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AN OPPORTUNITY FOR IMPACT

**Recommendations for regulating
modern slavery in supply chains
in Aotearoa New Zealand**

May 2022

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Rebekah Armstrong and Quintin Lake**

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Foreword from the UK's Independent Anti-Slavery Commissioner, Dame Sara Thornton DPE QBM

Modern slavery is a heinous crime that generates an estimated \$150 billion in annual profits globally. There are thought to be 40 million people in modern slavery at any time. Conservative estimates suggest that 25 million are in forced labour, of which 16 million are working for the private sector. Many will be caught up in the supply chains of multinational companies.

The intersection of modern slavery with legitimate business is complex. While modern slavery is perpetrated by criminals, human traffickers and ruthless opportunists, it is enabled by lax governance, ignorance and aggressive commercial practices. It feeds off the exploitation of the most vulnerable in society, from migrant workers to those people with insecure immigration status or those in dire financial poverty. Every sector is at risk, from manufacturing and agriculture to hospitality and social care.

No responsible business would want to benefit from forced labour, but many are unaware – or prefer not to see – the risks that they carry within their supply chains. While legislation is no silver bullet, it is the most powerful method of forcing greater corporate responsibility at scale. As we have seen in the UK, it can also help to raise public awareness and promote more debate in society.

When legislation is echoed across jurisdictions, the effect on business should be even more powerful, capturing and enforcing standards across an increasing number of suppliers around the world. I am delighted that the New Zealand government is committed to exploring legislative options for combatting modern slavery, and that the principles of human dignity, fairness and equality lie at the heart of this consultation.



Foreword

This recommendation paper is published in the context of Aotearoa New Zealand recently entering public consultation for regulating modern slavery in supply chains. It provides direction for a legislative design that is compliant with international developments and, at the same time, considers Aotearoa New Zealand's geopolitical and cultural context. It is not a response to the Government's consultation proposal, but rather an independent resource, setting out recommendations based on research and the authors' modern slavery law and practice expertise.

The recommendations are a resource for companies, governments, non-government organisations, academics and civil society, including to assist with submissions that these entities may wish to make as part of the national consultation process. The following recommendations are made with an understanding that the Treaty of Waitangi/Te Tiriti o Waitangi principles are ensured and a Te Ao Māori perspective is considered in any future legislative and policy developments in this area.

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Authors

The authors of this paper combine between them decades of expertise in business and human rights, human trafficking and other forms of modern slavery, public issues advocacy, and policy development. The presented views and opinions remain their own as independent experts and should not be associated with any of their current or past affiliate organisations.

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Introduction

According to worldwide estimates, there are 40.3 million ‘modern slaves’, with 63 per cent of those in forced labour in the private economy.¹ The actual number may be higher due to the clandestine nature of modern slavery and global disruptive events, such as the COVID-19 pandemic, which heighten exposure to modern slavery risks. Businesses, therefore, have a key role to play in addressing modern slavery, both globally and in Aotearoa New Zealand.

The term modern slavery, also referred to as contemporary slavery or modern-day slavery, does not have a globally agreed definition. As such, it is commonly used as an umbrella term to capture the most egregious forms of exploitation, ranging from serious labour-related abuses, including the worst forms of child labour and human trafficking to forced marriage and organ harvesting.

The New Zealand government has committed to exploring legislative options to address modern slavery¹ and, on 8 April 2022, formally commenced consultation for a proposed legislative response to Modern Slavery and Worker Exploitation, Forced Labour, People Trafficking and Slavery.² At the core of the proposed regulatory reforms lie the principles of human dignity, fairness and equality with the consultation document citing “towards freedom, fairness and dignity in operations and supply chains.”³

Human rights are part of Aotearoa New Zealand’s legislative and cultural context, and the value of freedom is part of New Zealand’s identity, even referred to in the national anthem. Over the last year, the New Zealand public has demonstrated strong support for action to address modern slavery in the supply chains of entities operating on the New Zealand market, with a public petition signed by 37,000 individuals calling for the New Zealand Government to introduce legislation.⁴

New Zealand’s Minister for Workplace Relations and Safety, Michael Wood, expressed the significance of freedom when in July 2021 he stated:

Freedom is at the heart of what is to be fully human, the ability to live out our lives to the fullest possible extent... In the absence of freedom, we belittle not just the people whose freedom is taken away, but if we are part of the supply chains that allow that to happen, we belittle ourselves as well. There is an urgent imperative to act on this issue.⁵

Aotearoa New Zealand’s business community has also echoed this sentiment. In March 2020, more than 100 New Zealand businesses signed an Open Letter in support of regulatory action that spoke to values of freedom and kindness:

Modern slavery goes against our kiwi values. New Zealand’s identity as a nation is built on kindness, fairness, equality, and sustainability. As New Zealand continues to trade on these credentials, showing leadership on addressing modern slavery through ensuring its companies and public sector are meeting global labour rights standards, becomes more important.⁶

- 1 Ministry of Business, Innovation and Employment (2021) *Briefing on the petition of Trade Aid and World Vision New Zealand – Take action against modern slavery*, https://www.parliament.nz/resource/en-NZ/53SCPET_EVI_111975_PET1459/90675bc8be4363b07b3412f8c65e7f9f92bbf077.
- 2 Ministry of Business, Innovation and Employment (2021) *Consultation on modern slavery and worker exploitation*, <https://www.mbie.govt.nz/have-your-say/modern-slavery/>.
- 3 Ministry of Business Innovation and Employment (2022) *Discussion document: A legislative response to modern slavery and worker exploitation*, <https://www.mbie.govt.nz/dmsdocument/19734-discussion-document-a-legislative-response-to-modern-slavery-and-worker-exploitation>.
- 4 Ensor J, ‘Modern slavery: Petition accepted by Michael Wood as Government convenes group to advise on possible legislation’, *Newshub* (29 June 2021), <https://www.newshub.co.nz/home/politics/2021/06/modern-slavery-petition-accepted-by-michael-wood-as-government-convenes-group-to-advise-on-possible-legislation.html>.
- 5 Ibid.
- 6 Sign for Freedom, *Open letter to New Zealand Government* (17 March 2021) https://www.signforfreedom.nz/uploads/8/9/4/0/89405540/open_letter_to_nz_government.pdf.

