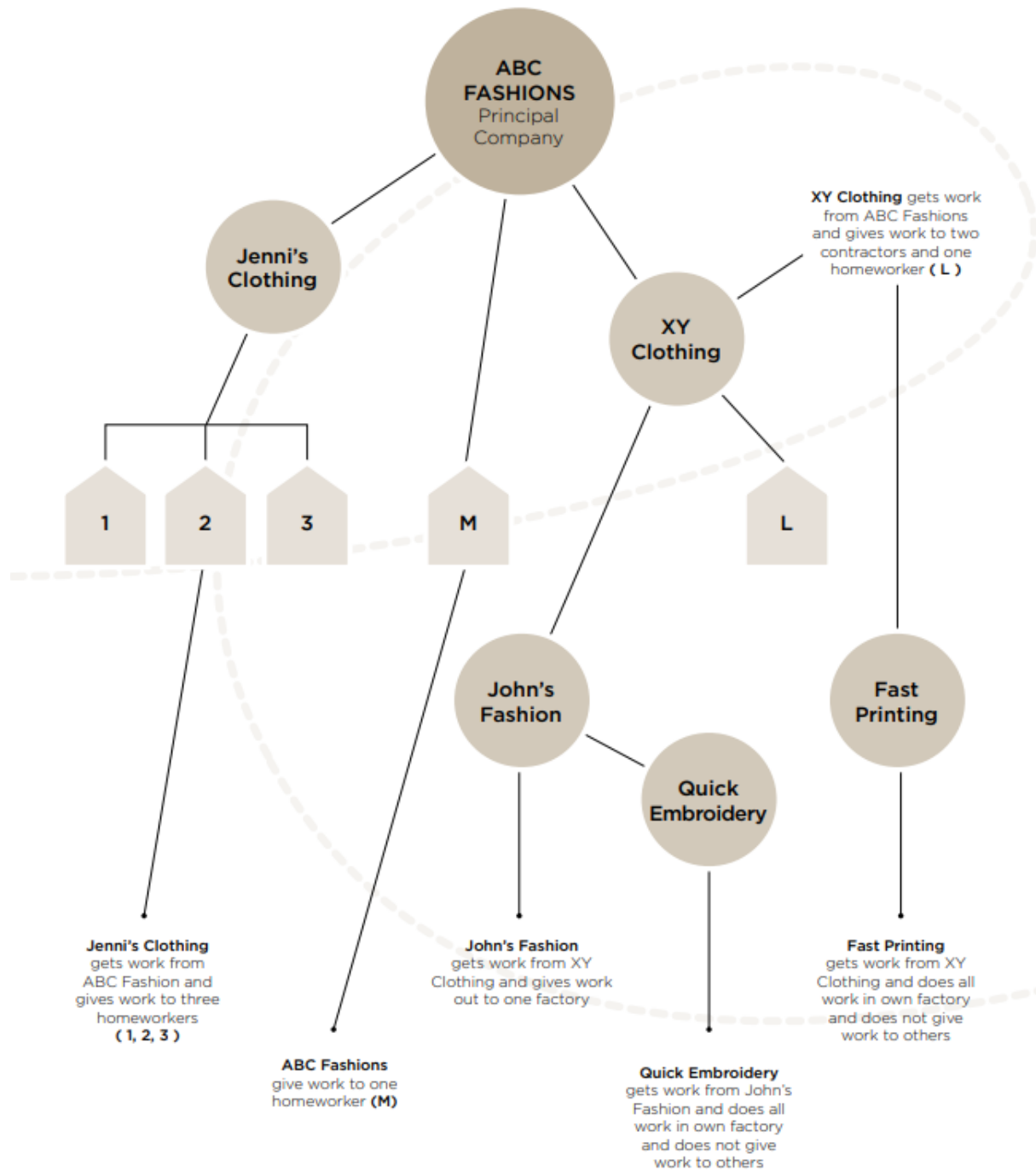


Image 1: Supply Chain Mapping Example.

