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National Action Plan to Combat Modern Slavery 2020-24: Public Consultation Paper

The Employment Law Centre of Western Australia (Inc) (**ELC**) welcomes the opportunity to make a submission in relation to the public consultation paper (**Consultation Paper**) for the *National Action Plan to Combat Modern Slavery 2020-24* (the **National Action Plan**).

About ELC

ELC is a community legal centre which specialises in employment law. It is the only not-for-profit legal service in Western Australia dedicated to offering free employment law advice, assistance and representation to vulnerable employees.

ELC assists thousands of callers each year through our Advice Line service and provides several hundred employees each year with further assistance from a solicitor. Through these activities, ELC has had first-hand experience assisting exploited migrant workers, including those displaying indicators of modern slavery.

ELC is also actively involved in the Modern Slavery and Human Trafficking Interagency Group (**Interagency Group**) based in Perth, a group of both non-government and government agencies set up with the purpose of combating modern slavery in Western Australia. The organisations involved in the Interagency Group have sought to develop a coordinated response to modern slavery cases in Western Australia.

Structure of this submission

This submission responds to consultation questions 1, 2 and 3 in the Consultation Paper.

We have also attached a copy of ELC's earlier submission dated 19 May 2017 to the Inquiry into establishing a Modern Slavery Act in Australia (**ELC's May 2017 Submission**) and ELC's submission dated 20 July 2018 to the Inquiry into the Modern Slavery Bill (**ELC's July 2018 Submission**), as these submissions touch on some of the points made in this submission.

Responses to the questions in the Consultation Paper

Consultation question 1: Do the 12 goals capture key areas of focus for Australia over the next five years?

In ELC's view, the 12 goals in the Consultation Paper do, to a large extent, capture key areas of focus for Australia over the next five years. Obviously, the goals are quite general at this stage and the Consultation Paper does not set out key details such as how such goals will be achieved or what funding the government proposes to commit to achieving these goals. Broadly speaking, however, the goals do seem to capture some key priority areas in relation to modern slavery in Australia.

Below are ELC's specific comments in relation to some of the 12 goals in the Consultation Paper.

Goal 4: Maintain a robust and comprehensive legislative framework to combat modern slavery

In ELC's view, a strong legislative framework is crucial in combating modern slavery. In this regard, we commend the government on the recent introduction of the *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**).

However, as ELC has noted in ELC's July 2018 Submission (see **attached**), there are some key gaps in Australia's existing legislative framework, including in the Modern Slavery Act.

For example, the Modern Slavery Act does not contain any penalties or other consequences where an organisation fails to comply with its obligation to prepare and provide a modern slavery statement to the Minister. This renders the Modern Slavery Act far less effective, since organisations can simply choose not to comply with their reporting obligations. In ELC's view, the Modern Slavery Act should be amended to include penalties for non-compliance.

Another significant limitation of the Modern Slavery Act is that it does not establish an independent Anti-Slavery Commissioner, in contrast to the *Modern Slavery Act 2015* (UK) (**UK Act**). ELC understands that the Anti-Slavery Commissioner in the UK has been an effective means of addressing modern slavery in that jurisdiction because, for instance, the Commissioner has been able to hold other agencies to account. In ELC's view, an Anti-Slavery Commissioner should exist in Australia.

The UK Act also contains a number of other measures in Part 5 of that Act which seek to protect victims of modern slavery, which are absent from the Modern Slavery Act. These measures are consistent with the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* issued by the United Nations Office of the High Commissioner for Human Rights (**UN OHCHR Recommended Principles**) which emphasise that protecting trafficking victims is

paramount.¹

In terms of the need for a strong legislative framework, ELC notes that the National Action Plan itself can only go so far in addressing modern slavery because it is non-binding; it is only effective if government agencies act in accordance with it, which they are not legally obliged to do.

ELC is aware of several instances where enforcement agencies do not appear to have adhered to procedures under the *National Action Plan to Combat Modern Slavery 2015-19 (2015-19 National Action Plan)*, as detailed in ELC's May 2017 Submission (see especially pp. 3-11).

In ELC's view, in order to ensure that government agencies comply with any procedures regarding potential victims of modern slavery, such procedures need to be enshrined in legislation instead.

For these reasons, ELC recommends that the wording of Goal 4 be amended slightly so that the focus is not just on *maintaining* a robust and comprehensive legislative framework, but also on *developing* such a framework and addressing any gaps or limitations that exist in the current legislative framework.

Goal 5: Train frontline officials to support the identification of victims and effective investigations of modern slavery

In ELC's view, it is essential that frontline officials be trained both on the indicators of modern slavery and on the processes that must be followed when they come across a potential victim of modern slavery.

At present, one of the key problems with Australia's approach to responding to modern slavery seems to be that frontline staff are not adequately trained such that potential victims of modern slavery are often not being identified, and circumstances potentially involving slavery offences are not being treated as such.