Key business leaders have also spoken out in favour of freedom and fairness, and to the corresponding need for legislative action to address modern slavery:

New Zealanders want to know that overseas workers who make their products are treated fairly... Introducing modern slavery legislation in New Zealand will encourage businesses to work collaboratively to raise standards and stamp out modern slavery from supply chains.

– Tania Benyon, Chief Product Officer of the Warehouse⁷

Our coffee passes through many hands before it reaches us so transparency between us and the producers in coffee-growing countries worldwide is important to us... The L'affare brand (and the people behind L'affare) align with those of many NZ coffee businesses, in support of values-based business...

– Paul Cockburn, The Head of New Zealand coffee brand L'Affare⁸

We are part of a very interconnected global economy and social ecosystem... It is therefore not a matter of whether New Zealanders are unknowingly supporting forms of Modern Slavery through their purchasing practices, but rather where this is happening and to what extent.

– Reuben Casey, Chief Executive Office at Kathmandu⁹

The commitment of businesses to act ethically is not new. The idea of a socially “responsible” business has a long history, which in modern times has been associated mainly with the concept of corporate social responsibility (CSR) that started to formally appear in literature in the 1930s. However, private business self-regulation under CSR differs from the more recent attempts to regulate business operations, including in supply chains, through modern slavery legislation and other regulatory approaches, such as human rights due diligence (see an interactive global [map](#) on the business and human rights landscape).¹⁰ These developments have been influenced largely by the United Nations (UN) “protect, respect and remedy” framework that formed the basis for the UN Guiding Principles on Business and Human Rights (UNGPs).¹¹ Even though they are not legally binding, they are the primary global standard for addressing business impact on human rights. The more recent shift from a voluntary to prescriptive or mandatory approach has been instigated by the apparent lack of effectiveness with purely self-regulatory mechanisms.¹²

The businesses of Aotearoa New Zealand have been part of, as well as subject to, these global changes.¹³ However, unlike many other countries and jurisdictions today, Aotearoa New Zealand remains without a legislative framework seeking to address and combat modern slavery in the operations and supply chains of entities operating on the New Zealand market, as well as New Zealand businesses operating globally.

7 Sowman-Lund S, ‘Close to a hundred NZ companies sign letter calling for modern slavery law’, *The Spinoff* (16 March 2021) <https://thespinoff.co.nz/business/16-03-2021/close-to-a-hundred-nz-companies-sign-letter-calling-for-modern-slavery-law>.

8 *Ibid.*

9 The Walk Free Foundation, *New Zealand businesses show leadership with support for a Modern Slavery Act* (16 March 2021), <https://www.walkfree.org/news/2021/new-zealand-businesses-show-leadership-with-support-for-a-modern-slavery-act/>.

10 World Business Council for Sustainable Development (2021), *WBCSD Business and Human Rights Landscape*, <https://humanrights.wbcsd.org/project/wbcsd-business-and-human-rights-landscape/>.

11 Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, endorsed by the UN Human Rights Council in its resolution 17/4 of 6 July 2011 (A/HRC/RES/17/4).

12 See, for example, Business and Human Rights Resource Centre (2021) *Modern Slavery Act: Five years of reporting conclusions from monitoring corporate disclosure*, https://media.business-humanrights.org/media/documents/MSR_Embargoed.pdf.

13 See, for example, New Zealand Ministry of Foreign Affairs and Trade, *German supply chain due diligence legislation and New Zealand suppliers* (June 2021), <https://www.mfat.govt.nz/en/trade/mfat-market-reports/market-reports-europe/german-supply-chain-due-diligence-legislation-and-new-zealand-suppliers-june-2021/?m=564460#search:Z2VyYWVwZGR1ZS8kaWxpZ2V0Y2UqbGF3>.

A supply chain comprises all business and individual contributors, including labour force, to creating a product, material or service and the means by which it is distributed to the final buyer.

Recognising this gap, in 2021, legislative options to address modern slavery in supply chains became a key focus of attention. The New Zealand government released the Plan of Action against Forced Labour, People Trafficking and Slavery¹⁴ in March 2021, which set out a road map for addressing modern slavery in Aotearoa New Zealand. Subsequently, the government established the Modern Slavery Leadership Advisory Group to support and inform the Government’s work programme investigating legislation on international supply chain transparency and other actions regarding slavery in supply chains.¹⁵ As outlined above, the New Zealand government has recently launched a public consultation on options for addressing modern slavery, which will be used to inform any legislation put forward to Parliament.¹⁶

Transparency in supply chains requires getting to know what is happening in an entity’s supply chain and communicating it effectively internally as well as externally.