(vi) the risk of modern slavery present in the TCF industry

The Ethical Clothing Australia accreditation program and associated compliance audits focus on ensuring compliance with Australian workplace laws. The remit of the CFMMEU MD under the SLA does not extend to screening of modern slavery. However, anecdotally, compliance officers have been exposed to situations which would adhere to conditions of modern slavery, however, due to risk to the worker, cannot and will not report. Currently, Ethical Clothing Australia believes there are insufficient frameworks in Australia in place to ensure the worker will have the situation resolved without being further victimised.

Data pertaining to breaches of Australian workplace laws support the notion that the local TCF industry is a high-risk industry for modern slavery.

The Fair Work Ombudsman ('FWO') conducted a National Textile, Clothing and Footwear (TCF) Campaign in 2015. This was divided into two distinct phases which consisted of an education phase commencing in March 2015 which aimed to 'increase awareness of workplace laws at all levels of labour supply chains (including outworkers) in the TCF industry'.<sup>3</sup> This was followed by a compliance phase in June 2016 where FWO Inspectors revisited businesses the FWO had interacted with in phase 1.

Research from the first phase indicated the local TCF industry has the following features:

- pressure on the price of local production, rendering those at the lower levels of the supply chains particularly vulnerable;
- relatively high levels of female workers, including from migrant, refugee and asylum-seeking backgrounds who may not be aware of their rights and entitlements; and
- a high contravention rate of industry awards and legal obligations (40%), which may reflect difficulties in navigating supply chain arrangements, which are both varied and fragmented.<sup>4</sup>

The findings from phase 2 are detailed in their 2019 report *Textile, Clothing and Footwear Compliance Phase Campaign Report* which outlined the following:

*The FWO found that of the 371 audits conducted during this phase:*

- *48% were in breach of some aspect of their workplace relations obligations, whether monetary, non-monetary, or both.*
- *31% of all breaches related to the underpayment of the hourly rate of pay*
- *20% of breaches related to the failure of businesses to provide pay slips to workers with the required information or within the required time*
- *non-compliance relating to penalties, allowances and overtime accounted for 5% of all breaches.*

The FWO research supports Ethical Clothing Australia's own compliance audits on TCF businesses as a part of the Ethical Clothing Australia accreditation program. During the period 1<sup>st</sup> January – 30<sup>th</sup> June 2023, a total of 403 compliance visits were conducted across 161 individual businesses.

Of these businesses, 56 were accredited with ECA and a further 105 businesses were non-accredited businesses who constituted a supply chain member of the accredited business.

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<sup>3</sup> Fair Work Ombudsman, *Textile, Clothing and Footwear Compliance Phase Campaign Report*, January 2019 3.

<sup>4</sup> Australian Competition & Consumer Commission, *Determination: Application for revocation of A91354-A91357 and the substitution of authorisation AA1000418, AA100418, 30 August 2018, i. ('ACCC')*

Across the 161 businesses visited by ECA's compliance team, there were approximately 1,788 people working within the businesses and supply chains of the businesses.

During this reporting period, the compliance team found:

- 32% (n=119) of non-compliance in relation to entitlements;
- 37% (n=140) of non-compliance with wage records;
- 54% (n=214) of non-compliance with health and safety;
- 38% (n=144) of non-compliance with superannuation;
- 20% (n=75) of non-compliance with workers compensation; and,
- 37% (n=140) of non-compliance with wage records.

Both the FWO reports and the Ethical Clothing Australia accreditation program compliance data supports the notion that the local TCF industry remains somewhat uncompliant with the Textile, Clothing, Footwear and Associated Industries Award 2020 ('TCFAI Award') and other workplace laws, despite ongoing support and education to build their awareness of their legal obligations.

