



## Sourcing the truth

HOW ETHICAL ARE FASHION SUPPLY CHAINS RIGHT NOW? TO ANSWER THIS, ETHICAL CLOTHING AUSTRALIA ROUNDED UP A PANEL CONSISTING OF A NSW MP, A UNION REP, A UNIVERSITY LECTURER, AN ANTI-SLAVERY DIRECTOR AND A LOCAL MANUFACTURER.

**P**anel host Heather Chai - the director of the Modern Slavery Unit at The University of Sydney - is joined by NSW MP Dr Sarah Kaine; CFMEU Manufacturing Division national secretary of Jenny Kruschel; USYD associate professor Martijn Boersma; Be Slavery Free co-director Carolyn Kitto; and ABMT Apparel director Andrew Quinn.

**SARAH, WHAT INITIATIVES DO YOU THINK ARE MAKING THE BEST IMPACT WHEN IT COMES TO GARMENT WORKERS' RIGHTS?**

**Sarah:** Over the course of the previous government, there were a range of policies that didn't support workers, generally, let alone vulnerable workers. So one of the things that we've been trying to do is correct the balance in that respect. If we go specifically to the textiles and clothing sector, I initiated an inquiry in the modern slavery committee. That inquiry I initiated because I just happened to be aware of a very, very quirky piece of regulation that has been hanging around since 2005, that most people had forgotten about. That piece of regulation was called the New South Wales Ethical Clothing Extended Responsibility Scheme.

This was a bit of a co-regulation - if you like - with the textile, clothing and footwear union. This meant that retailers - so the organisations at the top of the supply chain - were required to report on all of the activities down their supply chain when they purchased textiles and clothing, which was revolutionary. It was the first of its kind. What that meant was that both the government of the day, but also the union, knew exactly where workers were, where they were actually sitting at their machines, doing their work. And that is really significant in terms of trying to ensure that workers are treated well. So that was a really

revolutionary piece of regulation that got put in the bottom drawer, and I knew it was sitting there, so we ran this inquiry.

Out of that inquiry, the recommendations were that there is still a lot of value in that scheme that we probably need to update it, because we now have a federal system of industrial relations, but there is a lot of value in having that level of granularity and transparency when it comes to knowing where work has been carried out down the supply chain.

We also made recommendations about the fact that we're also operating in the world. In New South Wales, we're lucky enough to have an anti-slavery commissioner and an act, and we need to revisit that regulation in light of those developments as well.

We're waiting for the official government response to those recommendations. But the recommendations from the committee were there's definitely value in having transparent supply chains, but we need to figure out what the best way is of enforcing that transparency.

**JENNY, HOW DO YOU THINK THE LANDSCAPE IS CHANGING FOR WORKERS IN THE SECTOR? HAS IT IMPROVED?**

**Jenny:** Yes, conditions have improved. There are a whole lot of new conditions around maternity leave, and safety. I mean, when I started, I remember if you needed to get up on a machine, you were given a phone box, or you could come to work in thongs, and people would smoke in and around the factory. So there's definitely been some changes, but the exploitation in the sector is still around. Transparency is the only way that workers can have a voice through the union, and that we can know where the work is getting done. And not only in Australia. We should have a trade policy from the top to the bottom, but we should have it internationally as well. And

the laws in Australia say that if you give work out, you should be BOR-registered with Fair Work, and you should tell the union where the work's going. But the reality is today in Australia, there are lots of companies breaching that legislation, and they're not showing us where their supply chains are going, and they don't want to be transparent.

**MARTIJN, CAN YOU EXPLAIN HUMAN RIGHTS DUE DILIGENCE AND DO YOU THINK AUSTRALIA'S KEEPING UP WITH THE GLOBAL TRENDS IN THIS SPACE?**

**Martijn:** Human rights due diligence starts with the introduction of transparency. Back in 2010 in California, basically it was a requirement for companies of a certain size that met the threshold to explain as much supply chain risks and disclose those risks to the public. Now that's essentially also the mechanism that we have had in the UK since 2015 and that's essentially the mechanism that we have right now in Australia. As a company, you have to be aware of risks in supply chains. You need to disclose everything you're doing to address those risks, and you basically need to show the progress that you are making.