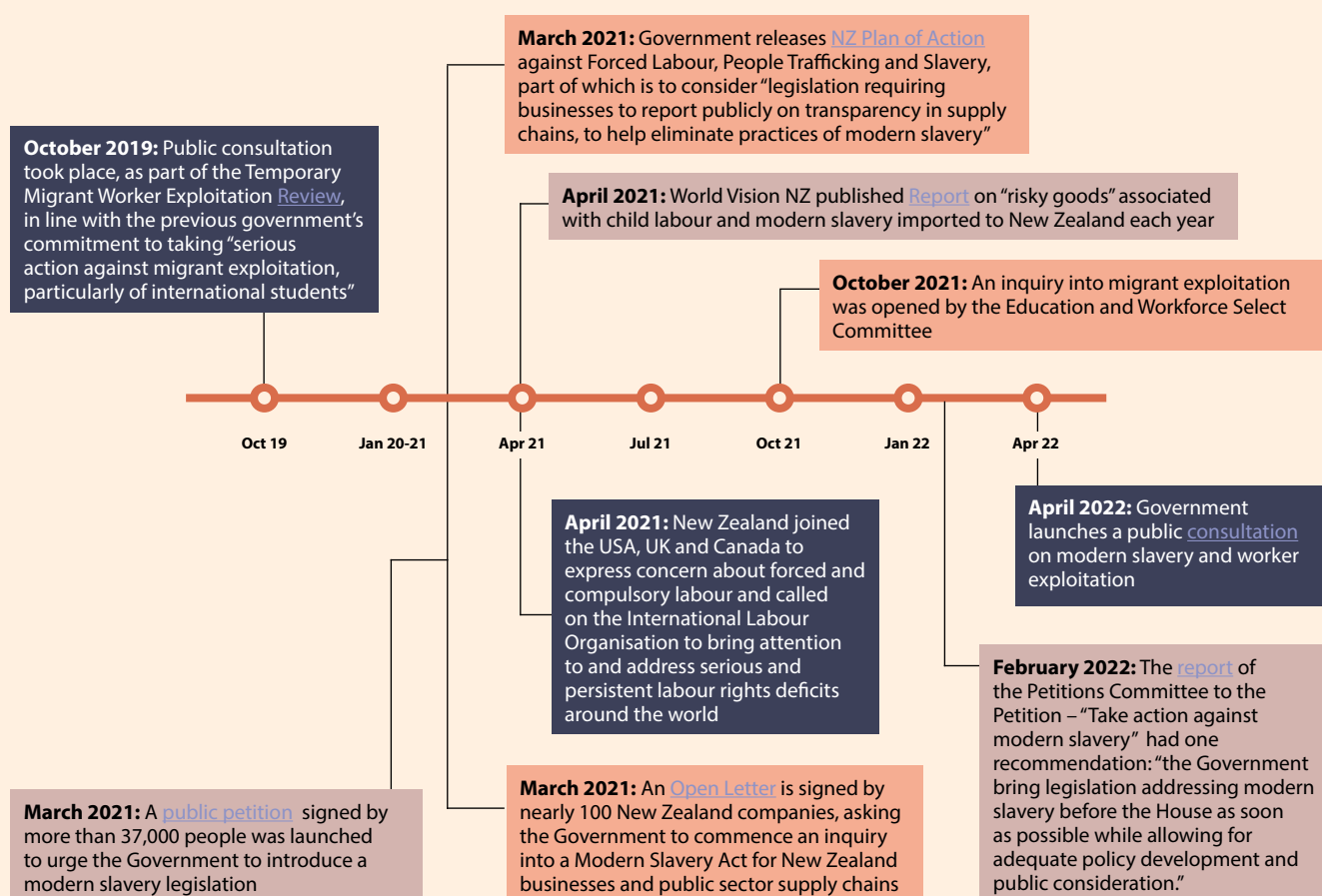


Figure 1: Timeline of key events in Aotearoa New Zealand relating to regulating modern slavery in supply chains

14 Ministry of Business, Innovation and Employment (2021) *Plan of action against forced labour, people trafficking and slavery*, <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-people-trafficking-and-slavery/>.

15 Ensor J, ‘Modern slavery: Petition accepted by Michael Wood as Government convenes group to advise on possible legislation’, *Newshub* (29 June 2021), <https://www.newshub.co.nz/home/politics/2021/06/modern-slavery-petition-accepted-by-michael-wood-as-government-convenes-group-to-advise-on-possible-legislation.html>.

16 At the time of writing, all stakeholders are called on by the Government to provide feedback and commentary on the proposed regulatory framework until 7 June 2022, <https://www.mbie.govt.nz/have-your-say/modern-slavery/>.

The steps the Government is taking are positive, because Aotearoa New Zealand is behind key global partners in enacting such legislation, such as Australia, the UK and several other European nations. This provides Aotearoa New Zealand with a unique opportunity to design and implement a regime set up for success. Legislative developments elsewhere provide a bounty of learnings that can be applied. By examining alternative approaches, and by drawing from current practice, a New Zealand approach should be designed that truly works in the national context, is harmonised where possible with other international developments, and serves the purpose at the heart of such regimes: to prevent and address the exploitation of people and communities.¹⁷

The timing of exploring legislative options in the context of globally disruptive events, such as a pandemic, conflict or climate change, is also significant. Rather than treating it as a one-off event, experiences from the COVID-19 pandemic should inform any legislative development and be considered when building resilience to global shocks caused by worldwide events, whether human- or nature-made. As supply chain management approaches are evolving due to the COVID-19 pandemic, companies and non-governmental organisations have an opportunity to work closely together to understand the nuances of modern slavery at a local level, and develop more integrated, sector-wide insights and solutions that are driven by worker's perspectives. These approaches can lead to faster targeting and mitigation of risks to businesses and investors, and build resilience and efficiency in supply chains, along with addressing increased workers' vulnerability to exploitation. Aotearoa New Zealand's legislation has an opportunity to further encourage and accelerate these proactive approaches.

17 Design of alternative regimes and existing practices are not explored in-depth in this paper, but such analysis supports the recommendations put forward in this paper.

Recommendations

These recommendations can be read individually, but they are complementary and build on one another. They are also made with the premise that legislation should align with the UNGPs.¹⁸ Recognising the complexity of addressing modern slavery as a multifaceted societal challenge, a whole-system approach is needed. It is unlikely therefore that any of the recommendations can make a difference when viewed in isolation, and thus they need to be looked at and considered collectively.

Recommendation 1: *Legislation addressing modern slavery should apply to all entities operating in Aotearoa New Zealand and their international and domestic supply chains, including public authorities (government), non-governmental organisations and private entities.*

Recommendation 2: *Transparency in domestic and international supply chains should be a key feature of the legislation. This will help to ensure that entities understand how their supply chains are operating and can more readily identify risks to people and the environment, including but not limited to modern slavery.*

Recommendation 3: *Aotearoa New Zealand should adopt a mandatory human rights and environmental due diligence approach, focusing on both human rights and environmental risks. This approach incorporates the requirement for transparency in supply chains, but goes beyond both in terms of the prescribed processes as well as the focus of those actions.*

Recommendation 4: *The criteria on which entities report must be mandatory to increase clarity for entities and consistency in the standard of reporting, as well as to facilitate transparency and verification of actions taken.*

Recommendation 5: *The New Zealand Government should create a central public register or repository of compliance statements, and administer it to facilitate transparency, monitoring and support for peer-to-peer sharing and learning of best practices.*