The existence of the Ethical Clothing Australia program itself mitigates risk of modern slavery within the local textile clothing and footwear industry, however, this risk mitigation is concentrated to and within accredited businesses and their supply chain. The non-compliance with workplace laws of businesses who have voluntarily opted in to have their supply chain audited is indicative of the level of compliance the broader industry is likely to have. While only conjecture, it can be reasonably concluded that businesses who have not opted into the voluntary program are likely to be less compliant with Australian workplace laws and subsequently the risk of modern slavery increases.

#### **Case study 2: Pheonixing**

A manufacturer in an accredited supply chain shut down and employees were told they were terminated but they were not paid redundancy payments or all of their entitlements. Employees were re-hired by a new ABN opened by the same owners but none of their accruals or employment were transferred over.

The Compliance Officer requested evidence that the employees were paid all of their legal entitlements. When this wasn't able to be provided, the Compliance Officer advised the company of the employees legal entitlements to leave accrual payments, notice payments and redundancy payments and requested payments be demonstrated.

Intervention by the compliance team resulted in two employees being paid their correct redundancy packages.

### Case study 3: Exploitation of Temporary Visa Holders

During an annual compliance audit on an accredited business, the compliance team discovered that casual workers were being paid the Trainee rate. Upon reviewing additional documents provided by the company, the compliance officer determined that these casual workers had been employed for more than 3 months.

During a conference call, the compliance officer inquired about the tasks of two casual workers and questioned why they were still being paid the trainee rate after more than 6 months of employment. The owner explained that they operate machinery and are paid higher than his permanent worker, who holds a higher skill level and they are on a working visa. The compliance officer clarified that permanent workers accrue entitlements, unlike casual workers, and therefore the casual rate should include a 25% casual loading. Furthermore, all workers, whether casual or permanent, should be paid according to their rightful skill level, as outlined in the TCFAI Award.

The owner argued that these workers are on a working visa and prefer not to be permanent and intends to terminate their employment in the coming weeks. The compliance officer emphasised that regardless of visa status, workers are entitled to the protections outlined in the Award.

After some discussion, the owner agreed to raise the casual workers to skill level 2, providing the latest payslip as evidence. Following this, the compliance officer conducted a site visit and spoke briefly with the workers. The compliance officer inquired about the worker's plans, and she indicated that she would return next week, and her working visa is still valid for a few more months.

- (vii) the extent of participation by different parts of the TCF industry in alternative voluntary codes
  - a. *About the Ethical Clothing Australia Accreditation Program*

Ethical Clothing Australia was founded in 2000. It is a joint union and industry collaboration which was established due to the high rates of exploitation in the local industry, and the desire to foster a more transparent and compliant industry which protected the rights of local workers, while highlighting businesses who had made a commitment to ethical and local manufacturing. It continues to be a joint union and industry collaboration.

The Ethical Clothing Australia accreditation program is a voluntary accreditation program which TFC businesses opt into and in doing so, commit to adhering to the *Ethical Clothing Australia Code of Practice incorporating Homeworkers* ('the Code'). The Code is designed to assist businesses to ensure that they, and all their outsourced supply chain comply with the industry specific Textile Clothing Footwear and Associated Industries Award 2020 ('the TCFAI Award') as well as the Fair Work Act 2009 and other relevant workplace laws.

By signing on to the Code, the principal business are legally responsible for their suppliers, their suppliers' cooperation and legal compliance. This includes second, third and subsequent tier's suppliers (i.e. those suppliers who make for your direct suppliers).

The purpose of the Code is to require compliance with existing legal obligations rather than to extend their obligations, with one exception. Clause 9.4(d) of Part 1 of the Code extends the liability of some accredited manufacturers to cover unpaid remuneration to outworkers within their

outsourced supply chains.<sup>5</sup> This is in recognition of the high rates of exploitation outworkers experience.

