

Submission to the Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) by the NSW Parliament Modern Slavery Committee

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29 February 2024

Acknowledgement of Country

As New South Wales Anti-slavery Commissioner, I acknowledge that Aboriginal and Torres Strait Islander peoples are the first peoples and traditional custodians of Australia and the oldest continuing culture in human history.

I acknowledge that First Nations communities in New South Wales have survived practices that today we call modern slavery. The legacies of that treatment continue to affect Aboriginal and Torres Strait Islander people today, and through them affect the New South Wales community and economy.

My Office and I pay our respects to elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to country and acknowledge their continuing custodianship of the land, seas and sky. We acknowledge their ongoing stewardship and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes, self-determination and for real freedom.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

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List of Acronyms

AFC	Australian Fashion Council
ANZSIC	Australian and New Zealand Standard Classification
CFMEU	Construction, Forestry, and Maritime Employees Union
ECA	Ethical Clothing Australia
FWO	Fair Work Ombudsman
HWCP	Homeworkers Code of Practice
OECD	Organisation for Economic Co-operation and Development
SME	Small and medium businesses
TCF	Textile Clothing and Footwear
TCFUA	Textile Clothing and Footwear Union of Australia

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Executive Summary

The Australian textile, clothing and footwear (TCF) sector has evolved over the last forty years in response to tariff liberalisation. Today, there are approximately 7,727 TCF businesses in Australia, with 91% operating with a turnover of less than \$2 million per year. ABS data identifies 5,985 TCF workers in NSW, but this probably undercounts a large number of workers who work off the books, in homes ('outworkers' or 'homeworkers'). This workforce skews female (though there is significant gender variation across sub-sectors), older (39% over 55 years), and from a migrant and non-English speaking background (38% speak a language other than English at home; the most common language is Vietnamese). The largest single cohort of TCF workers appears to be female clothing trade workers aged between 55 and 59.

TCF workers, especially outworkers, exhibit significant indicators of vulnerability to workplace exploitation, abuse and immobility. TCF jobs are Hobbesian: nasty, brutish and short. Outworkers endure precarious work and receive low wages, often improperly paid. 10% of full-time employed TCF workers appear to earn wages placing them on or below the poverty line. TCF workers report vulnerability to coercion and threats, and often work significant unpaid overtime, in cramped and sometimes poorly ventilated conditions. Outworkers suffer three times as many injuries as factory workers. In some cases, children appear to assist with work. (There is no minimum age for children to perform this work in NSW.) The outworker workforce is also largely non-unionised.

Taken together, these factors point to indicators of forced labour, a form of modern slavery, according to the established International Labour Organisation assessment methodology. In extreme cases, there may also be indicators of servitude, a crime under both NSW and Commonwealth law.

Outworkers become triply invisible: they work in spaces that are hidden from regulators' view; they are economically invisible, because much of their work occurs off-book; and they are politically invisible, because their isolation prevents mobilisation, collective action and voice. Unsurprisingly, modern slavery in the sector appears to be significantly under-reported. Fear of retaliation is a central reason for victims not to report.

There have been a variety of initiatives that seek to improve the visibility of this hidden and vulnerable population, and to ensure that both regulators and retailers play their part in preventing and addressing modern slavery risks. One such key initiative is the Ethical Clothing Extended Responsibility Scheme ('the Scheme'), established in NSW in 2005.

When it was instituted two decades ago, the Scheme was at the leading edge of such regulatory initiatives. The Scheme created incentives for retailers to comply with the Ethical Clothing Australia Code, and to take steps to ensure that outworkers received the wages, superannuation and other entitlements they were due. And it appears to have significantly improved supply chain transparency, making it possible for both government and unions, mandated under the Scheme to play this role, to more easily locate and assist vulnerable workers.

Over the last decade, however, the Scheme appears to have fallen into disuse. Today, central mechanisms within the Scheme are not functioning. Meanwhile, thinking on how to ensure responsible business conduct in complex supply-chains has evolved both internationally and in Australia. The Scheme, as drafted, does not require retailers or other TCF firms to take the

steps expected of them under international standards to which Australia has committed, such as the UN Guiding Principles on Business and Human Rights, and the OECD Due Diligence Guidance for Responsible Supply-Chains in the Garment and Footwear Sector. This risks leaving these firms exposed, including to litigation through, for example, the Australian National Contact Point, an OECD-linked complaints mechanism.

The Scheme also does not currently reflect existing anti-slavery arrangements in NSW. But those arrangements offer opportunities for updating the Scheme to ensure that alignment. For example, the Anti-slavery Commissioner could be integrated into the Scheme and given power to visit and confidentially speak with vulnerable workers in TCF supply-chains. The Scheme could also be amended to require retailers to meet the same standard in ethical procurement that over 400 Government agencies, local councils and other NSW public buyers must now meet, taking 'reasonable steps' to ensure they do not procure goods and services that are the product of modern slavery. The content of this expectation could be aligned with the Guidance on Reasonable Steps published by the Office of the Anti-slavery Commissioner (OASC). The submission explains how this result might be achieved through use of the Anti-slavery Commissioner's existing powers, including under section 27 of the Modern Slavery Act 2018 (NSW).

Modern slavery risks in the TCF industry are a product of the presence of vulnerable workers in the workforce and a regulatory environment that allows exploitative business practices. Using the recently published OASC Inherent Risk Identification Tool, the submission identifies 26 other NSW procurement categories that may represent high modern slavery risks. Many of them, including cleaning, security and domestic agriculture, have supply chains that share structural characteristics with the TCF industry. This suggests that if the Scheme were successfully revived and revised, it might provide a model that could be considered for application in other sectors. However, as each sector has its own vulnerability dynamics and regulatory dynamics, careful consideration would be needed in each case. It might be worthwhile to treat a revival of the Scheme as a 'pilot' for review after 2 years, with a view to adapting this model to other sectoral contexts.

Introduction

The trend towards responsible business conduct in the Australian textile, clothing and footwear sector

The textile, clothing, and footwear (TCF) industry was once a major sector of Australian manufacturing but has diminished in size since the advent of trade liberalisation. Traditionally, the industry relied on onshore factory manufacturing to produce clothing. However, as import tariffs were removed, competition from overseas suppliers with lower labour costs forced restructuring, with Australian retailers increasingly relying on a complex pyramid of sub-contracting. Retailers engaged principal manufacturers and fashion houses, who engaged multiple manufacturers, who in turn sub-contracted the work until it was progressively handed down to low-cost manufacturers overseas and/or outworkers. Each step down the pyramid away from lead firms represented a decline in commercial influence, accompanied by an outsourcing of risk.¹ That trend has been further reinforced by legal reforms allowing firms to treat outworkers as independent contractors rather than employees, limiting their legal protections. The resulting industry structure, which entirely reflects the global pattern of industrial reorganisation in the sector under the influence of trade liberalisation, leaves those workers at the base of the pyramid, including outworkers (sometimes called ‘homeworkers’ because they work outside factories, in homes),² with limited bargaining power – and in many cases, vulnerable to modern slavery.³

Modern slavery is an umbrella term for a range of exploitative practices including forced labour, slavery, servitude, debt bondage, human trafficking, deceptive recruiting, and the worst forms of child labour and forced marriage. Modern slavery is best understood as existing on a continuum of exploitation, recognising that conditions can worsen overtime and lead to slavery.⁴ Effective prevention of modern slavery therefore requires engagement with situations that show indicators of modern slavery risks, even if the conduct in question falls short of a modern slavery offence as defined in Schedule 2 of the *Modern Slavery Act 2018* (NSW). The fashion industry is rife with these modern slavery risks, encompassing poor occupational health and safety (e.g., poor ventilation and cramped conditions), extremely low wages, forced overtime, unpaid and underpaid wages, mental and physical abuse including threats, and restrictions to

¹ Nossar, I., Johnstone, R., Macklin, A., & Rawling, M. (2015). Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains. *Journal of Industrial Relations*, 57(4), 585-603. , Nossar, I., Tennent, R., Johnstone, R., Shepherd, N., & Rawling, M. (2017). Australian Supply Chain Regulation Project: Draft Report on Textile Clothing and Footwear Sector Regulation.

² Nossar, I., Johnstone, R., Macklin, A., & Rawling, M. (2015). Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains. *Journal of Industrial Relations*, 57(4), 585-603.

³ Cockayne, J. (2021b). Garments and Apparel: A “Captive and Vulnerable Labour Force”. In *Developing freedom: The sustainable development case for ending modern slavery, forced labour, human trafficking*. United Nations University.

⁴ Boersma, M., & Nolan, J. (2022). Modern slavery and the employment relationship: Exploring the continuum of exploitation. *Journal of Industrial Relations*, 64(2), 165-176.

freedom of association and freedom of movement. In extreme cases, there may also be forced and child labour.⁵

These risks have, as we explain further below, arguably increased as a result of structural trends in the textile, clothing and footwear sector in Australia in recent decades. At the same time, the liberalisation of trade in the industry has given Australian retailers, buyers and consumers access to cheaper textiles, clothing and footwear. This is commonly thought of as representing a net welfare gain for Australian consumers, and for the economy. What this masks, however, is the social costs of production and distribution. Just as the failure to price the costs of carbon emissions into our economic activity risks leaving us and our descendants footing the bill for the unrecognised negative externalities of earlier economy activity, so the failure to account for the externalisation of modern slavery risks may create unacknowledged economic and social costs. In New South Wales, for example, modern slavery cases are expected to cost the economy around \$9.6 billion, through healthcare, law enforcement, lost earnings, and other costs.

The garment sector has been a key venue for debates on the social costs of irresponsible business conduct over the last two decades – and, correspondingly, a key site for regulatory innovation. Globally, there have been recurring efforts to protect vulnerable workers from exploitation in TCF supply chains. The Nike and Gap “sweatshop” scandals of the 1990s marked a cultural shift towards the responsabilisation of retailers to ensure the workers producing their products were being treated fairly, regardless of government regulatory capacity. The activism that grew around these scandals eventually led to the creation of new norms within the industry, specifically on supplier factory disclosure⁶. The enduring pressure of activist campaigns has continued to shape the industry’s regulatory environment, with slowly evolving expectations on responsible business conduct evolving from a concern of civil society activists to one of activist shareholders.

For example, after the 2013 collapse of the Rana Plaza in Bangladesh, which killed over 1,130 people, most of them TCF workers producing goods for global supply-chains, multiple industry stakeholders came together to push for the Bangladesh Accord on Fire and Building Safety⁷. Organisations such as Clean Clothes Campaign and Fairwear Foundation continue to push for industry change to protect workers and hold powerful supply chains actors accountable. And periodic scandals such as the discovery of sweatshop conditions and modern slavery indicators in the production facilities of a central England retailer, Boohoo (discussed in Figure 1 below), ensure the TCF industry remains a popular byword for labour exploitation risks.

⁵ Dickson, M., & Warren, H. (2020). A Look at Labor Issues in the Manufacturing of Fashion through the Perspective of Human Trafficking and Modern-day Slavery. In S. B. Marcketti & E. E. Karpova (Eds.), *The Dangers of Fashion : Towards Ethical and Sustainable Solutions* (1 ed., pp. 103-124). Bloomsbury Visual Arts. <http://www.bloomsburycollections.com/book/the-dangers-of-fashion-towards-ethical-and-sustainable-solutions/ch7-a-look-at-labor-issues-in-the-manufacturing-of-fashion-through-the-perspective-of-human-trafficking-and-modern-day-slavery/>

⁶ Doorey, D. J. (2011). The transparent supply chain: From resistance to implementation at Nike and Levi-Strauss. *Journal of business ethics*, 103(4), 587-603. <https://doi.org/https://10.1007/s10551-011-0882-1>

⁷ Reinecke, J., & Donaghey, J. (2015). The ‘Accord for Fire and Building Safety in Bangladesh’ in response to the Rana Plaza disaster. In *Global Governance of Labour Rights*. Edward Elgar Publishing. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2562144

Figure 1: The Boohoo scandal

Modern slavery risks in TCF production are not consigned to developing countries. They can also arise in production in developed countries such as Australia and the United Kingdom, as a 2020 scandal in England made clear. The scandal concerned allegations of exploitation of garment workers in Leicester, England, producing garments for Boohoo Group PLC (boohoo), an online fast-fashion giant.

Leicester is a hub for “Made in the UK” garment manufacturing, employing workers predominantly from ethnic minority backgrounds, typically born outside of the UK, with limited English language skills.⁸ During the peak of COVID-19 lockdowns in July 2020, *The Sunday Times* published an exposé that alleged garment workers producing garments for Boohoo Group were being paid £3.50 per hour (less than half the minimum wage), were working in cramped and poorly ventilated conditions (spreading the COVID-19 virus), and experienced intimidation when asking for their employment entitlements. These allegations were later confirmed by an independent review commissioned by Boohoo and undertaken by independent barrister Alison Levitt KC. Levitt found that the allegations were “substantially true” and claimed that Boohoo’s supply chain monitoring was “inadequate and... attributable to weak governance”⁹.

The sweatshops in Leicester have been characterised as an “open secret”, and the poor working conditions were well-known amongst the community¹⁰. Yet, Boohoo allowed these issues to continue unaddressed as they had “not felt any real sense of responsibility for the factory workers in Leicester”¹¹. Boohoo was meeting its transparency and disclosure obligations under the UK Modern Slavery Act, duly publishing an annual modern slavery statement. But this had not prevented ineffective oversight and widespread violations of workers’ rights. While Boohoo had grievance mechanisms in place, they were manifestly ineffective: workers were threatened against speaking out, and their vulnerability further silenced them.

The move to better regulate TCF supply chains has also dovetailed with broader efforts to agree expectations of responsible business conduct. Over time, these coalesced around a framework of due diligence and remediation obligations captured in a set of United Nations Guiding Principles on Business and Human Rights developed by a former Harvard professor and UN Under-Secretary General, John Ruggie, and approved by member states in 2012. A parallel framework developed through the Organisation for Economic Cooperation and Development (‘OECD’), provides Guidelines for Multinational Enterprises on Responsible Business Conduct in areas from human rights to the environment to anti-corruption. These frameworks have steadily converged, to provide a clear and consistent set of expectations on business, supported by governments around the world – including the Australian government.

The direction of regulatory development globally has also been reflected in Australia’s efforts to effectively govern TCF production, with efforts between the late 1980s and early 2000s aimed at counteracting the opacity and risk externalisation generated by growing outsourcing. In the late 1980s changes to the federal clothing award required manufacturers to provide

⁸ Stevenson, M. (2022). Hidden in plain sight: the bystander effect and the mobilisation of modern slavery whistleblowing. *Supply Chain Management: An International Journal*, 27(1), 128-139.