Recommendation 6: *The New Zealand Government should establish an Independent Anti-Slavery Commissioner role and provide for the allocation of sufficient resources to support the post and activities of a Commissioner's office.*

Recommendation 7: *The New Zealand Government should continue to maintain and actively engage with a Modern Slavery Advisory Group comprising of various stakeholders, including representatives of workers and survivors of modern slavery, as an integral process for implementing and developing Aotearoa New Zealand's legislative response to modern slavery.*

Recommendation 8: *The legislation should provide for accountability mechanisms, including financial penalties, exclusion from public tender and public listing as a non-compliant entity if entities fail to discharge obligations, including failure to adhere to mandatory reporting criteria. Centralised government enforcement frameworks must be in place and adequately resourced to monitor and respond to non-compliance.*

Recommendation 9: *The legislation should provide remedy for workers subjected to modern slavery, including mechanisms to seek redress. There should be consideration of establishing entity liability for harms, including those committed by their subsidiaries, contractors and suppliers.*

Recommendation 10: *The New Zealand Government should review international legislative developments regarding banning imports linked to all forms of forced labour and consider whether a similar legal tool could complement legislation addressing modern slavery for supply chains in Aotearoa New Zealand.*

The following section provides the background and rationale for the proposed 10 recommendations.

¹⁸ The New Zealand Government has confirmed they are drawing from the UNGPs when considering legislative options. Ministry of Business, Innovation and Employment (2021) *Briefing on the petition of Trade Aid and World Vision New Zealand – Take action against modern slavery*, https://www.parliament.nz/resource/en-NZ/53SCPET_EVI_111975_PET1459/90675bc8be4363b07b3412f8c65e7f9f92bbf077.



Recommendation 1: Entities Captured by the Legislation

Legislation addressing modern slavery should apply to all entities operating in Aotearoa New Zealand and their international and domestic supply chains, including public authorities (government), non-governmental organisations and private entities.

All entities have a part to play to combat modern slavery and it is important that this is reflected in the legislation if the regulatory framework is going to have its desired effect and capture the New Zealand market. With 99 per cent of New Zealand's businesses being small to medium enterprises (SMEs),¹⁹ and government procurement sitting at approximately NZ\$51.5 billion/20 per cent of GDP,²⁰ it is essential that the public sector and SMEs are part of the regulatory regime. More than 80 per cent of New Zealand companies that signed the Open Letter to the government in support of modern slavery legislation were SMEs.²¹ If all New Zealand entities have to fulfil mandatory modern slavery risk requirements, necessary culture change will take place that, in turn, will assist in eradicating modern slavery from New Zealand's supply chains, wherever they might be located.

Our recommendation is that, while all entities should be required to undertake human rights and/or environmental due diligence (see Recommendation 3), a proportionate approach should be adopted, which allows entities to discharge their obligations by taking action that is reasonable based on their risk profile. In practice, thresholds and mechanisms may be appropriate to provide clarity around what entities are required to do and what is "reasonable", and we recommend that, when looking at the level of obligations, the sector of activity; the size of the undertaking; the risk profile; its business model; its position in value chains; and the nature of its operations, products and services²² should be considered. We also recommend that clear guidance is issued by the government to assist entities with taking the required steps.

19 OECD (2020) *Financing SMEs and entrepreneurs 2020: An OECD scoreboard*, <https://www.oecd-ilibrary.org/sites/a819a8fe-en/index.html?itemId=content/component/a819a8fe-en#:~:text=SMEs%20are%20a%20significant%20part,sole%20operators%20and%20self%20employed>.

20 New Zealand Government Procurement, *Growth in government procurement spend* (20 May 2021), <https://www.procurement.govt.nz/about-us/news/growth-in-government-procurement-spend/>.

21 Sign for Freedom, *Open letter to New Zealand Government* (17 March 2021), https://www.signforfreedom.nz/uploads/8/9/4/0/89405540/open_letter_to_nz_government.pdf.

22 Criteria adopted from various sources, including European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)) Brussels (10 March 2021), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.htm; Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, endorsed by the UN Human Rights Council in its resolution 17/4 of 6 July 2011 (A/HRC/RES/17/4), Principle 17B; International Labour Office (2015, 2nd Ed) *Value chain development for decent work: how to create employment and improve working conditions in targeted sectors*, https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/instructionalmaterial/wcms_434363.pdf.

Learnings can be applied from other jurisdictions when looking at who should be captured by the law. For example, the *UK Modern Slavery Act* was heavily criticised for initially failing to capture public authorities,²³ and reforms to the Act now include mandatory obligations for the public sector.²⁴ Financial thresholds have established who is captured by reporting obligations in the UK and under the Australian *Modern Slavery Acts*, while the number of employees has established size and accountability in other jurisdictions, including France, Germany and Norway.²⁵

In Australia, any entity operating with annual consolidated revenue of AU\$100 million or more is required to provide annual statements to the Commonwealth (Cth) Government. An estimated 3,000 entities are captured by the Act, but the law allows for other entities that fall below the threshold to report on a voluntary basis. In both the UK and Australia, there are calls for a more robust law. Specifically in the UK, calls for new corporate accountability regulation ask for a duty to prevent human rights and environmental harms that applies to all entities, regardless of size.²⁶

It is important, therefore, that legislation addressing modern slavery in Aotearoa New Zealand considers global developments while also taking an approach that is appropriate to the New Zealand context, ensuring that where there is a risk of modern slavery in the market, the law is in place to make sure this is addressed. Further, depending on which types of entities are going to be captured by the legislation, as a minimum, it should be possible for any entity to participate in the regulatory regime, including being able to make a voluntary compliance submission (see Recommendations 4 and 5).

23 UK Home Office (2019) *Independent review of the Modern Slavery Act: Final report*, <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>.

24 UK Home Office (2020) *Transparency in supply chains consultation. Government response*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf

25 See French Duty of Vigilance Law (LOI no. 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre) 2017; German Supply Chain Act (Lieferkettensorgfaltspflichtengesetz, LkSG) 2021, coming into force on 1 January 2023; Norwegian Transparency Act (Åpenhetsloven) 2021, coming into force on 1 July 2022.