In order to protect vulnerable workers, particularly outworkers, a business's operations are audited from design to dispatch including cut, make, trim and any value adding processes to ensure that local TCF workers, including outworkers, are being paid appropriately, receiving all their legal entitlements, and working in safe conditions.

To maintain accreditation, a business must undertake an annual compliance audit and may be subject to additional audits, should their operations change within the 12-month period from their last audit.

Under the Code, principal businesses that use suppliers who do not comply with their legal obligations may be required to boycott those suppliers in order to retain their accreditation.<sup>6</sup> This action has been authorised by the Australian Competition & Consumer Commission.

However, the program is designed to be collaborative, so when a business or a member of their supply chain are found to be in breach of the Code, the compliance officers will work with the businesses to rectify the issue. In doing so, local TCF workers are remedied for loss of entitlements or underpayments in a timely manner. If the breach cannot be rectified, then the business must be de-accredited.

#### *b. Australian Competition & Consumer Commission Authorisation*

The Code has Australian Competition & Consumer Commission (ACCC) authorisation. Various versions of the Code have been authorised by the ACCC since 2000. The ACCC indicates that the Code has resulted in, and is likely to continue to result in, public benefits in the form of increased compliance by businesses with legal obligations relating to workers, efficiencies in the management of supply chains and efficiencies in businesses' signalling their compliance with legal obligations, which provides better information to customers.

The ACCC has considered whether the Code has resulted, or is likely to result, in public detriments including restricting competition between suppliers and increasing costs and administrative burdens for businesses. Since obtaining accreditation under the Code is voluntary, the ACCC considers the operation of the Code is likely to result in little if any public detriment.

In the most recent authorisation in 2018, the ACCC considers that the likely public benefits outweigh the likely public detriments. Accordingly, the ACCC reauthorised the Homeworker Code Committee, its committee members, and current and future accredited businesses to give effect to a revised version of the Homeworkers Code of Practice until 21 September 2028.

#### *c. Ethical Certification Trademark*

Businesses which successfully achieve accreditation or renewal are permitted to utilise insignias from the Ethical Certification Trademark series to promote their compliance to consumers and major purchasers.

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<sup>5</sup> ACCC (n 3) 1-2.

<sup>6</sup> ACCC (n 3) i.

The accredited business must indicate whether their products are 100% made, a majority made or specific product lines are made in Australia. The use of the trademark is monitored by Ethical Clothing Australia to ensure the integrity of the trademark and to prevent social greenwashing.

*d. Subject matter expertise and right of entry to undertake compliance audits*

Ethical Clothing Australia has a service level agreement with the Construction, Footwear, Mining, Maritime and Energy Union Manufacturing Division ('the Union'). The Union compliance officers undertake the accreditation compliance audits on accredited and applying businesses and their supply chain.

The Union compliance officers are highly skilled subject matter experts, often with their own personal experience of working in the local TCF industry. Furthermore, and critically, the compliance officers, as part of the Union have existing powers and operations under workplace laws, more specifically, the Fair Work Act and the TCFAI Award. These grant the Union wide powers to enter workplaces and inspect and copy documents.

Audits would be significantly more costly if a commercial auditor was engaged to undertake the audits. Ethical Clothing Australia is able to keep the cost of accreditation down as it is a not-for-profit which receives funding from state and commonwealth government to deliver the program, and subsequently, can subsidise the cost of the audit for businesses. Further, the Union provides pro bono support to deliver the program such as when legal issues arise and the Union can rely on its existing legal powers in order to access workplaces in order to conduct audits. Moreover, there is a credibility and national consistency in utilising the Union to conduct the audits.

However, drawing on the data noted above under 1(i), while there is clear voluntary engagement in Ethical Clothing Australia's accreditation program (130 accredited businesses)<sup>7</sup> there are a greater number of businesses who have opted to not undertake accreditation in their own right (173 businesses in the supply chain of accredited businesses). This could be for a range of reasons, including that they do not see the value of paying for accreditation in their own right when their operations are being audited as part of the principal businesses audit anyway.