⁹ Levitt, A. (2020). *Independent Review into the boohoo Group PLC’s Leicester supply chain*. <https://www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020.pdf>

¹⁰ Stevenson, M. (2022). Hidden in plain sight: the bystander effect and the mobilisation of modern slavery whistleblowing. *Supply Chain Management: An International Journal*, 27(1), 128-139.

¹¹ Levitt, A. (2020). *Independent Review into the boohoo Group PLC’s Leicester supply chain*. <https://www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020.pdf>

supplier and work location lists to the union (TCFUA) and government agencies bi-annually, enabling oversight of the sub-contracting process from principal supplier down to outworkers. This award was further supplemented in 1995 to allow regulatory agencies access to contract pricing information, and eventually these changes were incorporated into the counterpart state clothing awards. However, Nossar and colleagues highlight that these changes did not account for retailer responsibilities¹². Shortly after these changes, trade union and community organisations campaigned for the adoption of a voluntary code of practice and accreditation program known as the *Homeworkers Code of Practice* (HWCP)¹³, imploring retailers and manufacturers to ensure outworkers received their entitlements. The HWCP went a step further than the award by providing for a manufacturer accreditation program, though it had limited accountability mechanisms for voluntary participants who violated the code or defected from it, and it did not have a focus on retailers (as opposed to suppliers).¹⁴. Meanwhile, Target (a major TCF retailer) adopted their own voluntary code that resembled the federal award, but also included disciplinary action (termination of contract) for suppliers who failed to remedy breaches of outworker legal protections.

Current regulation

In response to public concern and pressure from union and community groups, in the late 1990s Australian states began to introduce TCF-industry specific regulations.

Australian outworker legislation originated in NSW and has largely been modelled from proposals developed by a leader of the TCFUA (NSW Branch), Igor Nossar, in 1999¹⁵. NSW led the charge for regulatory protection of outworkers, with many states following shortly afterwards. In 2001 the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW), amended the *Industrial Relations Act 1996* (NSW). These reforms introduced provisions deeming outworkers in relevant supply-chains to be employees and enabled outworkers to seek restitution for unpaid remuneration from principal contractors and other suppliers in the supply chain. Part 2 of the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW) allowed for the creation of the Ethical Clothing Trades Council, an advisory body that later recommended that Part 3 of the Act be implemented, a mandatory code of practice for outworkers¹⁶.

As a result, in 2005 the Ethical Clothing Extended Responsibilities Scheme ('the Scheme') came into force. Modelled on the Target code, the Scheme makes retailers located at the apex of the pyramid responsible for ensuring workers within their supply chain are receiving their legal entitlements¹⁷. Retailers are required to include contract provisions within their supplier arrangements to affirm that workers will receive their entitlements and making non-compliance

¹² Nossar, I., Johnstone, R., Macklin, A., & Rawling, M. (2015). Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains. *Journal of Industrial Relations*, 57(4), 585-603.

¹³ In 2010, the HWCP was re-branded as Ethical Clothing Australia.

¹⁴ Nossar, I., Johnstone, R., Macklin, A., & Rawling, M. (2015). Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains. *Journal of Industrial Relations*, 57(4), 585-603.

¹⁵ Rawling, M. J. (2006). A generic model of regulating supply chain outsourcing. *ANU College of Law Research Paper No. 07-07*. <http://ssrn.com/AbstractID=982748>

¹⁶ Nossar, I., Johnstone, R., Macklin, A., & Rawling, M. (2015). Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains. *Journal of Industrial Relations*, 57(4), 585-603.

¹⁷ Ibid.

a ground for contract termination. A second unique feature is the precedence given to voluntary HWCP code, whereby firms otherwise subject to the Scheme are excused for non-compliance with the Scheme if they are signatory to and compliant with the HWCP¹⁸. This works to create a two-tier regulatory structure, with the more stringent Scheme kicking in only if a firm has not voluntarily complied with the less stringent HWCP.

Since the Scheme was adopted in 2005, however, the focus of attention and regulatory initiative around the TCF industry has shifted elsewhere. Indeed, as we explore later in the submission, the Scheme has apparently fallen into desuetude over the last half decade, with the central statutory mechanism – the Ethical Clothing Trades Council – no longer being convened, and mandatory reporting by covered retailers apparently lapsing. At the same time, regulatory attention has shifted away from supply-chain specific initiatives to a broader discussion of responsible business conduct more generally, and in particular to transparency and reporting legislation focused on modern slavery due diligence and reporting. This includes the adoption of a *Modern Slavery Act 2018* in both the Commonwealth and NSW Parliaments, the former focusing on corporate due diligence, the latter more focused on public sector due diligence and engagement with survivors.

One pivotal shift in the regulatory approach has been the steady crystallisation of an expectation that all stakeholders in supply chains will play a role in managing modern slavery risks, based on the level of risks to people, and on the leverage available to the individual stakeholder. The anti-slavery framework also understands modern slavery in a broader context than simply wage theft, under-remuneration and workplace exploitation – the focus of the Scheme and related legislation. Instead, modern slavery offences may encompass aspects of worker treatment outside traditional workplaces, including coercion and deception exercised in the home or place of accommodation, through family networks, or through recruitment processes.

These divergences in regulatory approach raise the question whether the regulatory arrangements in place in NSW through the Scheme reflect today's market expectations and Australia's commitments to international standards, and whether they provide retailers and buyers, including NSW Government buyers, an effective framework to meet protect and respect human rights, notably those relating to modern slavery.

These are the questions with which this submission grapples. The submission has been authored by NSW Anti-slavery Commissioner Dr James Cockayne and Ms Justine Coneybeer, a doctoral researcher at the Queensland University of Technology. The structure of the submission tracks the Terms of Reference of the NSW Parliament Modern Slavery Committee's Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) and its capacity to mitigate the risks of modern slavery in the TCF industry. The submission was prepared in six weeks in early 2024 through a combination of desktop research, key informant interviews and use of the Commissioner's information-gathering powers under section 14 of the *Modern Slavery Act 2018* (NSW).

¹⁸ Rawling, M., Kaine, S., Josserand, E., & 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), 438-464. <https://doi.org/10.1177/0067205x211016575>

1. TOR 1(a) The characteristics of the TCF manufacturing industry

There is limited reliable information available about the current TCF manufacturing industry footprint in Australia. What follows relies primarily on Australian Bureau of Statistics data, though there are reasons to think this data may significantly understate real employment levels in TCF outwork and sweatshop sectors¹⁹. Outworkers appear often to operate off the books – which of course makes them more vulnerable to modern slavery. ABS data has therefore been supplemented, in our analysis, by reliable civil society and research sector analysis.

ABS data relies on the Australian and New Zealand Standard Industrial Classification (ANZSIC) for the Textile, Leather, Clothing, and Footwear Manufacturing Industry categories (ANZSIC 13) and the ANZSIC Occupation Code (OCCP) 393 for Textile, Clothing and Footwear Trades Workers. The ANZSIC divides the TCF industry into the following subsections:

1. Textile Manufacturing
2. Leather Tanning, Fur Dressing and Leather Product Manufacturing
3. Textile Product Manufacturing
4. Knitted Product Manufacturing
5. Clothing and Footwear Manufacturing

While the following tables present information on the various sub-sectors of the industry, it is important to note that the clothing and footwear manufacturing sector is widely believed to have the greatest proportion of outworkers²⁰.

1.1 Size of the Australian TCF industry in Australia including the number of outworkers

Domestic TCF industry is a relatively small component of the Australian manufacturing industry, and of Australian trade in textiles, clothing and footwear, accounting for around 10% of clothes sold in Australia²¹. The majority of the roughly 7,727 TCF businesses in Australia are small and medium businesses (SMEs) that earn less than \$200,000 per year, with 91% having a turnover of less than \$2 million per year. Most of these operate in the clothing and footwear sub-sector. Additional data is summarised in Figure 1 below, and available at Appendix A.

¹⁹ TCFUA. (2015). *Productivity Commission Review into the Workplace Relations Framework: Submission by the Textile, Clothing and Footwear Union of Australia*

https://www.pc.gov.au/__data/assets/pdf_file/0012/188589/sub0214-workplace-relations.pdf; Department of Employment. (2014). *Post-implementation Review of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*. <https://nla.gov.au/nla.obj-3067881188/view>

²⁰ Department of Employment. (2014). *Post-implementation Review of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*. <https://nla.gov.au/nla.obj-3067881188/view>

²¹ Macdonald, K., & Marshall, S. D. (2015). Transnational business and the politics of social risk: Re-embedding transnational supply chains through private governance. In B. Lange & F. Haines (Eds.), *Regulatory Transformations—Rethinking economy-society interactions*. Oxford.

Figure 2: Size of the Australian TCF industry

ToR	Findings
Size of the Australian TCF industry	Number of businesses ²² : <ul style="list-style-type: none"> • 7,727 TCF businesses • 53% operate in Clothing and Footwear Manufacturing sub-sector • 38% operate in Textile Product Manufacturing Sector
	Size of businesses ²³ : <ul style="list-style-type: none"> • Available data suggests that the majority of TCF businesses are small businesses²⁴ • 26% of businesses employ 1-19 employees. • 55% of businesses earn sales revenue under \$200,000 p.a.. • 91% of businesses earn sales revenue under \$2 million.

Available data appears to suggest that reliance on outworkers in Australia peaked in the 1990s, and may have declined significantly since then – presumably reflecting the movement of manufacturing offshore. Figure 3, below, summarises some of the key estimates of the size of the number of outworkers in the sector in recent decades.

Figure 3: Number of outworkers

ToR	Findings
Number of outworkers	1980s - 60,000 ²⁵ 1990s - 329,000 ²⁶ 1995 - 329,000/ Claims outworkers outnumber factory workers 14:1 ²⁷ 1996 - 50 – 330, 000 ²⁸ 2003 - 25,000 ²⁹ / Claim that outworkers are 40% of workers ³⁰ 2014 - 12,000 – 40,000 ³¹

²² Data source: Businesses in Australia, 2018-19, TableBuilder

²³ Data source: Businesses in Australia, 2018-19, TableBuilder

²⁴ ABS defines a small business as a business employing less than 20 people and/or earns less than \$2 million in annual turnover.

²⁵ Burchielli, R., Delaney, A., & Coventry, K. (2014). Campaign strategies to develop regulatory mechanisms: Protecting Australian garment homeworkers. *Journal of Industrial Relations*, 56(1), 81-102.

²⁶ Ibid.

²⁷ TCFUA as cited in Department of Employment. (2014). *Post-implementation Review of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*. <https://nla.gov.au/nla.obj-3067881188/view>

²⁸ Senate Economics References Committee. (1996). *Outworkers in the Garment Industry* https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/Pre1999/outworkers/report/index

²⁹ Productivity Commission. (2003). *Review of TCF Assistance: Inquiry Report (26)*. <https://www.pc.gov.au/inquiries/completed/textile-clothing-footwear/report/tcf.pdf>

³⁰ Ibid.

³¹ Department of Employment. (2014). *Post-implementation Review of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*

1.2 Number of Australian TCF industry workers and employment characteristics

Nationally there are currently approximately 21,357 workers in the TCF industry, with 5,985 identified as working in New South Wales. Most workers are employed in the Clothing and Footwear Manufacturing sub-sector, and dressmaking/tailoring is the most common occupation. ABS data also indicates that clothing trade workers are more often employed part-time, though 28% declare working more than 39 hours per week. Corroborating this data, the CFMEU have reported an increase in the casualisation of the workforce due to the fluctuation of production orders, though most workers want to transition to a permanent position³². 61% of full-time employed clothing trades workers earn under \$999 per week (equivalent to \$51,999 annual salary or less). Critically, in total, 10% of full-time employed TCF workers appear to earn official income placing them on or below the poverty line.³³ Additional data is summarised in Figure 4 below, and available at Appendix B.

Figure 4: Number of Australian TCF industry workers and employment characteristics

ToR	Findings
Number of Australian TCF industry workers and employment characteristics	Number of workers overall ³⁴ : <ul style="list-style-type: none"> • 21,357 workers nationally • 5,985 workers in NSW
	Number of TCF 'trade workers' according to OCCP 393 ³⁵ : <ul style="list-style-type: none"> • 10,104 TCF trade workers nationally • 2,975 TCF trade workers in NSW
	TCF trade workers employment status ³⁶ : <ul style="list-style-type: none"> • The majority (48%) of TCF trade workers are employed full-time. • 38% of clothing trade workers are employed full-time and more often employed part-time (48%). • Canvas and leather good makers and upholsters are more often employed full-time (52%).
	TCF trade workers work hours ³⁷ : <ul style="list-style-type: none"> • 28% of TCF workers work more than 39 hours per week³⁸. • 22% of clothing trade workers work more than 39 hours.

³² CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*. <https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>

³³ The poverty line for a single adult with no children is \$489 p/w, and a couple with two children is \$1027 p/w. See UNSW, & ACOSS. (2023). *Poverty in Australia 2023: Who is Affected*. https://povertyandinequality.acoss.org.au/wp-content/uploads/2023/03/Poverty-in-Australia-2023_Who-is-affected_screen.pdf

³⁴ Data source: Census of Population and Housing, 2021, TableBuilder

³⁵ OCCP 393 captures TCF trade workers and exclude workers who do not fall under the TCF Award (e.g., administration staff).

³⁶ Data source: Census of Population and Housing, 2021, TableBuilder

³⁷ Data source: Census of Population and Housing, 2021, TableBuilder

³⁸ Note that the Textile, Clothing, Footwear and Associated Industries Award 2020 states that ordinary hours of work should not exceed an average of 38 hours per week over a 4-week period. See [here](#).

	<ul style="list-style-type: none"> • 42% of canvas and leather goods makers work more than 39 hours. • 38% of upholsterers work more than 39 hours
	<p>TCF workers income³⁹:</p> <ul style="list-style-type: none"> • 61% of full-time employed clothing trades workers earn under \$999 per week (equivalent to \$51,999 annual salary or less). • 59 % of full-time employed Canvas and Leather Goods Makers earn under \$999 per week (equivalent to \$51,999 annual salary or less). • 50% of full-time employed upholsters earn under \$999 per week (equivalent to \$51,999 annual salary or less). • In total, 10% of full-time employed TCF workers earn income on or below the poverty line⁴⁰

1.3 Demographic profile of TCF trade workers

The TCF workforce skews female, with 58% of workers identifying as female. However, there are significant gender differences between different sub-sectors. While 84% of clothing trades workers are female, 73% of canvas and leather goods identify as male, and 88% of upholsterers identify as male.

The workforce also skews towards older age brackets, with 39% of the workforce over 55 years old. The largest cohort of workers in the whole sector is female clothing trades workers aged between 55 and 59.