26 Corporate Justice Coalition, *Parliamentary briefing: A corporate duty to prevent negative human rights and environmental impacts* (26 October 2020), https://corporatejusticecoalition.org/wp-content/uploads/2020/10/CJC-F2P-General-Parliamentary-Briefing_FINAL.pdf.



Recommendation 2: Compulsory Transparency in Supply Chains

Transparency in domestic and international supply chains should be a key feature of the legislation. This will help to ensure that entities understand how their supply chains are operating and can more readily identify risks to people and the environment, including but not limited to modern slavery.

From a supply chain management perspective, the concept of transparency in supply chains is relatively new. The development of more complex and dynamic supply chains globally has complicated the visibility of supply chains, which these days often involve complex relationships among various entities and contributors that create a product, raw material or service, which is then distributed to the ultimate customer. Lower tiers of supply chains that cross jurisdictions with different standards and expectations, uncertainties around responsibilities over labour practices, and buyer–supplier power asymmetries have increased risks of exploitation.

In response to increasing global awareness about the human and environmental impacts of business operations, an expectation to collect supply chain-related information and data has been on the rise. In simple terms, transparency in supply chains requires getting to know what is happening in an entity’s supply chain and extended operations, and communicating it effectively, both internally and externally.

In practice, improving the management of supply chains and relationships with third parties connected with an entity’s activities often requires significant changes to existing processes, but also to mindset. Horizontal cooperation between businesses – ranging from manufacturers sharing supply chain assets or storage, transportation and distribution channels for mutual benefits²⁷ – is not something that has been widely practised and thus it challenges traditional business models. However, businesses can benefit directly from collaborating with competitors without losing their competitive advantage.²⁸ Reputational risks also need to be considered. Growing expectations by many consumers and elements of the wider global community to know where products and materials come from, and the conditions in which they were produced, has increased exponentially in recent years.

27 In the European Union (EU) context, see a recent public consultation (13 July 2022–05 October 2021) on ‘Horizontal agreements between companies – revision of EU competition rules’, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13058-Horizontal-agreements-between-companies-revision-of-EU-competition-rules/public-consultation_en.

28 See, for example, The B-Team and Baker McKenzie (2018) *Eradicating modern slavery: A guide for CEOs*, <https://bteam.org/assets/reports/Eradicating-Modern-Slavery-A-Guide-for-CEOs.pdf>; Lake Q, MacAlister J, Berman C, Gitsham M and Page N (2016) *Corporate approaches to addressing modern slavery in supply chains: A snapshot of current practice*, https://www.ethicaltrade.org/sites/default/files/shared_resources/corporate_approaches_to_addressing_modern_slavery.pdf.

Globally, there has been an increase in laws that deal with the elimination of modern slavery in general, and in supply chains specifically. In the United States of America (USA), California introduced the first legislation of this sort, the *Transparency in Supply Chains Act 2010*, which was then followed by relevant legislation in the UK, the *Modern Slavery Act 2015*. Australia introduced the *Modern Slavery Acts 2018* at both the federal and state levels, with the New South Wales (NSW) modern slavery legislation coming into force on 1 January 2022.

This type of legislative regulation is commonly referred to as transparency in supply chains (TISC). One of the benefits of this type of regulation is that it increases awareness of modern slavery and provides information to the market (including investors) that can be used to inform engagement with that business.

There are, however, shortcomings of having TISC-only regulation. Research shows it often falls short of clarifying how it applies across supply chains and multiple tiers, and may not require entities to specify what actions they have taken to address the identified risks beyond simply reporting on the risks.²⁹ Furthermore, limited enforcement through sanctions and penalties for non-compliance can stall effectiveness and fail to incentivise businesses to make detailed disclosures and to act upon them.³⁰

While transparency provisions are not sufficient on their own, they are necessary because taking effective action to counteract or address modern slavery requires, as a first step, identifying where risk may be across the entire supply chain, in addition to disclosing publicly where this is. The practice of transparency in supply chains is, therefore, the prerequisite to effective human rights and environmental due diligence (see Recommendation 3). Improving supply chain management goes hand in hand with making sure that compliance statements are public and easily accessible (see Recommendation 5).

Given the legal and business practice developments globally, it is necessary for New Zealand entities to play an active role in shifting norms and expectations, as well as take responsibility for the risks of modern slavery, and the wider human rights and environmental harms, across their entire operations. Consequently, demystifying supply chains, however complex, and placing a greater onus on identifying and disclosing both effective as well as substandard practices within the entities' supply chains, must be at the core of any future legislative developments in Aotearoa New Zealand.

29 See, for example, a recent civil society review of the first cycle of modern slavery regulation in Australia, Sinclair A, Dinshaw F, Nolan J, Marshall S, Zirnsak M, Adams K, Keegan P, Boersma M, Bhakoo V and Moore H (2022) *Paper promises? Evaluating the early impact of Australia's Modern Slavery Act*, <https://www.hrlc.org.au/reports/2022/2/3/paper-promises-evaluating-the-early-impact-of-australias-modern-slavery-act>.

30 See, for example, Secretary of State for the Home Department (2019) *Independent review of the Modern Slavery Act 2015: Final report*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf; Business & Human Rights Resource Centre (2018) *FTSE 100 & the UK Modern Slavery Act: From disclosure to action*; KnowTheChain (2020) *Applicable on paper only? Why ICT companies need to address forced labor risks in lower supply chain tiers*, <https://knowthechain.org/ict-companies-need-to-address-forced-labor-risks-further-down-their-supply-chains/>.



Recommendation 3: Mandatory Human Rights and Environmental Due Diligence

Aotearoa New Zealand should adopt a mandatory human rights and environmental due diligence approach, focusing on both human rights and environmental risks. This approach incorporates the requirement for transparency in supply chains, but goes beyond both in terms of the prescribed processes as well as the focus of those actions.