(viii) the nature and pattern of reporting of exploitation, abuse or modern slavery in the TCF industry

There is no real data on the prevalence of reporting exploitation in the local TCF industry. Again, qualitative data captured from the Ethical Clothing Australia accreditation program indicates there is often low-level understanding of rights, particularly with outworkers, and a lack of understanding on where and how to report, should they determine something is not right.

It is crucial to note that only companies accredited by Ethical Clothing Australia, along with their entire supply chain, undergo consistent monitoring to ensure compliance with ethical standards. Workers associated with Ethical Clothing Australia accredited companies benefit from comprehensive education regarding their rights that comes with accreditation. By increasing awareness and exposure to the protections offered through Ethical Clothing Australia accreditation, individual workers gain confidence in understanding their rights. This not only safeguards their rights

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<sup>7</sup> There were a 130 businesses accredited in the 12 month period captured in the data set utilised for this submission.



but also strengthens the industry as a whole as workers share their knowledge about rights. Moreover, a well-informed workforce, contributes to the sustainability of the industry as it fosters an environment that encourages skilled workers to remain within the sector, promoting continuity and expertise.

**Case Study 4: Mrs Mei\* a former outworker.**

Mei had been an outworker for at least 15 years.

A member of the Outworker Outreach team met her at a community centre when they were delivering an information session.

Mei used to sew at home for work. She said that she received a lot of pressure from the delivery person, from the unit price to the delivery deadline. With sewing orders that needed to be completed urgently, she used to work continuously for more than 12 hours a day to complete them. Her right arm "voiced her protest" because of the repetitive movements for a long time. And then, with such a hand injury, she had to stop sewing. She received nothing but a low salary for each garment, no annual leave, no sick leave, no superannuation. Through all of this, she worked in isolation.

Although Mei was no longer working, she expressed gratitude that she was able to share her experience with someone who understood.

**RECOMMENDATION 1: THAT THE NSW GOVERNMENT FUND ETHICAL CLOTHING AUSTRALIA TO GROW THE ACCREDITATION PROGRAM IN NSW TO PROTECT MORE LOCAL TCF WORKERS.**

## Part B: The Scheme

### (b) The current application of the Scheme in New South Wales

It is Ethical Clothing Australia's understanding that the NSW Scheme has not been consistently enforced since it was first issued in 2005.

The Ethical Clothing Australia accreditation program is arguably the primary scheme operating in NSW to protect outworkers. Further, s 3(2)(e) of the Scheme indicates that the Scheme is to complement and encourage compliance with the Homeworkers Code of Practice<sup>8</sup>, however, with only 15 accredited businesses located in NSW, this objective is also falling short.

Overall, there is a significant gap in NSW in adequately protecting a high-risk group of workers.

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<sup>8</sup> The Homeworkers Code of Practice is now the Ethical Clothing Australia Code of Practice.

- (c) The conformance of the Scheme with Australia’s commitment to relevant international standards and frameworks such as the United Nations Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Business Conduct
- (d) If changes are required to the current scheme to better mitigate the risks of modern slavery in the TCF industry in New South Wales

As highlighted above, the supply chains in the local TCF industry can be incredibly complex, and outworkers are often very invisible within these supply chains.

The structure of the Scheme places a heavy burden on retailers to be able to do due diligence checks on whether a supplier will be engaging outworkers, and, if they are, ensuring their condition of employment meets the legal requirements.

Under the SLA, the CFMMEU MD has been undertaking this work as part of the Ethical Clothing Australia accreditation program for more than 20 years. This work is complex, and often suppliers themselves don’t understand their full obligations to outworkers. Subsequently, the Scheme, while aiming to provide protection to outworkers is unlikely to achieve the stated aims unless significant time and resources are invested in skilling up retailers to fully understand the TCFAI Award 2020 and other relevant Australian workplace laws.