The workforce also skews towards migrants. Almost half (49%) are migrants, with around one fifth of those (and 10% of the TCF workforce, including 15% of the clothing trade sector) being born in Vietnam. 38% of TCF workers speak a language other than English at home. 14% of clothing trade workers speak Vietnamese at home. 15% of clothing trade workers do not speak English well.

Additional data is summarised in Figure 5 below, and available at Appendix C.

Figure 5: Demographic profile of TCF trade workers

ToR	Findings
Sex ⁴¹ :	<p>The workforce identifies predominantly as female</p> <ul style="list-style-type: none"> • 58% (5821) identifies as female • 83% (5062) of clothing trades workers identify as female <p>Men dominate the other sub-sectors:</p> <ul style="list-style-type: none"> • 73% (1304) of canvas and leather good makers identify as male • 88% (83) of upholsterers identify as male

³⁹ Data source: Census of Population and Housing, 2021, TableBuilder

⁴⁰ The poverty line for a single adult with no children is \$489 p/w, and a couple with two children is \$1027 p/w. See UNSW, & ACOSS. (2023). *Poverty in Australia 2023: Who is Affected*. https://povertyandinequality.acoss.org.au/wp-content/uploads/2023/03/Poverty-in-Australia-2023_Who-is-affected_screen.pdf

⁴¹ Data source: Census of Population and Housing, 2021, TableBuilder

<p>Age⁴²:</p>	<ul style="list-style-type: none"> • The TCF industry contains an aging workforce and 39% are over 55 years old⁴³. • The largest cohort is women aged between 55-59 (890). • The largest cohort according to sub-sector is female clothing trades workers between 55-59 years old. • 38% of female workers are over 55 years old
<p>Cultural background/migration status⁴⁴</p>	<ul style="list-style-type: none"> • 49% (4899) of TCF trade workers were not born in Australia. <ul style="list-style-type: none"> ○ Of the workers born outside Australia: ○ 20%/960 were born in Vietnam (10% of overall workforce) ○ 9%/435 were born in China (4% of overall workforce) ○ 8%/408 were born in England (4% of overall workforce) ○ 7%/326 were born in New Zealand (3% of overall workforce) ○ 4%/187 were born in Philippines (2% of overall workforce) • Clothing trades workers represent the largest cohort of workers (according to occupation) not born in Australia (57%). <ul style="list-style-type: none"> ○ 15% were born in Vietnam (largest cohort according to country of birth)
<p>Language</p>	<p>Language other than English (LOTE)⁴⁵:</p> <ul style="list-style-type: none"> • 38% of TCF workers speak a LOTE at home. • Vietnamese is the most spoken LOTE and spoken by 9% of TCF trade workers. • Clothing trades workers are the largest cohort that use a LOTE at home. <ul style="list-style-type: none"> ○ 49% of clothing trades workers (speak a LOTE at home) ○ Vietnamese (14%) is the most common LOTE. <p>English proficiency⁴⁶:</p> <ul style="list-style-type: none"> • 11% of the TCF workforce use another language and do not speak English well or at all. • Clothing trade workers are the sub-sector cohort with the least English proficiency. <ul style="list-style-type: none"> ○ 15%/955 do not speak English well, or at all.

1.4 The lived experience of workers in the TCF industry

Jobs for outworkers in the TCF industry might be described as Hobbesian: nasty, brutish and short. Outworkers endure precarious work and receive low wages – which appear in many cases to be improperly paid. There are extensive, reliable reports of vulnerability to coercion and threats in the workplace, and structural barriers to exiting these jobs to find alternative employment.

⁴² Data source: Census of Population and Housing, 2021, TableBuilder

⁴³ 56.3 is the average age of retirement in Australia. See [here](#).

⁴⁴ Data source: Census of Population and Housing, 2021, TableBuilder

⁴⁵ Data source: Census of Population and Housing, 2021, TableBuilder

⁴⁶ Data source: Census of Population and Housing, 2021, TableBuilder

Precarious work

Workers in the TCF industry experience a high degree of insecure employment. They are often employed as casuals⁴⁷, despite seeking permanent positions⁴⁸, and are at high risk of being retrenched due to business insolvency⁴⁹. If retrenched, workers will often struggle to find work again and enter early retirement or extended periods of un/underemployment⁵⁰.

The lack of secure employment has knock-on implications for financial security, for example restricting savings, access to loans⁵¹ and preventing home ownership. It also appears to push outwork further into the shadows: some outworkers will accept informal work as they fear that disclosing income would impact their access to Centrelink benefits, which they are otherwise reliant upon when work is unavailable⁵².

Overwork and underpayment

TCF work is characterised by low wages that are highly award dependent. However, it is commonly reported that many workers are not paid the legal minimum award wages or their full entitlements including superannuation, overtime pay, public holiday pay, casual loading⁵³. Where workers are paid an award wage, some research finds, their skills may be underappreciated and misclassified, leading to mispricing of their labour⁵⁴. Considering that many workers are from migrant backgrounds who are unfamiliar with Australian regulation,

⁴⁷ Ethical Clothing Australia. (2022). *2022-23 Pre-Budget Submission to the Treasurer*.

https://treasury.gov.au/sites/default/files/2022-03/258735_homeworker_code_committee_trading_as_ethical_clothing_australia.pdf

⁴⁸ CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*. <https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>

⁴⁹ Asian Women At Work. (2008). *Cries from the Workplace: 20 women, 20 stories*. Asian Women At Work. <https://www.awatw.org.au/images/pdf/Cries%20from%20the%20Workplace.pdf>

⁵⁰ TCFUA. (2015). *Productivity Commission Review into the Workplace Relations Framework: Submission by the Textile, Clothing and Footwear Union of Australia* https://www.pc.gov.au/__data/assets/pdf_file/0012/188589/sub0214-workplace-relations.pdf

⁵¹ CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*. <https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>

⁵² Confidential research interview, 12 February 2024

⁵³ TCFUA. (2015). *Productivity Commission Review into the Workplace Relations Framework: Submission by the Textile, Clothing and Footwear Union of Australia* https://www.pc.gov.au/__data/assets/pdf_file/0012/188589/sub0214-workplace-relations.pdf; CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*. <https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>

⁵⁴ Asian Women At Work. (2008). *Cries from the Workplace: 20 women, 20 stories*. Asian Women At Work. <https://www.awatw.org.au/images/pdf/Cries%20from%20the%20Workplace.pdf>, Ethical Clothing Australia. (2022). *2022-23 Pre-Budget Submission to the Treasurer*. https://treasury.gov.au/sites/default/files/2022-03/258735_homeworker_code_committee_trading_as_ethical_clothing_australia.pdf

they are also often not aware of their rights under the TCF award.⁵⁵ When outworkers do receive work, they often must work excessive hours, with no time to relax⁵⁶. Casual and fluctuating hours further disables their capacity to plan their personal lives and interrupts their family responsibilities⁵⁷. And outworkers suffer three times as many injuries as factory-based workers due to long hours.⁵⁸

Coercion and inability to exit

Workers in the Australian TCF sector appear to routinely experience threats to prevent them from speaking out. For example, complaints to contractors may be met with anger⁵⁹, reduced workloads, dismissal, or workplace bullying and harassment⁶⁰.

Workers are highly reliant on their weekly wage and typically have limited access to other forms of income or assets. The precarity of work, low wages, threats of retaliation and physical toll of garment production has led many TCF workers to leave the industry entirely, in search of secure work, often apparently moving into care industries. But mobility within the TCF sector is very limited. Alternative employment is not always available, or is perceived to be unavailable, as workers are inhibited by their English language skills and/or have limited capacity (time/money) to train and acquire new skills⁶¹. Older migrant women are particularly constrained in these circumstances, and likely further physically incapacitated by the physical toll of garment production as outworkers are more likely to experience acute and chronic injuries⁶².

⁵⁵ Ethical Clothing Australia. (2022). *2022-23 Pre-Budget Submission to the Treasurer*.

https://treasury.gov.au/sites/default/files/2022-03/258735_homeworker_code_committee_trading_as_ethical_clothing_australia.pdf; Confidential research interview, 12 February 2024

⁵⁶ Asian Women At Work. (2008). *Cries from the Workplace: 20 women, 20 stories*. Asian Women At Work. <https://www.awatw.org.au/images/pdf/Cries%20from%20the%20Workplace.pdf>

⁵⁷ CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*. <https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>

⁵⁸ Macdonald, K., & Marshall, S. D. (2015). Transnational business and the politics of social risk: Re-embedding transnational supply chains through private governance. In B. Lange & F. Haines (Eds.), *Regulatory Transformations—Rethinking economy-society interactions*. Oxford.

⁵⁹ Asian Women At Work. (2008). *Cries from the Workplace: 20 women, 20 stories*. Asian Women At Work. <https://www.awatw.org.au/images/pdf/Cries%20from%20the%20Workplace.pdf>

⁶⁰ Asian Women At Work. (2011). *Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011: Submission of Asian Women At Work Inc*. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_Employment_and_Workplace_Relations/Completed_inquiries/2010-13/textilesfairwork/submissions, TCFUA. (2014). *Inquiry into the Fair Work Amendment Bill 2014: Submission of the Textile, Clothing, and Footwear Union of Australia (TCFUA)*. <https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.aph.gov.au%2FDocumentStore.ashx%3Fid%3D53562597-5143-4c10-99a4-72fa4ca154a0%26subld%3D252093&psig=AOvVaw3feiZBet-Sg01ivs9nbWu8&ust=1709081539814000&source=images&cd=vfe&opi=89978449&ved=0CAkQr5oMahcKEwjAiPGBp8qEAXUAAAAAHQAAAAAQBg>

⁶¹ Asian Women At Work. (2008). *Cries from the Workplace: 20 women, 20 stories*. Asian Women At Work. <https://www.awatw.org.au/images/pdf/Cries%20from%20the%20Workplace.pdf>

⁶² Coventry, K. (2011). *Not Without More: A Critical Exploration of the Need for a Multi-Pronged Approach to Homeworker Protection in Australia* [Doctoral dissertation, LaTrobe University].

1.5 The nature and complexity of TCF supply chains

As Figure 6 below shows, where traditionally the industry relied on direct contracting (Fig. 6(a)), today there is greater reliance on pyramidal sub-contracting (Fig. 6(b)). Work is funnelled through traditional factories to subcontractors that often operate without long-term contractual certainty. These subcontractors in turn rely on a “significant but largely hidden outwork sector”⁶³. The process of manufacturing TCF products requires diverse skills (e.g., pattern making, dyeing, cutting, sewing, embroidery) and changes according to the specification of the product. The skills required often means that part of the work will be sub-contracted to different manufacturers and/or outworkers. For example, two t-shirts within the same purchase order may have partially different supply chains where, for example, one requires an embroidered design and the other a screen-printed design. Middlemen or agents are engaged to contract work out to home and sweatshop-based workers, avoiding the costs associated with labour management and health and safety requirements⁶⁴. Outworkers tend to work in garment manufacturing and are engaged in short-run, fast turnaround orders, which cannot typically be sourced from overseas⁶⁵.

Garment manufacturing is a particularly labour-intensive sub-sector and wages are a significant operating cost (15-32%) for manufacturers compared to other sectors in the manufacturing industry⁶⁶. Thus, retailers and brands strategically outsource production to limit firm liability and costs (both capital and operating expenditures). Even if they outsource production and risk, retailers, retail brands and lead firms have significant potential leverage over their supply chain as they choose who, where, and at what price to outsource the production of their goods. However, they may not exert this leverage routinely, often because they have limited visibility over this supply-chain since the prevailing business model encourages outsourcing of supply and management of supply chains.

Additionally, the TCF businesses they outsource to are largely SMEs, which have limited bargaining power. High operating costs, the secular decline in local demand, and the fragility of small businesses has left TCF businesses prone to collapse and insolvency. The highly competitive nature of supply, combined with the relatively limited number of lead firms and brands, works to give lead firms and retailers significant market power.

While the industry has been in decline, year on year, there is a growing movement calling for investment and expansion of the Australian TCF industry. The industry is anticipating a resurgence of “re-shoring” production back to Australia as demand grows for simplified supply

⁶³ Page 9 TCFUA. (2015). *Productivity Commission Review into the Workplace Relations Framework: Submission by the Textile, Clothing and Footwear Union of Australia*
https://www.pc.gov.au/__data/assets/pdf_file/0012/188589/sub0214-workplace-relations.pdf

⁶⁴ Macdonald, K., & Marshall, S. D. (2015). Transnational business and the politics of social risk: Re-embedding transnational supply chains through private governance. In B. Lange & F. Haines (Eds.), *Regulatory Transformations—Rethinking economy-society interactions*. Oxford.

⁶⁵ Department of Employment. (2014). *Post-implementation Review of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*. <https://nla.gov.au/nla.obj-3067881188/view>

⁶⁶ Ethical Clothing Australia. (2021a). *2021-22 Pre-Budget Submission to the Treasurer*. https://treasury.gov.au/sites/default/files/2021-05/171663_ethical_clothing_australia.pdf, Fair Work Ombudsman. (2019). *Textile, Clothing and Footwear Compliance Phase Campaign Report*. <https://www.fairwork.gov.au/sites/default/files/migration/965/textile-clothing-footwear-compliance-phase-campaign-report.docx>

chains, and greater control over labour conditions⁶⁷. Several factors in the strategic environment are pushing in this direction, including:⁶⁸

- the movement in the industry to ultrafast fashion (which relies on near-shoring production to allow ultrafast distribution, in response to localised fashion trends, often driven by social media),
- disruptions to off-shore supply-chains during the COVID 19 pandemic, and
- concerns around the need for supply-chain traceability to avoid using cotton grown with Uyghur forced labour.

Figure 6: Direct contracting and sub-contracting⁶⁹.