Mandatory human rights and environmental due diligence (mHREDD) is gaining momentum worldwide and becoming an expected requirement for companies under domestic and regional regulatory frameworks. Human rights and/or environmental due diligence³¹ has a much wider scope of application than modern slavery regulation, in that it encompasses the regulation of modern slavery-specific practices as well as offers protection from violations of other human rights and/or environmental norms. These two approaches are complementary. Some form of mHREDD or incorporating a requirement for due diligence in modern slavery legislation would have a much wider impact and, arguably, make it easier for entities to comply with their multiple (current and emerging) responsibilities. Most notably, a draft EU Law on mHREDD is currently under consideration.³² Should this law be enacted, it will have wide consequences for New Zealand companies trading in the EU, as well as supplying entities that themselves trade in the EU.³³

It is important, therefore, that in the design of any legislation addressing modern slavery, key learnings from overseas legislation are considered. It would be problematic and burdensome for New Zealand companies to have a set of rules or regulations that set out different expectations and are incongruent with similar legislation they must adhere to overseas, and which have the potential to create an uneven playing field.

Mandatory human rights and environmental due diligence build on transparency in supply chains because they require companies to take action to prevent actual and potential harm caused by their business activities, or activities of their subsidiaries, subcontractors and suppliers based on the geographies, industries and products identified by transparency provisions that show risks to people and the planet.

31 We note that the New Zealand legislative proposals and consultation document focus on due diligence requirements relating to modern slavery risks in operations and supply chains, and not risks that relate to wider human rights and/or environmental abuses. However, this recommendation is made based on international developments and best practice, and is the direction the authors recommend that Aotearoa New Zealand considers.

32 European Commission (2022) Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf. See also European Coalition for Corporate Justice, *Evidence for mandatory Human Rights and Environmental Due Diligence legislation – Background note* (January 2021) <http://corporatejustice.org/wp-content/uploads/2021/03/evidence-for-mhredd-january-2021-.pdf>.

33 Commentary indicates that any EU mHREDD law would affect companies operating in the EU including companies listed on stock exchanges, unlisted companies, financial institutions and not-for-profit organisations, see McCoequodale R and Scheltema M, *Core elements of EU regulation on mandatory human rights and environmental due diligence*, <https://media.business-humanrights.org/media/documents/94663bf5d5e81b55fa716bc9c31bd0293513ba61.pdf>.

The four key components of human rights due diligence, under the UNGPs and Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises,³⁴ involve placing responsibilities on businesses to identify, prevent, mitigate and account for how they address human rights impacts in global and domestic supply chains.

Human rights due diligence puts an onus on companies to identify human rights risks and, where necessary, prioritise their focus on first addressing human rights risks that are most severe and likely to have (actual or potential) negative impact on people (or, with environmental risks, the planet) across the value chain.³⁵

In practice, this often means designing and implementing a framework to identify human rights and environmental risks in the business supply chain and operations, adopting strategies to address the identified human rights and environmental risks, constant monitoring and review of the effectiveness of the risk management framework, and establishing mechanisms for transparent internal and external reporting that allow for scrutiny and accountability.³⁶

A recent report regarding legislating human rights due diligence outlined that:

Legislators should place a strong emphasis on the preventative nature of HRDD and make it clear that prevention, mitigation and remediation do not exist on an equal footing. Prevention of harm is the purpose and first priority of due diligence. Mitigation and remediation are undertaken if prevention fails, not as a substitute. This is implicit in the business responsibility to respect human rights, but additional clarification on the purpose of due diligence, namely, to prevent adverse impacts, is recommended.³⁷

Business leaders support mHRDD because it provides the possibility to “bring about a paradigm shift if it succeeds in driving better outcomes for people and planet across globalized value chains.”³⁸ It also creates a level playing field. The combination of a wide scope with nuanced implications for adequate action provides the incentive structure for businesses to engage on issues deeply embedded in their supply chains where the harms may be most severe, particularly to mitigate challenges such as the worst forms of child labour, which require sector-wide or cross-sector – rather than linear supply chain – approaches to address.

In April 2020, a group of 105 investors representing more than US\$5 trillion in assets under management made a statement requesting mandatory human rights due diligence regulation for companies. The statement further outlined that this regulation was:

1. materially good for business, investors, and the economy
2. essential in creating uniformity and efficiency as an increasing number of governments are already taking this step
3. a necessary component for investors to fulfill [their] own responsibility to respect human rights.³⁹

34 Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, endorsed by the UN Human Rights Council in its resolution 17/4 of 6 July 2011 (A/HRC/RES/17/4); [OECD \(2011\) The Revised Guidelines for Multinational Enterprises](https://www.oecd.org/daf/inv/mne/48004323.pdf), <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

35 UNGPs, Principle 17(b).

36 United Nations Human Rights Office of the High Commissioner, *EU Mandatory human rights due diligence directive: Recommendations to the European Commission* (2 July 2021) at 2.

37 Clean Clothes Campaign, ECCHR, Public Eye, SOMO, *Legislating human rights due diligence – Respecting rights or ticking boxes?* (January 2022), <https://www.publiceye.ch/en/publications/detail/respecting-rights-or-ticking-boxes>, at 5.

38 Joint Letter from more than 100 companies, investors, business associations and initiatives, urging the EU to adopt a mHRDD proposal (February 2022), https://media.business-humanrights.org/media/documents/EU_Business_Statement_February_2022.pdf.

39 Business and Human Rights Resource Centre, *Investors with over US\$5 trillion call on govts to introduce mandatory human rights due diligence for companies* (21 April 2020), <https://www.business-humanrights.org/en/latest-news/investors-with-over-us42-trillion-call-on-govts-to-introduce-mandatory-human-rights-due-diligence-for-companies/>.

Aotearoa New Zealand has already started legislating mandatory environmental due diligence. For example, the Financial Sector (Climate-Related Disclosures and Other Matters) Amendment Bill was recently passed and received royal assent.⁴⁰ This legislation shows how legislation can assist companies to meet obligations to achieve carbon neutrality by 2050. However, mHREDD would provide broader obligations than are currently in place by addressing environmental issues such as air and water pollution, deforestation, loss in biodiversity, and greenhouse emissions.⁴¹ In the design of legislation, policy coherence with international best practice would mean placing human rights and environmental due diligence provisions in the same statute.

