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Submission
On the National Action Plan to Combat Modern Slavery 2020-2024
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1. Introduction

The authors of this submission are academics from University of Western Australia (UWA)'s Faculty of Arts, Business, Law and Education and members of the UWA Modern Slavery Research Cluster (MSRC): <https://www.uwa.edu.au/able/research/modern-slavery-research-cluster>. The MSRC is an interdisciplinary group with members from across the Faculty, and the University, who share an interest in research on Modern Slavery. This brief submission draws on the expertise of some of our members and on emerging research that we consider to be relevant to the National Action Plan to Combat Modern Slavery 2020-2024 (NAP).

2. The importance of external engagement and an inter-agency approach

Although the introduction of the MSA has contributed to the legislative framework (Goal 4), a number of gaps remain. A key shortcoming of the MSA is the general lack of enforcement mechanisms. By contrast, the NSW Modern Slavery Act includes both provision for financial penalties for a failure to report and for the appointment of an Anti-Slavery Commissioner. Although business reporting can be an important part of the solution, it is a relatively minor part of the responses required to such a multifaceted issue. In the UK, the Anti-Slavery Commissioner plays a broad role, beyond enforcement and engagement with businesses, and cognisant of the complex nature of the issue. The Commissioner's five priorities are:

- Victim identification and care;
- Law enforcement and criminal justice;
- Private sector engagement;
- Partnerships; and
- International collaboration.

These align closely to goals proposed for the NAP. As such, given the lack of a Commissioner role in the MSA, we suggest that the NAP address the need for external engagement, international co-operation and a genuine inter-agency approach (all of which are reflected in the current goals) by incorporating an Anti-slavery Commissioner overseeing all aspects of the plan. If necessary, the *MSA 2018* should be amended to create the position of Anti-Slavery Commissioner.

Further, an important component of the NAP should be identifying responses to modern slavery when it is suspected or identified. For statutory agencies this may be clear but for members of the public, and in particular, reporting entities under the MSA, this requires careful consideration. Responding to modern slavery requires a nuanced understanding of the socio-economic and cultural context within which the exploitation is occurring. Knee-jerk reactions to modern slavery (eg cessation of contract with a supplier in a developing country) are unlikely to lead to positive outcomes for those affected by modern slavery, and

are contrary to international standards on responsible business conduct in the OECD Guidelines on Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. This is an area requiring further capacity building for all stakeholders.

In developing an inter-agency approach, there should be exchange of knowledge and research between the various parts of government dealing with responsible business conduct issues, including the Department for Home Affairs which administers the *MSA 2018*, the Australian National Contact Point for the OECD Guidelines on Multinational Enterprises (housed in the Treasury) and the Department for Foreign Affairs and Trade in respect of international investment and aid issues.

3. Legislative Framework

The introduction of the *MSA 2018* should not dilute the need for a sustained focus on employment law and criminal law provisions and their use. We support goals four, five, six, seven and eight in this regard. Although businesses play an essential role in identifying and tackling modern slavery, existing laws could be used more effectively to regulate workplaces and report on and prosecute cases of slavery and trafficking. To this end, the role of Anti-slavery Commissioner, as discussed above, could play a very useful role in addressing modern slavery across a number of legal areas including workplace exploitation, bonded labour, trafficking, prosecution of offenders and support for victims.

With regard to the question of metrics in the consultation paper, goal six: *progress effective prosecutions to secure convictions against offenders* requires measurement such as the number of active investigations, prosecutions in progress, successful prosecutions etc.

Since the mid-1990s, socio-economic trends linked to temporary labour migration have exerted considerable stress on the agility of the employment relations system to craft responses that maintain both equality and protection for all employees in Australia. The controversy surrounding the administration of 457 Visas from 1996-2007, the incidents relating to the status of international students, most particularly the 2015 “7-Eleven case” and now matters pertaining to backpackers and seasonal workers in the horticultural industry are examples of these trends. The subsequent enactment of the *Migration Legislation Amendment (Worker Protection) Act, 2008* (‘*Worker Protection Act*’) and the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* have gone a long way towards restating principles of both equality and protection for temporary labour migrants who are contributing to the overall wealth of Australian society by living and working here. Nonetheless there remain gaps.

The first is the phenomenon of “wage theft” as exposed by the “7-Eleven” case amongst international students, but also amongst temporary labour migrant workers in the horticultural industry. The second, related, challenge is that faced by temporary labour migrants working as part of the gig economy (e.g. food delivery agents) in being recognised as workers and hence having access to rights and conditions that enable them to secure living wage from their work in Australia.

Thus, the following is suggested:

- More supports should be available to statutory agencies, businesses and other stakeholders on risk sectors. Within Australia, these include those mentioned above.
- The work of those in the gig economy must be recognised as a legitimate form of work that then enables them to secure the rights and conditions that will assist them earn a living wage in Australia and be afforded rights and protections.
- The Fair Work Ombudsman’s Office should be adequately equipped to investigate and monitor these areas of the labour market, and take action against employers where required.
- Finally, the *MSA 2018* provides for a three-year review. It is essential that this opportunity is used to strengthen and consolidate the Act on the basis of research and evidence gathered during the first years of operation, and with regard to international and comparative law developments as this is a rapidly evolving legislative area.

4. The inclusion of a gender-based approach to modern slavery, remedy and the voice of survivors

Given the disproportionate impact of modern slavery on women and girls, including sex trafficking and forced marriage, a gender-based approach to modern slavery is an essential element of the NAP to ensure effectiveness and suitability of approaches taken. In terms of the question of metrics posed in the consultation paper, collating data on those affected by modern slavery as identified through the various areas of the NAP, should include data on gender.

We welcome the Government’s question in the consultation paper regarding including the voices of victims / survivors and note that women’s perspectives are critical. Engaging with victims is often best facilitated through the not-for-profit sector who have close grass-roots relationships with survivors of modern slavery both in Australia and overseas in the operations and supply chains of Australian businesses. We recommend close partnerships with civil society (NFPs, academia etc.) and an emphasis on the empowerment of survivors, ensuring adequate supports are available to avoid further trauma. Advisory or steering groups drawing on such expertise are recommended. Ultimately, an important means of having one’s voice heard is the access to remedy for modern slavery. Remedies should be a critical component of the NAP. This requires a mapping exercise, incorporating the MSA,

criminal and employment law, and use of international law mechanisms such as the OECD Guidelines for Multinational Enterprises through the Australian National Contact Point..

5. Conclusion

We have discussed the importance of external engagement and an inter-agency approach, ideally facilitated through a central anti-slavery commissioner role; gaps in the legislative framework and implementation of laws; and the inclusion of a gender-based approach, voices of survivors and a focus on remedies. We are happy to engage in further discussions as required.

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