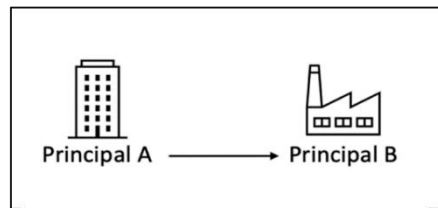


Figure 6a - Direct contracting relationship

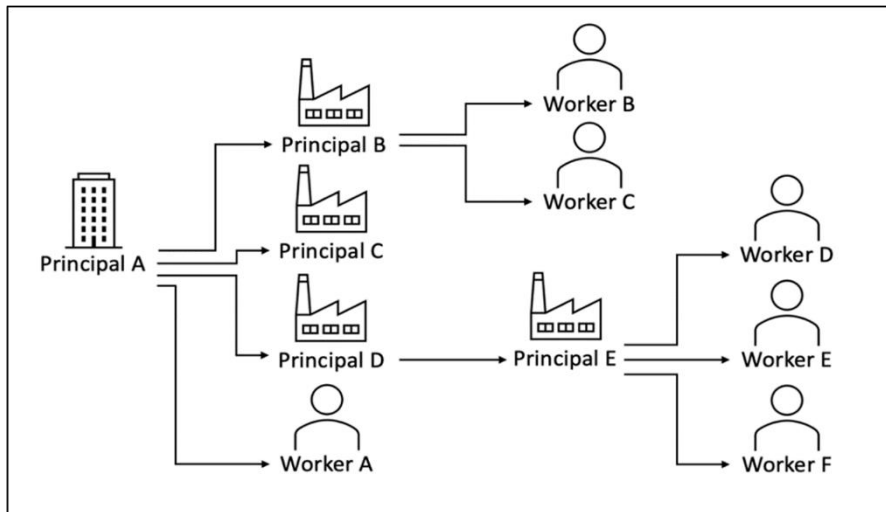


Figure 6b – Sub- contracted supply chain relationships

All of these factors have highlighted the need for companies to stabilise their supply chain, enhance their speed-to-market, and build capability to manage human rights risks – three objectives all served by re-shoring (at least parts of) production back to Australia. The

⁶⁷ Australian Fashion Council. (2022). *From Farm to Frontline: A Fashion & Textile Industry Revolution*. https://treasury.gov.au/sites/default/files/2022-03/258735_australian_fashion_council.pdf

⁶⁸ Australian Fashion Council. (2021). *From high fashion to high vis: The economic contribution of Australia’s fashion and textile industry*. <https://ausfashioncouncil.com/wp-content/uploads/2021/05/From-high-fashion-to-high-vis-EY-final-report-31-May-2021.pdf>, Payne, A., Maguire, R., O’Brien, E., Rissanen, T., Josserand, E., Kaine, S., Bolger, S., Coneybeer, J., & Kallio, K. (2022). *Reshoring and Right shoring In Solution approaches to address downstream labour abuses in the Australian cotton value chain* Cotton Research and Development Corporation, ibid.

⁶⁹Based on Ethical Clothing Australia. (2024). *Ethical Clothing Australia Award Guide*. <https://ethicalclothingaustralia.org.au/award-guide/>

Australian Fashion Council has been a leading proponent for rebuilding sovereign manufacturing capability⁷⁰. If there is to be a resurgence of the TCF manufacturing sector, a strong regulatory framework will be vital to ensure the protection of workers is enshrined in law, allowing for a prosperous industry for all stakeholders, underpinned by a strong social licence.

1.6 Risks of modern slavery

The available evidence suggests that workers in the TCF industry, especially outworkers, face significant risks of ‘modern slavery offences’ as detailed in Schedule 2 of the *Modern Slavery Act 2018* (NSW), namely:

- forced labour (and related offences, including conducting a business involving forced labour) under section 270.6A of the *Commonwealth Criminal Code*
- in extreme cases, potentially also servitude under section 93AB of the *Crimes Act 1900* (NSW) and section 270.5 of the *Commonwealth Criminal Code*

Workers’ situations exhibit several of the indicators of forced labour identified by the International Labour Organisation⁷¹, namely: abuse of vulnerability, deception, isolation, intimidation and threats, withholding of wages and excessive overtime. The risks that these workers face emerge out of a combination of vulnerability, the environment in which they work (including regulatory arrangements), and the prevailing business model in the sector⁷².

As we have seen, many workers in the Australian TCF sector have traits that may make them more vulnerable to exploitation. Workers from culturally and linguistically diverse backgrounds are likely to experience isolation based on factors such as their gender, race, and class⁷³. Workers from diverse backgrounds are less likely to understand their workplace rights and entitlements⁷⁴, more likely to be restricted by language and literacy barriers, and are at higher risk of child labour, forced labour, and sexual harassment⁷⁵. Women, who are over-represented

⁷⁰ Australian Fashion Council. (2024). *AFC's Pre-Budget Submission to Treasury for 2024-25*. <https://ausfashioncouncil.com/wp-content/uploads/2024/01/The-Australian-Fashion-Council-AFC-Pre-Budget-Submission-2024-25.pdf>

⁷¹ ILO. (2012). *ILO Indicators of Forced Labour* https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

⁷² Cockayne, J. (2021a). Developing freedom: The sustainable development case for ending modern slavery, forced labour, human trafficking.

⁷³ Cregan, 2001 as cited in Burchielli, R., Delaney, A., & Coventry, K. (2014). Campaign strategies to develop regulatory mechanisms: Protecting Australian garment homeworkers. *Journal of Industrial Relations*, 56(1), 81-102.

⁷⁴ Fair Work Ombudsman. (2019). *Textile, Clothing and Footwear Compliance Phase Campaign Report*. <https://www.fairwork.gov.au/sites/default/files/migration/965/textile-clothing-footwear-compliance-phase-campaign-report.docx>; OECD. (2018). *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*. O. Publishing. <https://www.oecd-ilibrary.org/docserver/9789264290587-en.pdf?expires=1574751622&id=id&accname=guest&checksum=4139CE1E5E965B3EFFF19D4951CB8309>

⁷⁵ OECD. (2018). *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*. O. Publishing. <https://www.oecd-ilibrary.org/docserver/9789264290587-en.pdf?expires=1574751622&id=id&accname=guest&checksum=4139CE1E5E965B3EFFF19D4951CB8309>

in the clothing manufacturing sub-sector in Australia, are more likely to experience gender discrimination⁷⁶ and have fewer employment opportunities when re-entering the workforce⁷⁷. They also often endure a double burden of responsibility (act as unpaid caregivers for children and the elderly)⁷⁸, which means they are often time-poor and have less bargaining power. The quick turnaround of orders and the invisibility of the workplace means that children may sometimes be relied upon to assist with the completion of an order⁷⁹. (In NSW, there is no minimum age for such work by children.)

ABS data also shows that the majority of workers in the industry are over 40. Age can play a factor in limiting a worker's opportunities to seek out new skills and knowledge for other job opportunities, thus restricting their capacity to leave exploitative conditions. Limited skills in other sectors and/or English language can also reduce labour mobility. Generally, workers in this sector have not received higher-level education, which also reduces their access to alternative employment options.⁸⁰

The institutional environment in which this work occurs is also a contributor to modern slavery risks. Homeworker invisibility hinders their ability to improve their own position⁸¹. The CFMEU have indicated that the TCF workforce is largely non-unionised and enterprise bargaining is less prevalent⁸². But unionisation and effective regulation have been hampered by the lack of transparency and traceability in supply-chains. Outsourcing and sub-contracting fragments supply chains and makes it increasingly complex to monitor and remedy labour conditions. Outworkers are hidden at the end of complex supply chains, meaning it is difficult to monitor and audit whether their rights are being met. Outworkers are also more vulnerable to the cost-competitive practices of actors higher up the supply chain. Legal arrangements have also tended to shield buyers from liability for violations by suppliers. And non-compliance is often tolerated by regulators: nationally, the TCF industry continues to be characterised as non-compliant with legal requirements, including the requirement to register and record details of their outsourcing contracts⁸³.

⁷⁶ TCFUA as cited in Coventry, K. (2011). *Not Without More: A Critical Exploration of the Need for a Multi-Pronged Approach to Homeworker Protection in Australia* [Doctoral dissertation, LaTrobe University].

⁷⁷ Victorian Government as cited in *ibid*.

⁷⁸ Burchielli, R., Delaney, A., Tate, J., & Coventry, K. (2009). The FairWear campaign: An ethical network in the Australian garment industry. *Journal of Business Ethics*, 90, 575-588. .

⁷⁹ Coventry, K. (2011). *Not Without More: A Critical Exploration of the Need for a Multi-Pronged Approach to Homeworker Protection in Australia* [Doctoral dissertation, LaTrobe University].

⁸⁰ Fair Work Ombudsman. (2019). *Textile, Clothing and Footwear Compliance Phase Campaign Report*. <https://www.fairwork.gov.au/sites/default/files/migration/965/textile-clothing-footwear-compliance-phase-campaign-report.docx>

⁸¹ Delaney, A., Burchielli, R., Marshall, S., & Tate, J. (2018). *Homeworking women: A gender justice perspective*. Routledge.

⁸² CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*. <https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>

⁸³ ACCC. (2018). *Application for revocation of A91354-A91357 and the substitution of authorisation AA1000418 lodged by Homeworker Code Committee Incorporated in respect of the Homeworkers Code of Practice (to be renamed 'Ethical Clothing Australia's Code of Practice incorporating Homeworkers')*. <https://www.accc.gov.au/system/files/public-registers/documents/AA1000418%20-%20Homeworkers%20Code%20Committee%20Incorporated%20-%20Final%20Determination%20-%2030.08.18%20-%20PR.pdf>

Finally, the prevailing business model may also be a risk-contributing factor. The Australian TCF manufacturing sector is predominantly populated by SMEs who outsource parts of purchase orders according to their business restraints (e.g., employees, capabilities). SMEs are more likely to compete on the basis of low labour costs⁸⁴. SMEs in the middle of the value chain have limited market power compared to lead firms and major buyers, including retailers. Since this part of the value-chain is highly competitive on price, these mid-tier firms typically look to reduce labour costs, exerting downward pressure on sub-contractors and their workers.

The most vulnerable workers, with the least power, are likely to carry the greatest risks - well hidden from view because they are often working in private spaces.⁸⁵ The atomisation of these spaces also makes it difficult for them to unionise or otherwise develop collective bargaining power. Delaney and colleagues⁸⁶ explain homework as invisible in three ways. Firstly, homeworkers are spatially invisible, given that the work is carried out in private homes. Secondly, they are economically invisible as their work is often not adequately captured as formal employment (or remunerated as such). The inability to determine an accurate figure on the number of outworkers in Australia suggests that homework is not being adequately captured as employment. Thirdly, workers can be politically invisible due to their isolation from unions and industry colleagues. Since outwork is carried out on a private premises, it is difficult for law enforcement or labour monitors to both locate the outworkers and monitor them. Additionally, work outside of formal settings prevents the development of collective grievances and thus collective action⁸⁷.

The industry prefers casual workers⁸⁸, who are more likely to experience unfavourable conditions.⁸⁹ The volatility of work availability means workers fear speaking out as they may have their hours reduced or be made redundant. Corporate insolvency is common in the industry and workers often lose their employment entitlements as a result (e.g., loss of employment, and non-payment of entitlements including wages, leave, redundancy, superannuation).⁹⁰ Yet

⁸⁴ Marshall, S. (2012). *Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011: Submission of Shelley Marshall Monsh University*.
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_Employment_and_Workplace_Relations/Completed_inquiries/2010-13/textilesfairwork/submissions

⁸⁵ Coventry, K. (2011). *Not Without More: A Critical Exploration of the Need for a Multi-Pronged Approach to Homeworker Protection in Australia* [Doctoral dissertation, LaTrobe University].

⁸⁶ Delaney, A., Burchielli, R., Marshall, S., & Tate, J. (2018). *Homeworking women: A gender justice perspective*. Routledge.

⁸⁷ Burchielli, R., Delaney, A., Tate, J., & Coventry, K. (2009). The FairWear campaign: An ethical network in the Australian garment industry. *Journal of Business Ethics*, 90, 575-588.

⁸⁸ The nature of the industry means supplier labour requirements rapidly increase and decrease according to buyer demand. On the preference for casuals see CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*.
<https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>.

⁸⁹ CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*.
<https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>

⁹⁰ TCFUA. (2017). *Reforms to address corporate misuse of the Fair Entitlements Guarantee Scheme: Submission of the Textile Clothing and Footwear Union of Australia*.
<https://treasury.gov.au/consultation/reforms-to-address-corporate-misuse-of-the-feg-scheme>

workers have the least capacity to absorb the consequences of insolvency.⁹¹ These impacts compound overtime and further destabilise long-term financial security (e.g., retirement). Since the industry is already characterised by low wages, TCF workers have limited opportunities to build a safety net to support their financial security if made redundant.

1.7 The extent of participation in alternative voluntary codes

Ethical Clothing Australia’s (ECA) Code of Practice, incorporating Homeworkers (a.k.a. Homeworkers Code of Practice) (‘HWCP’) is the key voluntary code in the Australian TCF Industry. ECA is a multi-stakeholder accreditation body overseen by a Committee comprised of industry groups, retailers, and the TCF sector union (CFMEU). ECA offers a voluntary accreditation system that verifies whether manufacturers are complying with their legal obligations around worker entitlements and conditions. The program maps a business’ supply chain throughout the design and production process and verifies workers are receiving their legal entitlements through an annual audit facilitated by the union (CFMEU). Additionally, applicants and accredited businesses must regularly supply records of their supply chain to CFMEU. Compliance with these obligations allows manufacturers to use the Ethical Clothing Australia trademark. The ECA website provides a directory of ‘ethical manufacturers’ to support the identification of manufacturers who have been accredited under the Code and retailers who sell ECA accredited products. Accredited manufacturers include those making clothing, footwear, medical PPE, leather products, textiles, dyeing facilities, launderers, and printing facilities.

The HWCP is voluntary, though participation is incentivised by the existence of the NSW Scheme – which applies to relevant firms that do not comply with the HWCP.

The figure below provides an overview of the Code. A more detailed table is in Appendix D.

Figure 7: Summary of the HWCP

Objective	<ul style="list-style-type: none"> - End exploitation of TCF workers - Provide an opportunity to accredited businesses to promote their products as ethically produced through the Ethical Clothing Australia trade mark⁹².
Stakeholders	<p>Homeworkers Code of Practice Committee has overall oversight on the implementation and management of the Code, its members include:</p> <ul style="list-style-type: none"> - Australian Industry Group (Ai Group) - NSW Business Chamber - Cue Clothing - Bluegum - Australian Defence Apparel (ADA) - CFMEU TCF sector representatives <p>The union (CFMEU) is responsible for receiving and managing complaints from workers and monitoring compliance with the Code.</p>

⁹¹ TCFUA. (2017). *Reforms to address corporate misuse of the Fair Entitlements Guarantee Scheme: Submission of the Textile Clothing and Footwear Union of Australia.*
<https://treasury.gov.au/consultation/reforms-to-address-corporate-misuse-of-the-feg-scheme>

⁹² Page 4 of Ethical Clothing Australia’s Code of Practice, incorporating Homeworkers: Manufacturer’s Agreement

Businesses Accredited	<ul style="list-style-type: none"> - Approximately 158 businesses⁹³. - The ECA website provides a directory of ‘ethical manufacturers’ to support the identification of manufacturers who have been accredited under the Code and include those making clothing, footwear, medical PPE, leather products, textiles, dying facilities, launderers, and printing facilities.
Accreditation Requirements	<p>Accreditation is renewed annually where the below obligations are met.</p> <ul style="list-style-type: none"> - cooperate with union and ECA regarding compliance and auditing - ensure all in-house workers receive their legal entitlements - ensure that their entire supply chain is compliant with their legal obligations - register with Fair Work Commission Board of Reference (BOR) and provide quarterly lists of homeworkers engaged to Union and BOR - provide written agreement and work record to the homeworker - pay homeworkers for unpaid work that was sub-contracted (directly or not), as per the relevant legislation - upon request, provide the Union within 7 days all details of homeworkers engaged and the work provided
Audits	Annual Audit frequency. Facilities audited: head office(s); in-house manufacturing operations; outsourced manufacturing locations (including outworkers)
Penalties	<ul style="list-style-type: none"> - The Committee may revoke accreditation if issues are not remedied. - Other accredited manufacturers will then be restricted from using the offending manufacturer in their supply chain.
Incentives	<ul style="list-style-type: none"> - The ECA certification trademark is used as a labelling /swing tag system that signals to consumers and buyers that a product has been ethically made in Australia.