The New Zealand Government has already made a commitment to consider comparative legislative regimes and the UNGPs in the development of potential modern slavery legislation.⁴² Thus, we recommend that the mHREDD approach, incorporating transparency in supply chains (see Recommendation 2), is adopted in Aotearoa New Zealand.

40 Beehive, *NZ passes world-first climate reporting legislation* (21 October 2021), <https://www.beehive.govt.nz/release/nz-passes-world-first-climate-reporting-legislation>

41 ECDPM, *Mandatory environmental due diligence: What is exactly expected of companies?* (14 June 2021), <https://ecdpm.org/talking-points/mandatory-environmental-due-diligence-what-is-exactly-expected-companies/>.

42 Ministry of Business, Innovation and Employment (2021) *Briefing on the petition of Trade Aid and World Vision New Zealand – Take action against modern slavery*, https://www.parliament.nz/resource/en-NZ/53SCPET_EVI_111975_PET1459/90675bc8be4363b07b3412f8c65e7f9f92bbf077.



Recommendation 4: Compulsory Reporting Criteria

The criteria on which entities report must be mandatory to increase clarity for entities and consistency in the standard of reporting, as well as to facilitate transparency and verification of actions taken.

There is sufficient experience internationally, including what works and what doesn't work, that can guide the scope of reporting in Aotearoa New Zealand. Building on this, it is essential that, beyond the reporting being mandatory, the steps taken reported by entities are clear and specific and the effectiveness of these actions is measured.

Under the Australian *Modern Slavery Act* (Cth), entities are required to report on seven compulsory criteria,⁴³ with further guidelines provided on how each criterion should be addressed.⁴⁴ The prescriptive approach requires entities to meet the reporting threshold by describing their structure, operations and supply chains, and what they do to assess and address the modern slavery risks in their operations and supply chains, as well as how they measure the effectiveness of those actions and what consultative processes they have undertaken with the entities under their control.

In 2021, the Australian Government introduced a Modern Slavery Statement Annexure to further support reporting entities in clearly demonstrating where in their statements they have addressed the mandatory criteria under Section 16 of the *Modern Slavery Act 2018* (Cth).⁴⁵

In contrast, the UK *Modern Slavery Act* does not prescribe any specific compulsory reporting criteria, which has been criticised as insufficient and led to significant discrepancies regarding what is reported by entities.⁴⁶ Currently, the UK Home Office's statutory guidance only recommends that entities cover six areas in their statements submitted under Section 54 of the *Modern Slavery Act 2015*, including information about due diligence processes and key indicators for measuring the effectiveness of the steps taken.⁴⁷ The UK Government has announced that compulsory reporting criteria under the UK legislation will be introduced,⁴⁸ which should help to increase the quality of reporting.

43 Australian Border Force, *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities*, <https://modernslaveryregister.gov.au/resources/>.

44 Ibid, *Guidance materials on the mandatory criteria*, <https://modernslaveryregister.gov.au/resources/>.

45 Ibid, *Modern slavery statement annexure*, <https://modernslaveryregister.gov.au/resources/>.

46 Business & Human Rights Resource Centre and Modern Slavery Registry (2021) *Modern Slavery Act: Five years of reporting. Conclusions from monitoring corporate disclosure*, https://media.business-humanrights.org/media/documents/MSR_Embargoed.pdf.

47 UK Home Office, *Transparency in supply chains: A practical guide* (last updated 13 December 2021), <https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide/transparency-in-supply-chains-a-practical-guide>.

48 UK Home Office, *Transparency in supply chains consultation: Government response* (22 September 2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf.

Despite the shortcomings of existing legislation in the UK and Australia, the practical implications of reporting requirements, and particularly the requirement that modern slavery disclosures are approved by the Board and signed by a director or equivalent, have already led to culture change across the corporate world, including raising the profile of modern slavery issues⁴⁹ and increasing engagement of investors.⁵⁰

It is essential for the New Zealand Government to ensure that entities reporting under the New Zealand regime are clear about what is required of them for reporting on by introducing mandatory reporting criteria, which is further accompanied by supplementary guidance materials providing good-practice examples, with a particular focus on supporting SMEs that often have fewer resources and expertise. New Zealand legislation should ensure senior leadership engagement, with board or equivalent sign-off for reporting. This creates a strong standard and expectation from the Government; assists in creating a level playing field for the standard of reporting; and allows for scrutiny, verifications and audits of statements in a transparent way.

49 Lake Q, MacAlister J, Gitsham M and Page N (2016) *Corporate Leadership on Modern Slavery: How have companies responded to the UK Modern Slavery Act one year on?* https://www.ethicaltrade.org/sites/default/files/shared_resources/corporate_leadership_on_modern_slavery_summary_0.pdf.

50 See, for example, CCLA Good Investment, *Find it, fix it, prevent it*, <https://www.modernslaveryccla.co.uk/>; AIQ Editorial Team, *By the people, for the people: Why investors should care about human rights* (17 May 2021), <https://www.avivainvestors.com/en-gb/views/aiq-investment-thinking/2021/05/human-rights/>.



Recommendation 5: Central Government-Run Register of Compliance Statements

The New Zealand Government should create a central public register or repository of compliance statements and administer it to facilitate transparency, monitoring and support for peer-to-peer sharing and learning of best practices.

It is essential that there is a public register or repository (i.e., searchable database) that allows for monitoring regarding how entities meet compliance requirements, and compare with other entities, and acts as a knowledge hub. This will increase transparency about what entities do, as well as facilitate education across the entities and the various stakeholders on the best models and practice responses. An online publicly accessible central register would also enable access to data by researchers, non-governmental organisations, investors and other third-party groups to monitor the effectiveness and impact of the regime. Further, it offers consumers an opportunity to make informed decisions based on the information provided by the entities.