Now the emphasis there lies entirely on disclosure. So compliance or noncompliance relies on whether you are disclosing those risks. So failure to comply, and enforcement, is a whole nother story. I won't get into that. But failure to comply basically means that you are not disclosing that.

Now I'm taking this historical perspective, because human rights due diligence basically is oftentimes explained as the next step beyond that. This is how I explain this to my students as well, by showing this graph, which is a regulatory curve with all the different types of laws that have been introduced around the world, not only different laws but



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also the increasing responsibilities placed on business over time. So this is part of the historical trend, which also brings us to the question of: What is Australia doing? Because, in effect, it's not a question of if, but rather when human rights due diligence will come to Australian shores.

With human rights due diligence, the emphasis doesn't lie on the disclosure or the transparency. The emphasis lies on the prevention thereof. So the compliance, therefore, is not: Are you disclosing it? Compliance lies in prevention. And with that comes an enforcement question as well, which is a whole separate discussion. France, Germany, and more recently, the EU has introduced its corporate sustainability due diligence directive, and the idea there is that if you as a company do not have a risk mitigation plan, if you do not take a proper proactive approach to that risk management, you leave yourself open to civil lawsuits. You leave yourself open, in some jurisdictions, to criminal liability for directives. So, in effect, it's the next step up.

In a nutshell, what I always tell my students: the difference between the move from transparency towards the due diligence is we go from *you could have known about these abuses, towards you should have known*. And that's a seemingly small step, but it's quite significant. And hopefully, with the review currently underway, we'll see an announcement coming from the Commonwealth government towards the end of the year. Fingers crossed, that will also give us a sense that

there will be a pathway towards human rights due diligence here in Australia.

AND WHAT DO YOU THINK COMPANIES HERE IN AUSTRALIA SHOULD BE DOING TO GET READY FOR THAT CHANGE?

**Martijn:** If you've been taking the current Modern Slavery Act in Australia seriously, then you'd be well on your way to actually doing it. Because, like I said, you need to be aware of risks. You need to show what you're doing to address those risks, and you need to show what progress you're making.

I've seen a wide variety of Modern Slavery Statements. I've seen really bad ones, and I've seen relatively good ones, and we're still operating from a lower bar. But if you've taken this seriously, and you don't just create some sort of good news report as a Modern Slavery Statement; if, as a business, as an organisation, you really try to map risks and put in place policies and procedures to address those risks in a proactive way, then you're well on the way to dealing with the sort of due diligence question.

If, as a reporting entity, you've not been doing that, and you've been using ChatGPT to generate your Modern Slavery Statement - which sometimes it looks like it could well have been - then you still have quite a way to go.

ANDREW, WHAT DO YOU THINK DUE DILIGENCE MEANS ON THE GROUND? WHAT'S YOUR EXPERIENCE AND THE CHALLENGES ACTUALLY IN DOING THIS IN PRACTICE?

**Andrew:** Most of the people we make for in Australia just expect us to be part of Ethical



Clothing Australia. And the larger brands all have compliance as part of their onboarding with a new supplier for their offshore factories, and so they need to be able to deliver that with a local supplier as well.

With Ethical Clothing Australia, it makes it very easy. And as Jenny said to me earlier, that's because we don't have to do any of the auditing ourselves. And that's absolutely true. If we had to try and do that to our whole supply chain, we would have to engage with them, go and look at their work practices, look at their facilities, do all of those sorts of things. And in Australian manufacturing, we just don't have that sort of admin capacity anymore. And so Ethical Clothing Australia allows us to have an audited supply chain that we can then illustrate to our customers that we are in fact compliant in all of these sorts of things.

What are the challenges, though, in offering this ethical product in today's market where you're doing the right thing and you're meeting those demands, but on the other hand, consumers are now able to shop online, import from Temu or Shein.