Below is a non-exhaustive list of alternative voluntary initiatives common in the TCF industry internationally.

Figure 8: Common voluntary initiatives

Initiative	Type	Requirement	Labour Issues addressed
UN Global Compact Network Australia	Pledge	<p>Joining creates a public commitment to implement 10 principles of UN Global Compact</p> <ul style="list-style-type: none"> - chief executive must sign - Publish annual report publicly 	<p>Working conditions Health & Safety Living Wage Modern Slavery Training Community & Social Welfare</p>
SA8000	Certification scheme	Meet certification standard to receive accreditation.	<p>Working conditions Health & Safety Living Wage Modern Slavery</p>
Ethical Trading Initiative	Multi-stakeholder initiative Membership	<p>Members must commit to:</p> <ul style="list-style-type: none"> - respecting worker rights - Implementing the ETI base code 	<p>Working conditions Health & Safety Gender-based issues</p>

⁹³ Ethical Clothing Australia. (2022). *2022-23 Pre-Budget Submission to the Treasurer*. https://treasury.gov.au/sites/default/files/2022-03/258735_homeworker_code_committee_trading_as_ethical_clothing_australia.pdf

		<ul style="list-style-type: none"> - identifying, preventing, mitigating, and remediating human rights impacts - work collaboratively with other members (NGOs and trade unions) - implement responsible business practices - acting in full transparency where issues are identified - recognise trade unions as worker representatives - Comply with ETI’s corporate transparency framework for annual public reporting 	Living Wage Modern Slavery
Fair Labor Association	Certification scheme	<p>Meet certification standard to receive accreditation.</p> <p>Members must:</p> <ul style="list-style-type: none"> - Implement fair labour principles. - Work with supplier to implement a workplace code of conduct and compliance benchmarks - Actively participate in FLA investigations 	Working conditions Health & Safety Living Wage Modern Slavery Training
Global Reporting Initiative	Standard for publicly reporting	<p>Reporting standards include:</p> <ul style="list-style-type: none"> - Identifying and assessing impact, and determining material topics for disclosure - Report information according to GRI standards (principle of quality reporting and information required). 	Working conditions Health & Safety Gender-based issues Living Wage Modern Slavery Training Community & Social Welfare

1.8 The nature and pattern of reporting exploitation, abuse, or modern slavery in the TCF industry

While our research suggests there are significant *risks* of modern slavery and workplace exploitation for TCF workers, our research did not uncover a pattern of reports of modern slavery *offences*.

This is, however, not surprising. Between 80 and 98% of cases of modern slavery in NSW are thought to go unreported. Where a sector is known to suffer modern slavery risks, but reports do not follow, this either suggests that strong risk mitigation and management measures are in place, preventing risks crystallising as modern slavery harms – or that workers may be unable or unwilling to report, or when they do report, the information is not recognised as constituting forced labour or modern slavery. In the TCF industry, barriers to reporting and a reluctance by authorities to identify workplace violations as the offense of forced labour seem more likely to explain low reporting than the existence of effective prevention and risk mitigation measures. For example, a 2019 Fair Work Ombudsman (FWO) Report stated that the TCF industry represents a low proportion of workplace disputes relative to other industries in the

manufacturing sector and attributed the low rate of complaints to structural barriers to reporting – the hidden nature of TCF work and the unique vulnerabilities of workers in the industry⁹⁴.

The absence of reports or findings of *modern slavery*, including forced labour, may also be a function of the limited understanding and training of frontline workers (including workplace regulators and unions) on identifying modern slavery offences – as opposed to wage theft and violations of industrial awards. This may help explain why there is significant ongoing evidence of failure to pay award wages and employment entitlements⁹⁵, even as modern slavery is not reported. For example, the 2019 Fair Work Ombudsman Report found that 48% (178 businesses) of the businesses that they investigated in the TCF industry were in breach of their obligations. Yet the FWO does not appear to have assessed these cases for the presence of forced labour or other forms of modern slavery - or to have referred the cases to other authorities or actors that might have been better equipped to make these assessments.

All of this points to the possibility of a significant pattern of underreporting of modern slavery in the industry. The key drivers of this pattern appear to be:

- **Workers may not know their rights or characterise their treatment as modern slavery or abuse:** It is common for migrant workers to not know their workplace entitlements, and also common for victims not to characterise their treatment as exploitation⁹⁶.
- **Workers believe they will be penalised for reporting:** Workers may be threatened by superiors or colleagues that they will be penalised with fewer hours, job loss, or told that the factory will close, and all workers will lose their jobs⁹⁷. The worker's family may be heavily reliant on their wage and so the risk of being penalised has an additional impact to more than one person, increasing the worker's fear⁹⁸. Such threats may themselves constitute indicators of forced labour, but police appear not to be familiar with the ILO Forced Labour indicators and the methodology for assessing them, and may be reluctant to identify workplace disputes as potential criminal offences.
- **Workers believe they have no alternative:** It appears to be common for TCF workers to perceive themselves as having few employment options outside their current employer or the industry more broadly. Managers have been known to convince workers that they have no skills and have nowhere else to go. Age, language skills and financial insecurity may all impede workers trying their luck elsewhere. At a certain point, exploitative treatment may

⁹⁴ Fair Work Ombudsman. (2019). *Textile, Clothing and Footwear Compliance Phase Campaign Report*. <https://www.fairwork.gov.au/sites/default/files/migration/965/textile-clothing-footwear-compliance-phase-campaign-report.docx>

⁹⁵ Ethical Clothing Australia. (2022). *2022-23 Pre-Budget Submission to the Treasurer*. https://treasury.gov.au/sites/default/files/2022-03/258735_homeworker_code_committee_trading_as_ethical_clothing_australia.pdf

⁹⁶ Ibid.; Confidential research interview, 12 February 2024

⁹⁷ CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*. <https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>

⁹⁸ Confidential research interview, 14 February 2024

become so normalised that that finding an employer willing to pay legal entitlements may come to be seen as impossible⁹⁹.

- **Risks of stigmatisation:** Our consultations indicated that many workers are unwilling to raise concerns about their treatment because it is likely to lead to social stigma and trauma in relatively small, tight-knit immigrant communities. It may also have reputational implications for family including offshore.
- **Workers do not trust reporting mechanisms:** Workers who are not familiar with Australian systems may not trust the reporting system and may fear that complaints will be traced back to them, increasing risks of and from retaliation¹⁰⁰.
- **Limited voice:** TCF outworkers have limited options for voicing their concerns. Neither the Scheme nor the HWCP require firms to provide access to effective grievance mechanisms (as required under the UN Guiding Principles and OECD Due Diligence regime). And opportunities for collective voice and collective bargaining in the workplace are impeded by low rates of unionisation and atomisation in different, disconnected workplaces.

2. TOR 1(b) The current application of the Scheme in New South Wales

The Scheme appears to have fallen into desuetude over the last decade.

During the course of our research for this submission, we were informed that the Ethical Clothing Trades Council has not formally convened for some years. Additionally, registrations by employers as outworker-employing entities also appears to have lapsed around 2017 and the mandate for the body responsible for administration of outworker registrations (the Clothing Trades (State) Industrial Committee) lapsed in December 2022.¹⁰¹ The reasons for this lapse appear somewhat prosaic. Key personnel involved in the development and implementation of the Scheme appear to have moved on from union and government roles, including due to changes of government and structural changes in the union movement.

There was only limited research into the Scheme and its application while it was on foot. This pointed to some promising signs. A 2017 study led by Igor Nossar (notably one of the architects of the Scheme),¹⁰² suggests that under the Scheme retailers were able to use their influence to compel their suppliers to comply with their legal obligations to workers, trigger contractual

⁹⁹ Confidential research interview, 12 February 2024

¹⁰⁰ Ibid; Asian Women At Work. (2011). *Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011: Submission of Asian Women At Work Inc.*
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_Employment_and_Workplace_Relations/Completed_inquiries/2010-13/textilesfairwork/submissions

¹⁰¹ Section 33 of the Clothing Trades (State) Award 2001 (the Award) mandates employers who use outworkers to register with the Clothing Trades (State) Industrial Committee

¹⁰² Nossar, I., Tennent, R., Johnstone, R., Shepherd, N., & Rawling, M. (2017). Australian Supply Chain Regulation Project: Draft Report on Textile Clothing and Footwear Sector Regulation.

clauses to cancel/suspend orders until the supplier addressed non-compliance issues, and use the threat of cancelling orders to ensure suppliers complied with their obligations. Regulators were also reportedly able to identify a greater number of workers previously hidden. In one supply-chain, for example, the number of workers known to regulators increased seven times, and in another case, the number of known workers increased three times.

However, a report by Diviney and Lillywhite¹⁰³ a decade earlier (in 2007) found that at that relatively early period of implementation of the Scheme, companies had limited awareness of their legal obligation to monitor labour rights in supply chains which reportedly prevented the industry as a whole meeting its legal obligations. Furthermore, their lack of education on the issue prevented the implementation of effective mechanisms for improving workplace conditions. Where companies attempted to work with award-compliant manufacturers, they found it difficult to identify which suppliers were in fact award-compliant. Additionally, SMEs found it difficult to comply with the HWCP and felt they had limited leverage to exert influence. Fundamentally, outworkers felt that conditions had worsened since 2002.

Our consultations with key industry informants, 20 years into the operation of the Scheme, suggest that supplier lists provided by retailers are often incorrect and manufacturers often fail to identify all the actors within a supply chain, whether through sloppiness or wilfully. Nevertheless, the disclosure of supplier lists does appear to achieve the central objective of increasing supply-chain transparency, making it easier for other stakeholders, including unions and regulators, to identify where at-risk workers in the supply-chain are likely to be located. Whether lists are correct or not, regulators are often able to utilise them to map the supply chain and identify workers through engagement with their network.¹⁰⁴

3. TOR 1(c) The conformance of the Scheme with Australia's commitment to relevant international standards

Even if the Scheme were fully operational at this point in time, it now appears somewhat dated. It is a product of an earlier generation of regulatory thinking, reflecting the leading edge of thinking in the early 2000s about how to maximise supply chain transparency to allow multistakeholder actors – including governments and unions – to more effectively regulate those supply-chains. By responsabilising retailers to monitor compliance with worker rights through a fragmented supply-chain, the Scheme pointed towards the greater emphasis that would later be placed on responsabilising all stakeholders along the supply-chain.

Specifically, the Scheme requires retailers to ask their supplier whether they are planning to sub-contract the work, and if outworkers will be involved, ascertain whether they will receive their legal entitlements. Depending on the sub-contracting arrangement, each actor through the supply chain is obliged to provide the retailer with the relevant information. At the time of

¹⁰³ Diviney, E., & Lillywhite, S. (2007). *Ethical threads: Corporate social responsibility in the Australian garment industry* Brotherhood of St Laurence.

https://library.bsl.org.au/jspui/bitstream/1/6204/1/DivineyLillywhite_ethical_threads.pdf

¹⁰⁴ Research interviews, February 2024.

the Scheme's inception, this requirement was a world-leading implementation of 'top-down' regulation¹⁰⁵.

Things have developed considerably in the two decades since the Scheme was instituted, with a much greater focus in international standards on what is sometimes called a 'smart mix' - combining supply-chain transparency and governmental regulation with a much thicker set of positive conduct expectations on firms themselves (both suppliers and buyers).¹⁰⁶ Reflecting this shift, Australia has committed to three specific regimes that require stakeholders in TCF supply-chains to go well beyond what is required under the Scheme to identify, manage and remediate modern slavery risks: the UN Guiding Principles on Business and Human Rights; the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, and associated guidance including the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector; and the International Labour Organization (ILO) Protocol of 2014 to Forced Labour Convention 1930 (No. 29).

These three regimes are substantially aligned around a set of common due diligence expectations that cover not only transparency and sharing information between actors along value-chains, but also active cooperation by those actors to identify and manage forced labour and modern slavery risks, and take defined steps to remedy harms where they occur. These expectations have found their way into Australian law and practice through both guidance issued to business by the federal Government, to assist compliance with reporting under the federal *Modern Slavery Act 2018* (Cth); and through Guidance issued in December 2023 by the NSW Anti-slavery Commissioner to guide efforts by over 400 public sector entities in NSW who have modern slavery due diligence ('Guidance on Reasonable Steps'¹⁰⁷).

As Figure 9 below lays out, both the HWCP and the Scheme do not address an array of aspects of responsible business conduct that are required to meet the expectations set out in these international standards. The regulatory logic embedded in the HWCP and the Scheme is predicated on maximising transparency in the TCF supply-chain, to allow regulators – both governmental and union – to more easily identify and regulate sources of risk. The regulatory logic in the international standards to which Australia is now committed goes further. It leaves space for transparency initiatives like the HWCP and the Scheme, but also reflects the *additional* expectations on market actors that have emerged over the last two decades. Firms are expected not simply to inform workers in their supply-chains of their rights, but also to provide or enable access to effective grievance mechanisms (with distinct benchmarks having evolved for what constitutes 'effectiveness' in this context); to provide or enable remedy where a firm is connected to harm; and to work with others in the supply-chain to remediate business practices that are generating modern slavery risks, including through proactive development of supplier capabilities. Where modern slavery arises, termination is now treated as a last resort, with the emphasis being placed on buyers 'staying and engaging' with suppliers to remediate harm and address harmful business practices. The Scheme, by contrast, emphasises the risk of suppliers being excluded from contracts as a form of leverage intended to incentivise their compliance.