As a multi-stakeholder initiative, incorporating business, union and industry, Ethical Clothing Australia and the accreditation program supports the state to execute its international human rights obligations to protect and fulfil the social rights of people as outlined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Further, the program provides a mechanism for businesses to execute their obligation to respect human rights as well as provide access to remedy as outlined in the United Nations Guiding Principles on Business and Human Rights. Businesses who have voluntarily signed on to the Code of Practice work collaboratively with the union to ensure their workers’ rights are being respected and remedied, should there be a breach.

## Part C: Any other related matters

*Implementing Ethical Clothing Australia accreditation as a mandatory requirement to tender for NSW public procurement.*

In 2018, the Victorian Government made changes to their Procurement Policy by introducing the [Guide to procuring uniforms and personal protective equipment](#). The guide mandated that all Victorian government buyers are to procure locally and ethically manufactured uniforms and PPE, **wherever possible** to create and retain local jobs. It also provides a risk mitigation framework for procurers to ensure products have been manufactured free from exploitative labour practices.

The government policy includes the requirement that Australian manufacturers of TCF goods applying for government tenders must hold Ethical Clothing Australia accreditation, or in the process of seeking accreditation and they must maintain their accreditation throughout the term of contract with the Victorian Government.

As part of this procurement policy, a publicly available [Ethical Supplier Register](#) has been set up which lists the contact details of manufacturers and their capabilities. When buying locally

manufactured uniforms and PPE, Victorian government departments and agencies must procure from registered suppliers on the Ethical Supplier Register.

The **wherever possible** caveat has led Victorian government departments and agencies to select price point over ethical procurement. Based on feedback from Ethical Clothing Australia accredited businesses, government departments and agencies have continued to procure TCF products from offshore manufacturers.

As it currently stands, states and territories are not reporting entities under the Modern Slavery Act 2018 (Cth) and without a state-based Act such as in NSW, there is currently no mandatory human rights due diligence legislation which requires the Victorian Government to report on their risk and risk mitigation strategies in relation to modern slavery in TCF procurement. This has led to the scheme being under utilised as price point continues to drive decision making over ensuring the social rights of workers are upheld.

However, NSW has an opportunity to adopt a much more rigorous public procurement policy, which draws on human rights due diligence legislation such as the NSW Modern Slavery Act 2018 to enforce a more rigorous policy which preferences people over profit. The Ethical Clothing Australia accreditation program is a solution which can support the NSW government to mitigate risk in public procurement.

**RECOMMENDATION 2: THAT THE NSW GOVERNMENT ADOPT A POLICY WHICH MANDATES ETHICAL CLOTHING AUSTRALIA ACCREDITATION AS A REQUIREMENT TO TENDER FOR PUBLIC PROCUREMENT.**

## Conclusion

The supply chains in the local textile, clothing and footwear industry are complex and outworkers are often invisible in the supply chain, making it challenging to ensure their rights are upheld, safeguarded and protected.

Ethical Clothing Australia believes that the local textile, clothing and footwear industry is a high-risk industry for exploitation which exists on the continuum of workplace breaches through to instances of modern slavery. Particularly prone to exploitation are outworkers.

ECA understand that the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) has not been fully implemented and compliance has not been enforced. The Scheme also aims to encourage businesses to sign on to Ethical Clothing Australia's Code of Practice as an alternative to being bound by the NSW Scheme.

Ethical Clothing Australia considers that it is appropriate that the NSW government provide funding assistance to ECA to grow the accreditation program in NSW, and in doing so, enhance the protection of the rights, wages and conditions of textile, clothing and footwear workers, including outworkers, in NSW.

In addition to this, Ethical Clothing Australia believes the accreditation program can support the NSW government to mitigate risk in public procurement of textile, clothing and footwear products, and firmly recommends adopting a policy which requires businesses tendering for procurement to be Ethical Clothing Australia accredited.