IS THAT INCREASING THE CHALLENGE FROM THE BUSINESS PERSPECTIVE?

**Andrew:** We're a manufacturer, but through our clients, we absolutely hear that it is challenging. Especially the favourable duty rates from importing Shein and Temu straight into Australia duty-free, because they're below the threshold where you have to pay duty.\* That is an unfair playing field that Australian retailers have to grapple with, and especially the ones who go the next step and do the right thing; the whole mapping of their supply chain. Because

that comes at a cost. If you want to be able to trace the fibre right through to the end garment, that comes at a cost.

And so if you're then trying to compete with brands that are not doing that, that's absolutely a challenge. And it's a huge challenge for the whole industry, not just in Australia, but the US, and Europe. They're all looking at this because it's basically rewarding bad practice. How it's working now, the ones with a higher price point are paying a higher duty rate than the ones who are doing the worst practices. And because their value is so low, it doesn't have a duty implication.

CAROLYN, WHAT ROLE ARE CONSUMERS PLAYING IN THE MODERN SLAVERY MOVEMENT?

**Carolyn:** Our approach at Be Slavery Free is that to end modern slavery is actually a shared responsibility, in that we

need to have business, we need to have workers and unions. We need to have academics, we need to have consumers. We need to have the place where people are working, as well as the shops that people are buying from, to be part of solving the problem. Because it's not going to be solved by one sector or one player actually taking this on their own.

Consumers play a very important role. We did a survey last year of consumer attitudes to modern slavery and purchasing modern slavery products which was done by McCrindle Research for us. One of the things we were really delighted to see was that actually around 70 per cent of Australians believed that they had probably purchased a good that was made with forced labour, or modern slavery. Now that's a massive change from when I started to work in this field back in 2006 and you'd say 'Modern Slavery? What are you talking about? That ended centuries ago...' So consumers are definitely more aware now. But, when we ask consumers about what their purchasing practice is at the till, that's where we get the problems. And part of it is because it's incredibly difficult for consumers to actually know.

Let me give you an example. We do a lot of work in the chocolate industry, and we produce a chocolate scorecard every year that covers 95 per cent of the chocolate industry. Last year, it got a 1 billion print reach around the world, so it's pretty highly used, and we use words like 'sustainable' and 'without child labour' and those sorts of things in this chocolate scorecard. I don't go shopping very often because it makes me too angry. Because when I walk into a shopping centre and see a stand with a well-known chocolate brand that says 100 per cent sustainably sourced, I know that that chocolate is not sustainably sourced. I know that they're using practices like mass balance. I know that they don't know where their cocoa comes

from. Maybe they only know where 50 per cent of their cocoa comes from. So how can they make that claim?

And it's the same in fashion; you go in and you find the sustainable section, and there's actually no way of knowing. In fact, this kind of approach for a consumer makes it incredibly difficult, because people go in and they say, 'Oh, I bought the chocolate on the stand because it said it was sustainable.' I'll say, 'Look at the scorecard, see where that company scores.' So it's very difficult for the consumer to actually know.

One of the things we're actually working on at the moment is getting some of Australia's legislation up to speed, because one of the things that the government needs to play a role in is actually banning these products from being imported into Australia in the first place. And so if the due diligence is not being done and the duty to prevent is not happening, they shouldn't be allowed in this country. The government needs to support consumers in that role, but it's also supporting business. A business model that uses modern slavery or forced labour is not a viable business model long-term. It'll eventually collapse. ●

*\*The Australian Border Force (ABF) provided Ragtrader commentary on this claim. According to the ABF, there are two separate charges that may apply to imports: Customs Duty and Goods and Services Tax (GST). "Customs Duty is typically not applicable on imports that are valued under AUD1000. Some exceptions apply such as excisable goods. The manner in which GST is collected differs between goods with a customs value of less than AUD1000 (low value goods) and goods with a customs value of more than AUD1000. The ABF enforces all applicable Customs Duties and taxes on goods valued over AUD1000 as they enter Australia."*