¹⁰⁵ Rawling, M. J. (2014). Cross-jurisdictional and other implications of mandatory clothing retailer obligations. *Australian Journal of Labour Law*, 27(3), 191-215.

¹⁰⁶ See e.g. Shift, & United Nations. (2021). *Enforcement of mandatory due diligence: Key design considerations for administrative supervision* <https://shiftproject.org/resource/enforcement-mhrdd-design/>

¹⁰⁷ See <https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner/due-diligence-and-reporting.html>.

This points to significant divergence between the Scheme and the expectations on firms under Australia’s existing commitments to international standards around responsible business conduct. Absent steps by TCF firms to proactively take these additional steps, beyond what is required by the HWCP and the Scheme, they risk exposure to complaints and litigation, for example through actions brought to the Australian OECD National Contact Point – an independent complaints mechanism located within the Commonwealth Department of Treasury which can consider allegations that firms have not met their obligations under the relevant OECD framework.

A more detailed analysis of the relationship between the OECD Due Diligence Guidance and the HWCP and Scheme can be found in Appendix E.

Figure 9: Does the Scheme conform with international standards?

	OECD Due Diligence Guidance	NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps (based on the UN Guiding Principles on Business and Human Rights)	HWCP – conformance with international standards?	Scheme - conformance with international standards?
TCF supply-chain coverage	Total	Guidance applies to >400 public buyers	Manufacturers who voluntarily apply	All businesses in the supply chain (retailers & suppliers)
Conduct requirement	1. Embed responsible business conduct in enterprise policy and management systems	1. Commit (covers MS Policy, Risk Management framework, stakeholder engagement, and risk analysis)	No. Organisational commitment to responsible business conduct not a feature of the Code.	No. Organisational commitment to responsible business conduct not a feature of the Scheme.
	2. Identify and assess potential adverse impacts in operations and supply chains	2. Plan (covers risk mapping and sourcing strategy) 3. Source (covers supplier selection and contracting arrangements) 4. Manage (covers monitoring and evaluating supplier performance, developing supplier capabilities)	Not covered, except through annual audit	Largely not covered. Scheme does require retailers to monitor compliance with a limited set of worker entitlements.
	3. Cease, prevent, or mitigate harm in the enterprise’s own operations and in its supply chain	4. Remedy (covers providing or enabling access to	Requirement to ensure compliance with relevant	Addressed only very narrowly around worker

		effective grievance mechanisms, using leverage to remediate deficient practices, and responsible withdrawal)	legislation and awards. Remedy limited to non-payment to outworkers	entitlements. Predisposition to termination does not reflect contemporary expectations around responsible withdrawal.
	4. Track implementation and results	Covered in 4 (Manage) and other aspects of the GRS	No	Requires sharing of information to facilitate regulator tracking
	5. Communicate how adverse impacts are being addressed	6. Report	Not covered	Not covered
	6. Provide for or co-operate in remediation when appropriate	Covered in 4 (Remedy), 6 (Report) and 7 (Improve)	Yes, though limited	Yes, though limited

4. TOR 1(d) Required changes to the Scheme to better mitigate the risks of modern slavery

The Scheme provides a transparency regime that, if enforced, would assist regulators – potentially including the NSW Anti-slavery Commissioner – to better identify, locate and address modern slavery risks in the TCF sector in NSW. But its narrow focus on transparency and industrial rewards does not reflect the broader set of expectations around modern slavery due diligence that now prevail in Australia, including those relating to use of leverage, providing and enabling access to effective grievance mechanisms, and direct engagement by buyers with at-risk stakeholders in the supply-chain.

Further, the Scheme is not integrated, as it stands, with the anti-slavery mechanisms that have emerged in the State, notably the powers given to the NSW Anti-slavery Commissioner by the *Modern Slavery Act 2018* (NSW). The Scheme relies on the executive government and on unions for its enforcement. But, as the *de facto* lapsing of the Scheme in recent years appears to have demonstrated, this makes enforcement dependent on government attention and adequate resourcing. Unions are constrained in their resourcing in numerous ways. The task of tracking and tracing suppliers and identifying outworkers is a time-consuming job and the union faces severe resource constraints in performing this role on its own.¹⁰⁸ The Union’s prospective

¹⁰⁸ Macdonald, K., & Marshall, S. D. (2015). Transnational business and the politics of social risk: Re-embedding transnational supply chains through private governance. In B. Lange & F. Haines (Eds.), *Regulatory Transformations—Rethinking economy-society interactions*. Oxford.

membership base is also low-paid and unable to afford union fees, or otherwise fear they might be penalised for being associated with the union. As a result, the TCF workforce is largely non-unionised¹⁰⁹. Low membership restricts the union's capacity to oversee workers throughout a sprawling supply chain network.

This suggests there may be utility in integrating the independent NSW Anti-slavery Commissioner into the Scheme, alongside the government and the union, since she or he has an existing mandate to focus on modern slavery issues, and the statutory independence, functions, powers, and to some extent resourcing to do so. The Office of the Anti-slavery Commissioner also has the ability to engage with people with lived experience, which could facilitate their engagement in the (re)development of the Scheme and its enforcement going forward.

If the Scheme were reactivated, and with a few small changes, the Scheme could, however, provide a useful tool in the State's arsenal of anti-slavery measures. Key changes to consider include:

1. Giving the Anti-slavery Commissioner the power to receive information generated by reporting under the Scheme, and a role in the governance of the Scheme (for example through inclusion in the Ethical Clothing Trades Council).
2. Giving the Anti-slavery Commissioner the power to visit locations where there are reasonable grounds to suspect that outworkers may be located, and to speak directly and confidentially with workers.
3. Amending the Scheme to ensure the obligations imposed on retailers and manufacturers align with Australia's commitment to international standards, notably the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector. The simplest way to achieve this alignment might be to:
 - a. align the obligation on retailers, as major buyers, with the obligation now on over 400 public buyers in NSW: "to take reasonable steps to ensure that goods and services procured by and for [them] are not the product of modern slavery" and
 - b. clarify that in determining what constitutes reasonable steps the retailers should have reference to any guidance published by the NSW Anti-slavery Commissioner. (This might extend to use of the Commissioner's power under section 27 of the *Modern Slavery Act 2018* (NSW) – discussed in the next section.)

¹⁰⁹ CFMEU. (2021). *Submission in response of the Construction, Forestry, Maritime, Mining & Energy Union (Manufacturing Division) in relation to the Textile, Clothing, Footwear And Associated Industries Award 2021*. <https://www.fwc.gov.au/documents/sites/casual-terms-review/submissions/am202154-sub-corrected-190821-cfmmeu-md-250821.pdf>

5. TOR 1(e) The enforceability of the Scheme in New South Wales, including methods for promoting compliance, such as incorporation by reference through exercise of the Anti-slavery Commissioner's power under section 27 of the Modern Slavery Act 2018 (NSW)

One way to achieve these objectives might be to mandate the Anti-slavery Commissioner to work with the industry to develop bespoke guidance for the industry, taking the form of a Code of Practice to be issued by the Commissioner under section 27 of the *Modern Slavery Act 2018* (NSW). Section 27(2) provides for such Codes of practice to “refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or from time to time”. The Commissioner's Code of Practice could thus refer to or incorporate, with or without modification, the Scheme.

The Anti-slavery Commissioner could be mandated to prepare a report appending such a Code, through a request from the Minister under section 19(5) of the *Modern Slavery Act 2018* (NSW).

Absent additional legislative action, however, such a Code will not bind entities that do not have modern slavery due diligence obligations under the *Modern Slavery Act 2018* (NSW) and related legislation. It would essentially be voluntary for private sector actors, but could become a factor in public procurement (i.e. NSW government and local council buying from TCF supply-chains).

The best approach may be, therefore, to combine:

- legislative amendments to the underlying legislation to require TCF retailers in NSW to take reasonable steps to ensure that goods and services procured by and for them are not the product of modern slavery, and clarifying that what constitutes reasonable steps should be determined through reference to any guidance published by the NSW Anti-slavery Commissioner
- legislative amendments integrating the Anti-slavery Commissioner into the governance of the Scheme and mandating her or him to visit locations where outworkers may be located and speak confidentially with outworkers
- a request from the Minister to the Anti-slavery Commissioner to prepare a special report (under section 19(5) of the *Modern Slavery Act 2018* (NSW)) incorporating a Code of Practice prepared through consultation with the TCF industry and Scheme stakeholders, intended to supplement the Scheme to align retailers' obligations with Australia's commitment to relevant international standards

Two particular areas that such a Code of Practice might usefully address are:

- **Responsible purchasing practices.** The OECD Due Diligence Guidance explicitly states the need for companies to adopt responsible purchasing practices, which have been identified as a key contributor to labour exploitation in TCF supply chains¹¹⁰. The Common Framework for Responsible Purchasing Practices, a multistakeholder initiative that has emerged in the sector, states that:

“adopting a responsible stance on purchasing contributes to suppliers’ ability to plan production effectively, manage working hours, pay workers fairly and invest in improving labour conditions, which in turn helps to boost productivity, stabilise suppliers’ workforces and build resilience in supply chains. Improving purchasing practices will contribute to preventing harm and facilitating both social and environmental improvements in the supply chain.”¹¹¹

The Code of Practice could potentially refer to or incorporate the Common Framework, with or without modification, based on consultation with NSW TCF stakeholders.

- **Publication of supplier information.** It is now good practice internationally for fashion companies and retail brands to publicly list their suppliers enabling full transparency for interested parties¹¹². Publicly available information enables a wider group of diverse stakeholders to monitor conditions in Australian TCF supply chains and hold companies to account. Public supplier lists have also enabled stakeholder collaboration to jointly remediate issues¹¹³. The Code of Practice could provide for regular disclosure by retailers of supplier lists on a publicly available platform adhering to open data standards and supporting machine readability, drawing on experiences like those of Open Supply Hub, discussed in Figure 10 below. Consideration may need to be given to anonymisation of certain information to protect privacy.

Figure 10: Open Supply Hub

Open Supply Hub (previously Open Apparel Registry) is a non-profit organisation that has established an open-access supply chain mapping platform. The platform has sought to tackle a major factor inhibiting the use of retailer’s supply chain lists, data siloed in PDFs and excel spreadsheets. Considering the complexity of global supply chains, inaccessible data has prevented collaboration amongst industry stakeholders and a clearer picture of who is using what production facilities. Thus, open-data standards are crucial to supply chain transparency and the capacity for supplier and buyer information to be used for the benefit of workers.

The platform is designed so that stakeholders can voluntarily contribute updated data on their supply chains (as opposed to annually or otherwise), and information is standardised with other data contributions to eliminate inconsistencies (e.g., spelling errors of factory addresses). The platform thus provides a ‘live’ picture of global supply chains, providing crucial oversight of who

¹¹⁰ Anner, M. (2019). Predatory purchasing practices in global apparel supply chains and the employment relations squeeze in the Indian garment export industry. *International labour review*, 158(4), 705-727. <https://doi.org/https://doi.org/10.1111/ilr.12149>

¹¹¹ MSI Working Group on Purchasing Practices. (2022). *Common Framework for Responsible Purchasing Practices: Building Resilience in Textile Supply Chains*. <https://static1.squarespace.com/static/636ba8ae2fd47349a887dd92/t/642ecf75bca27075443eac29/1680789366782/CFRPP+full+Framework.pdf>

¹¹² Human Rights Watch. (2019). *Fashion’s Next Trend: Accelerating supply chain transparency in the apparel and footwear industry*. <https://www.hrw.org/report/2019/12/18/fashions-next-trend/accelerating-supply-chain-transparency-apparel-and-footwear>

¹¹³ Open Supply Hub. (n.d.). *Civil Society Case Study: Clean Clothes Campaign*. <https://info.opensupplyhub.org/resources/clean-clothes-campaign-case-study>

is involved in what supply chain. Since its launch in 2019, the website states that 936 organisations have contributed data to the platform, resulting in 229,536 production facilities mapped across 166 countries¹¹⁴. As of February 29, 2024, the database lists 1115 TCF facilities in Australia¹¹⁵. The implications of such transparency have been transformative for the industry. For example, since NGOs, civil society groups, and unions have free access to the data, where issues have been identified within a factory, these stakeholders have been able to quickly act by contacting the relevant buyers to begin remediation efforts¹¹⁶.

Finally, one question that might arise is whether such action is warranted in NSW, given the focus on corporate due diligence under federal modern slavery legislation. The federal Modern Slavery Act 2018 (Cth) already mandates some brands and retailers to identify and disclose the risks of modern slavery in their supply chains. However, only companies earning revenue over \$100 million are obligated to comply with the Act. According to ABS data, this high threshold limits the application of the federal Act to just 113 firms in the TCF sector – just 2% of the businesses in the sector.

Several factors suggest there is space for the NSW Parliament to take the lead in addressing modern slavery risks in this sector, should it choose to:

- The NSW Parliament has a history of leadership both on encouraging responsible business conduct in the TCF sector (having been the first mover in the development of the Scheme) and in adoption of anti-slavery legislation.
- There is little prospect of the federal government developing bespoke guidance for this sector in the near term. The government is currently considering its response to the McMillan Review of the federal *Modern Slavery Act 2018* (Cth) and guiding a bill through the federal Parliament to establish a new role of federal Anti-slavery Commissioner. While this process may in time lead to the development of sector-specific guidance at the federal level, this seems unlikely to be forthcoming for several years.
- Recent scholarship on fashion company responses to the *Australian Modern Slavery Act (2018)* (Cth) suggests it is having a limited impact on buyer behaviour – such as revisiting how their own purchasing practices and contractual arrangements may contribute to modern slavery risks. Instead, companies often push the regulatory burden onto their suppliers, framing suppliers as the singular cause of labour exploitation¹¹⁷.

¹¹⁴ Open Supply Hub. *What is Open Supply Hub?* <https://info.opensupplyhub.org/>

¹¹⁵ Open Supply Hub. (2024). *Facilities*. Retrieved 29 February from <https://opensupplyhub.org/facilities?countries=AU>

¹¹⁶ Open Supply Hub. (n.d.). *Civil Society Case Study: Clean Clothes Campaign*. <https://info.opensupplyhub.org/resources/clean-clothes-campaign-case-study>

¹¹⁷ Coneybeer, J., O'Brien, E., Hurst, B., & Payne, A. (2023). Assessing the self-regulation strategies and reflexive capacity of fashion companies' anti-slavery tools. *Australian Journal of Human Rights*, 29(2), 215-238. <https://doi.org/10.1080/1323238X.2023.2290770>

6. TOR 1(f) Other industries that are vulnerable to the risks of modern slavery due to their supply chain characteristics, such as primary industries and construction, and the characteristics of those industries in New South Wales

There are numerous industries that are prone to modern slavery risks, in many cases due to supply chain characteristics.