In several cases of which ELC is aware, exploited migrant workers whose workplaces were raided appeared to display multiple indicators of modern slavery, yet they were almost immediately detained and were either deported or at least "facing deportation" because they did not have valid visas.²

Where government agencies take this type of approach, this makes it far less likely that any potential modern slavery victims can be identified or can participate in any criminal investigation or prosecution. This in turn makes it far less likely that the government can secure convictions against offenders. Unfortunately, the criminal syndicates who organise visa fraud and the exploitation of

¹ Office of the High Commissioner for Human Rights, *Recommended Principles & Guidelines on Human Rights and Human Trafficking*, Text presented to the Economic and Social Council as an addendum to the report for the United Nations High Commissioner for Human Rights (E2002/68/Add.1).

² For further detail on this point, please see ELC's May 2017 Submission.

foreign workers seem to have largely escaped liability in Australia to date.

Additionally, this approach is highly likely to create fear amongst potential modern slavery victims, which discourages such victims from reporting unlawful conduct to authorities.

This in turn is likely to make it harder to stamp out modern slavery, since there is little to deter rogue employers from relying on a business model involving modern slavery and such situations are likely to go vastly under-reported.

Goal 8: Enhance our approach to combating serious forms of labour exploitation, including forced labour and deceptive recruiting

ELC supports Goal 8. There is certainly room for improvement in Australia's approach to combating serious forms of labour exploitation, as discussed above.

Goal 10: Provide appropriate support, protections and remedies to empower victims of modern slavery

In ELC's view, Goal 10 is an essential component of any effort to combat modern slavery in Australia. One of the biggest weaknesses in Australia's response to modern slavery to date has been its approach to dealing with potential victims.

Unfortunately, as discussed above, the potential victims of modern slavery appear to be the ones bearing the brunt of enforcement action by authorities at present, whereas the criminal syndicates who organise visa fraud and the exploitation of foreign workers seem to have largely escaped liability to date.

Australia's current approach to potential modern slavery cases does not reflect international best practice, as outlined in the Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the United Nations Office of the High Commissioner for Human Rights (**UN OHCHR Recommended Principles**) and as discussed in ELC's May 2017 Submission.

Goal 12: Work collaboratively across government, along with non-government stakeholders, to combat modern slavery

ELC supports Goal 12. In ELC's view, it is essential for non-government organisations to be involved in any response to modern slavery, particularly in relation to identification of victims and victim engagement. This has been recognised in international literature on the subject.³

Many non-government organisations are experienced in offering a victim-centred approach rather than an enforcement-based approach, which can both improve the victim's experience, but also

³ See e.g. United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons*, 2008, p. 306.

increase the likelihood that a victim will participate in any future criminal investigation or prosecution. Further, some victims of modern slavery are distrustful of authorities due to their experiences in their home countries, but are more likely to trust other organisations, particularly those that are based in the community.

Another important point to note in relation Goal 12 is that non-government organisations must be involved *early* in any process of engaging with potential victims.

Consultation question 2: Should there be any additional goals to address other areas of focus, emerging issues or trends? If so, what should they be?

Collaboration with States and Territories

In ELC's view, one key goal that should be included in the National Action Plan that is currently missing is the goal of working with stakeholders across the various States and Territories. While Goal 12 emphasises collaboration across government and with non-government stakeholders, it does not deal with collaboration across Australia.

The federal government's current approach to responding to modern slavery seems to rely largely on connecting with organisations through the National Roundtable on Human Trafficking and Slavery (**National Roundtable**). However, we understand the National Roundtable is based in Canberra and that only a small number of organisations are represented in its membership. It is also unclear whether the National Roundtable is open to new members and if so, what the process is for other stakeholders to apply to join.

As noted above, ELC is part of a group of government and non-government organisations in Western Australia, known as the Interagency Group, which was set up with the purpose of combating modern slavery in Western Australia. The Interagency Group has sought to develop a coordinated response to modern slavery cases in Western Australia. One of the priority areas of the Interagency Group in recent times has been to improve data collection for modern slavery cases. We understand that there are other groups in other States and Territories that are also working towards combating modern slavery in Australia.

In ELC's view, there are many organisations across Australia that have some experience responding to potential victims of modern slavery that may be able to be able to make a valuable contribution to national discussions around modern slavery. For this reason, the National Action Plan should include provision for formal collaboration with stakeholders across the States and Territories.

Funding

As noted above, the goals in the Consultation Paper are not currently tied to any commitment by the government to provide funding to achieve those goals. In ELC's view, it is essential that the National Action Plan contain a commitment by the government to adequately fund Australia's

response to modern slavery.

Consultation question 3: The government is committed to ensuring victims of modern slavery are supported, protected and empowered. Are there ways in which the Government can better reflect the voices of victims and their lived experiences in the 2020-24 Plan and Australia's response to modern slavery?

Please refer to ELC's responses to consultation question 1 above.

Further information / consultation

ELC would be happy to provide further information and participate in further consultation – including stakeholder consultation roundtables – should there be any opportunity to do so.

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