In December 2023 the NSW Anti-slavery Commissioner published the GRS Inherent Risk Identification Tool ('the IRIT'), a simple-to-use, open-source risk mapping tool intended to allow covered entities to identify the modern slavery risk associated with different product categories from which they procure. Further due diligence on specific suppliers is also required, but the IRIT provides a common baseline for understanding modern slavery risk across NSW public buyers at the category level.¹¹⁸

The current version of the IRIT (v1.1.2, February 2024) identifies 27 categories in the NSW whole of government procurement taxonomy that exhibit high modern slavery risks. These are summarised in Figure 10 below. Further information is provided in the IRIT about the source of risk in each of these product categories, including the presence of vulnerable workers, weaknesses in the institutional or regulatory environment, or prevalent business practices and exploitation strategies.

Figure 11: High risk procurement categories per IRIT v1.1.2

PROCUREMENT CATEGORY Level 1	PROCUREMENT CATEGORY Level 2	PROCUREMENT CATEGORY Level 3
Agency Specific Expense	Uniform and Workwear	
Exempt	Correctional Facility Related	Inmate Wages
Facilities and Buildings Management	Cleaning	Cleaning

¹¹⁸ Download the IRIT at <https://dcj.nsw.gov.au/content/dam/dcj/dcj-website/documents/legal-and-justice/anti-slavery-commissioner/due-diligence-and-reporting/inherent-risk-identification-tool.xlsx>.

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Facilities and Buildings Management	Cleaning	Cleaning Supplies
Facilities and Buildings Management	Electrical, Mechanical and Elevators	Generators
Facilities and Buildings Management	Food, Water and Catering	Food Catering and Consumables
Facilities and Buildings Management	Security Services and Equipment	Security Services
Facilities and Buildings Management	Speciality Building Maintenance and Repairs	Flooring and Carpeting
Fleet Management	Corporate Fleet Vehicles	Emergency Vehicles
Fleet Management	Corporate Fleet Vehicles	General Fleet Vehicles
Fleet Management	Corporate Fleet Vehicles	Heavy Vehicle Types
Fleet Management	Corporate Fleet Vehicles	Other Vehicle Types
Fleet Management	Corporate Fleet Vehicles	Specialized Vehicles
Fleet Management	Vehicle Leasing	
Human Resources	Contingent Labour	Industrial and Construction Contingent Labour
Human Resources	Talent Acquisition Services	Employment Visa, Immigration Cost
ICT	End user computing and Peripherals	Computer accessories
ICT	End user computing and Peripherals	Computer displays
ICT	End user computing and Peripherals	End User Asset as a Service
ICT	End user computing and Peripherals	End User Devices
ICT	End user computing and Peripherals	Presentation and Multi-Media
ICT	End user computing and Peripherals	Printers
ICT	Infra and network hardware - non carriage	Hardware disposal
ICT	Infra and network hardware - non carriage	Network Hardware purchases and inventory

Medical	Equipment/Supplies	Medical Equipment
Medical	Equipment/Supplies	Medical Supplies & Consumables
Office Supplies and Services	Multi-functional Devices and Printers	Copiers & Printers

7. TOR 1(g) The merits of extending the Scheme to other industries that are vulnerable due to their supply chain characteristics to mitigate the risks of modern slavery

One of the strengths of the Scheme is the fact that it was designed to address one of the key problems that faces those who seek to address modern slavery: the difficulty of finding and locating those at risk. The Scheme works to give regulators granular information that they can use to better identify, assist and support those at risk. This has potential applications across a wide variety of sectors in NSW, where vulnerable workers operate in isolated settings, and lead firms and buyers have sufficient leverage to help shed light on those workers' location and situation.

Still, given the Scheme has fallen into desuetude for several years, it is difficult to truly assess its effectiveness, and to reliably assess which elements of the Scheme might be successfully adapted to other sectoral contexts. Modern slavery risks are highly situation-specific, because exploitation responds to systemic opportunities and the vulnerabilities of particular workforces. Careful reflection would be needed to identify if or how elements of the Scheme could best be adapted to deal with other high risk supply-chains in NSW, such as cleaning, security or local agriculture. Each of these sectors has its own political-economic and regulatory dynamics.

One option that the Committee may wish to consider would be to first pilot the revived and updated Scheme for the TCF sector. The Government could revive and adapt the Scheme, integrating it with the anti-slavery architecture and aligning with international standards along the lines flagged above, with a view to reviewing the performance of the Scheme in 2 years' time, with a view to considering the potential adaptation of the model to other sectors in NSW. The Minister could once again use his powers under section 19(5) to request a special report from the Anti-slavery Commissioner, for example by a defined date 2 years after the revised Scheme became operational, to report on the effectiveness of this 'pilot'.

Appendix A: ABS Data on the size of the TCF industry

Number of Businesses in TCF Industry				
ANZSIC 393 Sub-sector	NSW		AUS	
Textile Manufacturing	49	2%	166	2%
Leather Tanning, Fur Dressing and Leather Product Manufacturing	137	5%	462	6%
Textile Product Manufacturing	864	34%	2908	38%
Knitted Product Manufacturing	25	1%	112	1%
Clothing and Footwear Manufacturing	1506	58%	4083	53%
TOTAL	2578	-	7727	-

Data source: Businesses in Australia, 2018-19, TableBuilder

Headcount within TCF Businesses												
Headcount (ranges)	Textile Manufacturing		Leather Tanning, Fur Dressing and Leather Product Manufacturing		Textile Product Manufacturing		Knitted Product Manufacturing		Clothing and Footwear Manufacturing		Total	
1 to 9	35	22%	85	18%	759	26%	27	23%	816	20%	1713	22%
10 to 19	15	9%	15	3%	184	6%	13	11%	114	3%	346	4%
20 to 99	15	9%	9	2%	122	4%	7	6%	122	3%	277	4%
100 to 199	0	0%	0	0%	10	0%	0	0%	12	0%	29	0%
200+	0	0%	0	0%	4	0%	0	0%	6	0%	15	0%
Missing and 0 responses	96	60%	342	74%	1827	63%	75	65%	3016	74%	5357	69%
Total	159	-	462	-	2908	-	115	-	4092	-	7737	-

Data source: Businesses in Australia, 2018-19, TableBuilder

Sales per annum of TCF Businesses												
Total sales (ranges)	Textile Manufacturing		Leather Tanning, Fur Dressing and Leather Product Manufacturing		Textile Product Manufacturing		Knitted Product Manufacturing		Clothing and Footwear Manufacturing		Total	
	1 to 49,999	33	29%	85	25%	439	19%	20	24%	687	27%	1254
50,000 to 74,999	3	3%	33	10%	160	7%	3	4%	227	9%	424	8%
75,000 to 199,999	21	19%	94	27%	485	21%	20	24%	647	25%	1268	24%
200,000 to 1,999,999	34	30%	104	30%	959	42%	28	34%	798	31%	1934	36%
2,000,000 to 4,999,999	11	10%	14	4%	134	6%	6	7%	101	4%	267	5%
5,000,000 to 9,999,999	3	3%	5	1%	40	2%	0	0%	61	2%	116	2%
10,000,000 to 49,999,999	7	6%	7	2%	41	2%	6	7%	40	2%	95	2%
50,000,000+	0	0%	0	0%	6	0%	0	0%	5	0%	18	0%
TOTAL	112	-	342	-	2264	-	83	-	2566	-	5376	-

Data source: Businesses in Australia, 2018-19, TableBuilder

Appendix B: ABS Data on the number of workers in the TCF industry and their employment characteristics

Number of overall workers in TCF Industry	NSW	AUS
Textile, Leather, Clothing and Footwear Manufacturing, nfd	347	1219
Textile Manufacturing	183	869
Leather Tanning, Fur Dressing and Leather Product Manufacturing	324	1041
Textile Product Manufacturing	1606	7109
Knitted Product Manufacturing	42	240
Clothing and Footwear Manufacturing	3490	10878
TOTAL	5985	21357

Data source: Census of Population and Housing, 2021, TableBuilder

Number of TCF Trade Workers		
6-digit OCCP- Occupation	NSW	AUS
Textile, Clothing and Footwear Trades Workers nfd	12	54
Canvas and Leather Goods Makers nfd	0	12
Canvas Goods Fabricator	74	370
Leather Goods Maker	159	478
Sail Maker	64	201
Shoemaker	165	720
Clothing Trades Workers nfd	23	52
Apparel Cutter	124	355
Clothing Patternmaker	143	341
Dressmaker or Tailor	1544	5226
Clothing Trades Workers nec	79	165
Upholsterer	601	2146
Total	2975	10104

Data source: Census of Population and Housing, 2021, TableBuilder

4-digit level OCCP Occupation Labour Force Status Australia										
LFSP Labour Force Status	Textile, Clothing and Footwear Trades Workers, nfd		Canvas and Leather Goods Makers		Clothing Trades Workers		Upholsterers		Total	
Employed, worked full-time	28	52%	1084	61%	2310	38%	1421	66%	4840	48%
Employed, worked part-time	19	35%	561	32%	2971	48%	549	26%	4103	41%
Employed, away from work	0	0%	132	7%	851	14%	172	8%	1156	11%
Unemployed, looking for full-time work	0	0%	0	0%	0	0%	0	0%	0	0%
Unemployed, looking for part-time work	0	0%	0	0%	0	0%	0	0%	0	0%
Not in the labour force	0	0%	0	0%	0	0%	0	0%	0	0%
Not stated	0	0%	0	0%	0	0%	0	0%	0	0%
Not applicable	0	0%	0	0%	0	0%	0	0%	0	0%
Total	54	-	1775	-	6135	-	2146	-	10104	-

Data source : Census of Population and Housing, 2021, TableBuilder

Number of hours worked in a week according to TCF trade worker occupation (OCCP 393)										
HRWRP Hours Worked (ranges)	Textile, Clothing and Footwear Trades Workers, nfd		Canvas and Leather Goods Makers		Clothing Trades Workers		Upholsterers		Total	
0 hours	0	0%	121	7%	761	12%	145	7%	1023	10%
1-9 hours	5	9%	96	5%	501	8%	67	3%	671	7%
10-19 hours	7	13%	136	8%	902	15%	118	5%	1164	12%
20-29 hours	3	6%	189	11%	992	16%	193	9%	1377	14%
30-34 hours	4	7%	135	8%	582	9%	174	8%	888	9%
35-39 hours	16	30%	344	19%	1011	16%	614	29%	1979	20%
40-44 hours	14	26%	379	21%	714	12%	444	21%	1543	15%
45-49 hours	3	6%	127	7%	162	3%	124	6%	418	4%
50-59 hours	0	0%	142	8%	256	4%	140	7%	534	5%
60-69 hours	0	0%	65	4%	106	2%	71	3%	246	2%
70 hours or more	0	0%	31	2%	52	1%	32	1%	116	1%
Not stated	0	0%	14	1%	86	1%	26	1%	129	1%
Total	54	-	1775	-	6135	-	2146	-	10104	-

Data source: Census of Population and Housing, 2021, TableBuilder

TCF workers income																				
	Employed, worked full-time										Employed, worked part-time									
	Textile, Clothing and Footwear Trades Workers, nfd		Canvas and Leather Goods Makers		Clothing Trades Workers		Upholsterers		Total		Textile, Clothing and Footwear Trades Workers, nfd		Canvas and Leather Goods Makers		Clothing Trades Workers		Upholsterers		Total	
Negative income	0	0%	4	0%	4	0%	0	0%	10	0%	0	0%	9	2%	5	0%	5	1%	16	0%
Nil income	0	0%	4	0%	19	1%	0	0%	25	1%	0	0%	11	2%	29	1%	0	0%	45	1%
\$1-\$149 (\$1-\$7,799)	0	0%	4	0%	23	1%	10	1%	38	1%	0	0%	19	3%	246	8%	17	3%	287	7%
\$150-\$299 (\$7,800-\$15,599)	0	0%	28	3%	51	2%	12	1%	85	2%	0	0%	35	6%	321	11%	26	5%	381	9%
\$300-\$399 (\$15,600-\$20,799)	0	0%	32	3%	70	3%	15	1%	120	2%	6	35%	62	11%	346	12%	45	8%	458	11%
\$400-\$499 (\$20,800-\$25,999)	0	0%	43	4%	120	5%	42	3%	204	4%	0	0%	52	9%	403	14%	81	14%	545	13%
\$500-\$649 (\$26,000-\$33,799)	0	0%	81	7%	159	7%	87	6%	336	7%	0	0%	105	19%	529	18%	86	15%	716	17%
\$650-\$799 (\$33,800-\$41,599)	9	32%	179	16%	402	17%	191	13%	770	16%	0	0%	101	18%	442	15%	98	18%	642	16%
\$800-\$999	12	43%	267	25%	567	25%	353	25%	1201	25%	7	41%	61	11%	281	10%	89	16%	437	11%

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(\$41,600-\$51,999)																				
\$1,000-\$1,249 (\$52,000-\$64,999)	4	14%	213	20%	394	17%	326	23%	936	19%	4	24%	46	8%	174	6%	49	9%	271	7%
\$1,250-\$1,499 (\$65,000-\$77,999)	3	11%	75	7%	209	9%	170	12%	461	10%	0	0%	26	5%	71	2%	33	6%	128	3%
\$1,500-\$1,749 (\$78,000-\$90,999)	0	0%	62	6%	128	6%	91	6%	283	6%	0	0%	16	3%	51	2%	8	1%	77	2%
\$1,750-\$1,999 (\$91,000-\$103,999)	0	0%	45	4%	64	3%	42	3%	159	3%	0	0%	4	1%	22	1%	3	1%	33	1%
\$2,000-\$2,999 (\$104,000-\$155,999)	0	0%	30	3%	63	3%	43	3%	128	3%	0	0%	3	1%	20	1%	5	1%	30	1%
\$3,000-\$3,499 (\$156,000-\$181,999)	0	0%	5	0%	9	0%	6	0%	14	0%	0	0%	0	0%	0	0%	6	1%	10	0%
\$3,500 or more (\$182,000 or more)	0	0%	6	1%	10	0%	8	1%	25	1%	0	0%	0	0%	0	0%	0	0%	0	0%
Not stated	0	0%	8	1%	22	1%	19	1%	54	1%	0	0%	7	1%	17	1%	9	2%	26	1%
Not applicable	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
TOTAL	28		1086		2314		1415		4849		17		557		2957		560		4102	

Appendix C: ABS Data on the demographic profile of TCF Trade workers

Sub-sector	SEXP Sex	Person Records
Textile, Clothing and Footwear Trades Workers, nfd	Male	29
		58%
	Female	21
		42%
Canvas and Leather Goods Makers	Male	1304
		73%
	Female	475
		27%
Clothing Trades Workers	Male	1069
		17%
	Female	5062
		83%
Upholsterers	Male	1886
		88%
	Female	259
		12%
Total	Male	4290
		42%
	Female	5821
		58%

Data source: Census of Population and Housing, 2021, TableBuilder

Occupation according to Sex and Age																				
4-digit level OCCP Occupation	Textile, Clothing and Footwear Trades Workers, nfd				Canvas and Leather Goods Makers				Clothing Trades Workers				Upholsterers				Total			
	SEXP Sex		Male	Female	Male		Female		Male		Female		Male		Female		Male		Female	
15-19 years	3	7%	0	0%	39	2%	3	0%	62	1%	144	2%	41	2%	6	0%	138	1%	162	2%
20-24 years	3	7%	0	0%	75	4%	19	1%	86	1%	291	5%	93	4%	11	1%	251	2%	319	3%
25-29 years	3	7%	3	7%	79	4%	31	2%	84	1%	365	6%	110	5%	22	1%	273	3%	420	4%
30-34 years	0	0%	0	0%	86	5%	44	2%	70	1%	359	6%	111	5%	17	1%	271	3%	421	4%
35-39 years	3	7%	4	10%	98	5%	44	2%	67	1%	356	6%	140	7%	20	1%	308	3%	420	4%
40-44 years	0	0%	0	0%	106	6%	37	2%	65	1%	368	6%	142	7%	21	1%	315	3%	430	4%
45-49 years	0	0%	3	7%	104	6%	54	3%	75	1%	523	9%	209	10%	40	2%	389	4%	616	6%
50-54 years	0	0%	0	0%	187	10%	83	5%	124	2%	720	12%	259	12%	32	1%	570	6%	840	8%
55-59 years	0	0%	4	10%	179	10%	77	4%	149	2%	775	13%	281	13%	36	2%	608	6%	890	9%
60-64 years	9	21%	7	17%	156	9%	46	3%	149	2%	665	11%	275	13%	28	1%	585	6%	735	7%
65-69 years	0	0%	0	0%	105	6%	18	1%	60	1%	325	5%	154	7%	15	1%	324	3%	366	4%
70-74 years	0	0%	0	0%	67	4%	14	1%	41	1%	115	2%	52	2%	5	0%	160	2%	130	1%
75-79 years	0	0%	0	0%	28	2%	5	0%	14	0%	42	1%	14	1%	0	0%	57	1%	47	0%
80-84 years	0	0%	0	0%	5	0%	0	0%	8	0%	4	0%	6	0%	0	0%	24	0%	5	0%
TOTAL	21	-	21	-	1322	-	475	-	1057	-	5055	-	1887	-	253	-	4284	-	5808	-
Total workers	42				1797				6112				2140				10092			

Data source: Census of Population and Housing, 2021, TableBuilder

TCF Trade workers top 10 Countries of Birth										
4-digit level OCCP Occupation	Textile, Clothing and Footwear Trades Workers, nfd		Canvas and Leather Goods Makers		Clothing Trades Workers		Upholsterers		Total	
Australia	27	60%	1261	72%	2609	43%	1294	62%	5199	51%
Vietnam	3	7%	31	2%	893	15%	42	2%	960	10%
China (excludes SARs and Taiwan)	0	0%	10	1%	389	6%	29	1%	435	4%
England	0	0%	87	5%	173	3%	150	7%	408	4%
New Zealand	6	13%	55	3%	161	3%	109	5%	326	3%
Philippines	0	0%	18	1%	144	2%	24	1%	187	2%
India	0	0%	11	1%	125	2%	15	1%	162	2%
Italy	0	0%	27	2%	74	1%	25	1%	124	1%
Nepal	0	0%	0	0%	106	2%	0	0%	111	1%
Afghanistan	5	11%	9	1%	78	1%	11	1%	97	1%
TOTAL	45	-	1751	-	6092	-	2094	-	10098	-

Data source: Census of Population and Housing, 2021, TableBuilder

Language spoken at home										
4-digit level OCCP Occupation	Textile, Clothing and Footwear Trades Workers, nfd		Canvas and Leather Goods Makers		Clothing Trades Workers		Upholsterers		Total	
English	35	65%	1445	82%	3110	51%	1635	76%	6225	62%
Vietnamese	6	11%	25	1%	868	14%	43	2%	942	9%
Mandarin	7	13%	10	1%	273	4%	26	1%	316	3%
Cantonese	0	0%	8	0%	223	4%	16	1%	247	2%
Arabic	0	0%	43	2%	91	1%	37	2%	171	2%
Italian	0	0%	34	2%	102	2%	30	1%	166	2%
Greek	0	0%	22	1%	104	2%	34	2%	160	2%
Russian	0	0%	22	1%	103	2%	4	0%	129	1%
Spanish	0	0%	19	1%	81	1%	21	1%	121	1%
Nepali	0	0%	0	0%	94	2%	4	0%	98	1%
Total workers	54	-	1767	-	6119	-	2143	-	10085	-

Data source: Census of Population and Housing, 2021, TableBuilder

Proficiency in Spoken English in sub-sectors										
ENGLP Proficiency in Spoken English	Textile, Clothing and Footwear Trades Workers, nfd		Canvas and Leather Goods Makers		Clothing Trades Workers		Upholsterers		Total	
Speaks English only	35	65%	1445	81%	3110	51%	1635	76%	6233	62%
Uses other language and speaks English: Very well	7	13%	153	9%	939	15%	187	9%	1292	13%
Uses other language and speaks English: Well	7	13%	112	6%	1117	18%	208	10%	1445	14%
Uses other language and speaks English: Not well	3	6%	46	3%	873	14%	102	5%	1024	10%
Uses other language and speaks English: Not at all	0	0%	7	0%	82	1%	3	0%	96	1%
Not stated - both language (LANP) and proficiency in spoken English not stated	0	0%	4	0%	5	0%	9	0%	21	0%
Not stated - language (LANP) stated, proficiency in spoken English not stated	0	0%	0	0%	0	0%	3	0%	5	0%
Total	54		1775		6135		2146		10104	

Data source: Census of Population and Housing, 2021, TableBuilder

Appendix D: Ethical Clothing Australia Code of Practice

Objective	<ul style="list-style-type: none"> • End exploitation of TCF workers • Enable TCF workers to understand their employment entitlements • Ensure TCF workers receive their legal entitlements • Establish an accreditation system for manufacturers who comply with this agreement • Educate stakeholders in the industry and wider community • Facilitate accredited businesses to establish a more transparent, ethical, and sustainable supply chain • Provide a mechanism to accredited businesses to ensure ongoing compliance • Provide an opportunity to accredited businesses to promote their products as ethically produced through the Ethical Clothing Australia trade mark¹¹⁹.
Stakeholders	<p>Homeworkers Code of Practice Committee has overall oversight on the implementation and management of the Code, its members include:</p> <ul style="list-style-type: none"> • Australian Industry Group (Ai Group) • NSW Business Chamber • Cue Clothing • Bluegum • Australian Defence Apparel (ADA) • CFMEU TCF sector representatives <p>The union (CFMEU) is responsible for receiving and managing complaints from workers and monitoring compliance with the Code.</p>
Businesses Accredited	- Approximately 158 businesses ¹²⁰ .
Accreditation Requirements	<p>Accreditation is renewed annually where the below obligations are met.</p> <p>Clause 9 - Obligations 9.1 General obligations</p>

¹¹⁹ Page 4 of Ethical Clothing Australia. (2021b). *Ethical Clothing Australia's Code of Practice, incorporating Homeworkers: Manufacturer's Agreement* https://ethicalclothingaustralia.org.au/wp-content/uploads/2021/02/Code-of-Practice_FA-1.pdf

¹²⁰ Ethical Clothing Australia. (2022). *2022-23 Pre-Budget Submission to the Treasurer*. https://treasury.gov.au/sites/default/files/2022-03/258735_homeworker_code_committee_trading_as_ethical_clothing_australia.pdf

	<ul style="list-style-type: none"> - advise ECA of changes (within 7 days) to manufacturing circumstances (e.g., removal or addition of suppliers in the chain) - cooperate with union regarding compliance and auditing - cooperate with ECA with requested documentation and fee payment - maintain records (work agreement, work record, wage record, super and compensation fund payments) <p>9.2 Obligation regarding in house workers</p> <ul style="list-style-type: none"> - ensure all in-house workers receive their legal entitlements <p>9.3 Obligation in relation to supply chaion</p> <ul style="list-style-type: none"> - ensure that their entire supply chain is compliant with their legal obligations <p>9.4 Obligations to homeworkers</p> <ul style="list-style-type: none"> - Required to be registered with Fair Work Commission Board of Reference (BOR) and provide quarterly lists of homeworkers engaged to Union and BOR. - Required to provide written agreement and work record to the homeworker - provide homeworkers with at least their minimum legal entitlements - pay homeworkers for unpaid work that was sub-contracted(directly or not), as per the relevant legislation - upon request, provide the Union within 7 days all details of homeworkers engaged and the work provided
Audits	<ul style="list-style-type: none"> - Annual Audit frequency - Facilities audited <ul style="list-style-type: none"> o Head office(s) o In-house manufacturing operations o Outsourced manufacturing locations (including outworkers)
Penalties	<ul style="list-style-type: none"> - The Committee may revoke accreditation if issues are not remedied. - Other accredited manufacturers will then be restricted from using the offending manufacturer in their supply chain. - Due to the small size of the industry, and the increasing number of accredited businesses, this boycott mechanism is a powerful sanction impacting the capacity for an offending manufacturer to continue business¹²¹.
Incentives	<ul style="list-style-type: none"> - ECA utilise market-based tools to hold companies accountable and - The ECA certification trademark is used as a labelling /swing tag system that signals to consumers and buyers that a product has been ethically made in Australia. - The ECA website lists their accredited manufacturers, enabling consumers and retailers with information to support ethical purchasing.
Comments	<ul style="list-style-type: none"> - The Code is Australia-wide and based on Award standards (and so it is a strong voluntary code) - The code is contested amongst manufacturers and seen as an additional monetary burden – reducing competitiveness

¹²¹ Macdonald, K., & Marshall, S. D. (2015). Transnational business and the politics of social risk: Re-embedding transnational supply chains through private governance. In B. Lange & F. Haines (Eds.), *Regulatory Transformations–Rethinking economy-society interactions*. Oxford.

Appendix E: Scheme and HWCP Conformance with OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector

OECD Due Diligence Guidance	HWCP Conformance	Scheme Conformance	Scheme Gap
1. Embed responsible business conduct in enterprise policy and management systems	ECA Accreditation supports the 'pre-qualification' of manufacturers for sub-contracting.	Part 3, (10)(2) of the Scheme requires retailers to embed specific provisions within an agreement to confirm that outworkers, if engaged, will receive their legal entitlements, the addresses of where work is performed will be disclosed, and failure to abide by these terms will be considered a breach of the agreement and grounds for termination. These terms stipulate an entity's expectation regarding sub-contracting and outsourcing to homeworkers. The 'pre-qualification' of subcontractors is limited to their agreement prior to being engaged, that they will comply with their legal obligations (i.e., there is no prior due diligence activities such as an audit). The Scheme includes due diligence characteristics in that it creates a legal obligation for retailers to ask their suppliers whether they are using outworkers.	No specific policy requirement outlining organisational commitments, policies or processes or a commitment to responsible business conduct. Limited commitment to meaningful engagement with affected stakeholders – though does have to provide reporting to the union. The Scheme does not assign responsibility to senior staff.
2. Identify and assess potential adverse impacts in operations and supply chains	N/A	N/A	No requirement to identify risks according to: - sector - product - country - business-model - sourcing model No requirement to conduct a self-assessment to understand extent of risk.

			No requirement to assess supplier risk. No requirement to determine entity's relationship to risk (cause, contribute, link)
3. Cease, prevent, or mitigate harm in the enterprise's own operations and in its supply chain	ECA accreditation encourages firms to address deficiencies in their own practices. Due to the small size of the industry, and the increasing number of accredited businesses, the loss of custom that arises through loss of accreditation is a powerful incentive for addressing issues in own operations ¹²² . But the Code does not have obligations of conduct relating to a firm's use of leverage on their own suppliers, and its scope is narrowly related to workers' entitlements, not the broader context in which modern slavery may arise.	Part 3, (10)(2) requires retailers to embed specific provisions within an agreement to confirm that outworkers, if engaged, will receive their legal entitlements, the addresses of where work is performed will be disclosed, and failure to abide by these terms will be considered a breach of the agreement and grounds for termination. This requirement facilitates leverage to ensure suppliers will comply and enables entities to disengage where suppliers are found to be non-compliant.	No requirement to prevent/mitigate harm through internal operations e.g., implement responsible purchasing practice systems. Limited requirement to prevent/mitigate harm in supply chain – focused on pay and entitlements. Focus on termination, rather than responsible withdrawal, does not reflect international standards. Limited capacity to enable collective leverage where supply chain lists are not publicly disclosed e.g., multiple retailers support a supplier to comply.
4. Track implementation and results	Annual audits support ongoing monitoring of suppliers. Given that a supplier only requires to be audited once to ECA accreditation, audit-fatigue is reduced. Entities are required to cooperate with union regarding compliance and auditing.	No obligation of conduct on the retailers or suppliers. The Scheme instead relies on regulatory to monitor impacts and results, through analysis of information that the Scheme requires to be shared with regulators.	No tracking of effectiveness/monitoring of own operations. No tracking of effectiveness or monitoring of contract violations.
5. Communicate how adverse impacts are being addressed	N/A	The Scheme creates a duty for retailers to report unfavourable conditions to the relevant Minister and/or union. But it does not require them to directly remediate harms even when linked to them.	No requirement to publicly disclose any information on an entity's due diligence processes.

¹²² Ibid.

6. Provide for or co-operate in remediation when appropriate	n/a	<p>The Scheme is to be read in conjunction with the <i>Industrial Relations Act 1996</i> which allows for partial remedy for affected persons through restoration of unpaid wages. Div 3, 129D of the IR Act allows outworkers to make a claim against their “apparent employers” (e.g., the retailer who will sell the clothes produced) .</p>	<p>No requirement to establish effective grievance mechanisms (for either suppliers or workers). No commitment to addressing legitimate complaints e.g., raised through trade unions. No requirement to remediate issues that restore the affected person to the situation they were in prior to the harm (e.g., pay for interest on loans due to unpaid wages). Instead the Code and Scheme rely on existing governmental and regulatory infrastructure to play this role.</p>
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