The disadvantages of not having some form of compliance statement repository have been shown in other jurisdictions. In the UK, the modern slavery regulatory regime did not initially include a public register, which was subject to criticism,⁵¹ including civil society voices pointing out that it makes it “difficult to hold organisations to account.”⁵² A 2019 independent review also identified this as one of the regime’s key shortcomings.⁵³ Taking into account these criticisms, the Australian Government introduced a world-first public register. Following suit, the UK Government introduced a central registry in 2021,⁵⁴ which allows downloading modern slavery statement summary data from 2020 onwards to “provide a platform for organisations to share the positive steps they have taken to tackle and prevent modern slavery.”⁵⁵

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- 51 See, for example, House of Lords House of Commons Joint Committee on Human Rights, *Human rights and business* (2017) *Promoting responsibility and ensuring accountability. Sixth report of session 2016–17*, <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf>
- 52 The Walk Free Foundation (2016) *Harness the Power of Business To End Modern Slavery*, <https://cdn.walkfree.org/content/uploads/2020/10/06153843/Harnessing-the-power-of-business-to-end-modern-slavery-20161130-Final.pdf>, at 19.
- 53 Secretary of State for the Home Department (2019) *Independent review of the Modern Slavery Act 2015: Final report*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf
- 54 UK Government, *Modern Slavery Statement Registry*, <https://modern-slavery-statement-registry.service.gov.uk/>
- 55 UK Home Office, *Government launches modern slavery statement registry* (11 March 2021), <https://www.gov.uk/government/news/government-launches-modern-slavery-statement-registry>

Under the Australian *Modern Slavery Act* (Cth), entities are required to submit their statements to an online Register, which was launched on 30 July 2020. The Australian Government has a responsibility to maintain it and the Australian Border Force administers it. By 13 April 2022, 8,277 lodgements had been made (with 502 made on a voluntary basis) from 42 countries and more than 853,000 searches were conducted, showing that the Register is used on a large scale.⁵⁶ Since its creation, the Register has proven to be used extensively by researchers to review and compare the content of modern slavery statements, which has had an impact on corporate practices and the monitoring of those practices.

It is recommended, therefore, that a central and publicly accessible repository administered by the government is part of any regulatory regime in Aotearoa New Zealand. There is sufficient evidence from other jurisdictions that a free public register of compliance statements will increase transparency, comparability and monitoring of steps taken by the entities to address modern slavery which, in turn, will also increase the level of compliance by entities.

⁵⁶ Australian Border Force, *Australian Register for Modern Slavery Statements*, <https://modernslaveryregister.gov.au/>.



Recommendation 6: Independent Anti-Slavery Commissioner

The New Zealand Government should establish an Independent Anti-Slavery Commissioner role and provide for the allocation of sufficient resources to support the post and activities of a Commissioner's office.

The establishment of an Independent Anti-Slavery Commissioner's office would further Aotearoa New Zealand's efforts to combat modern slavery and, in the future, the role could be expanded to cover broader business and human rights issues.⁵⁷ A Commissioner could drive research into problematic industries and sectors, report and advise on matters related to Aotearoa New Zealand's anti-slavery response, and help further continuous improvement where required. The independence of the role from government would be integral to its success and provide for a stronger accountability mechanism for the state's efforts. However, the Commissioner should not take on the role of regulator, act as an enforcement body, or take on the responsibility and remit of any other central government function designed to monitor and incentivise compliance with the legislation.

Other jurisdictions have established similar positions.⁵⁸ Under the UK *Modern Slavery Act*, the Commissioner must encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences, as well as promote the identification of victims of those offences. The Commissioner does not exercise functions regarding individual cases or business reporting under the Act, except to draw conclusions when considering a general issue. A review of the Act found that the introduction of the Commissioner had been a success, with Ms Caroline Haughey, who undertook the review, stating that:

As well as raising the profile of the issue... (the Commissioner) has challenged data recording, ensured that there is an independent voice on the national and international stage presenting the UK picture. He has also brought back experience and knowledge from other jurisdictions.⁵⁹

57 Any development of a broader role should be done with consideration of the remit and purpose of New Zealand's Human Rights Commission and Commissioners.

58 There are also similar roles established under regional arrangements, for example, the Organization for Security and Co-operation in Europe (OSCE) Special Representative and Co-ordinator for Combating Trafficking in Human Beings, and National Rapporteurs established under the OSCE Action Plan to Combat Trafficking in Human Beings.

59 As referred to by the Parliament of Australia Joint Standing Committee on Foreign Affairs, Defence and Trade's *Inquiry into establishing a Modern Slavery Act in Australia* (Ms Caroline Haughey, Submission 190, p 5.), https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report/section?id=committees%2Freportjnt%2F024102%2F25192

The NSW *Modern Slavery Act* also provides for a government-appointed Anti-Slavery Commissioner, with a maximum term of five years in office.⁶⁰ Section 7 of the Act establishes the independence of the role, stating that the Commissioner is not subject to the control and direction of the Minister when exercising their functions.⁶¹ The NSW Act also establishes an obligation for government authorities, and certain persons and bodies, to work in cooperation with the Commissioner.

Given global developments and lessons learned in other areas where the functions of commissioner or ombudsman have been successfully implemented, the establishment of the Office of Independent Anti-Slavery Commissioner is going to be critical for supporting and encouraging good practice in the prevention of modern slavery, and potentially wider business and human rights issues, in Aotearoa New Zealand as well as regarding New Zealand entities' operations overseas.

60 Part 2 amended via Section 6 of the Modern Slavery Amendment Bill 2021.

61 The Commissioner's functions, as set out in the legislation, include advocacy; monitoring; awareness raising; making recommendations; and providing information, education and training.



Recommendation 7: Modern Slavery Advisory Group

The New Zealand Government should continue to maintain and actively engage with a Modern Slavery Advisory Group comprising of various stakeholders, including representatives of workers and survivors of modern slavery, as an integral process for implementing and developing Aotearoa New Zealand's legislative response to modern slavery.

Expert advisory groups to governments are an integral feature of all democratic systems and have been used widely in different contexts. The purpose and benefits of such groups are multiple, including providing government with strategic advice, supporting government with effective implementation and driving forward specific policies.

In June 2021, the New Zealand Government established the Modern Slavery Leadership Advisory Group (MSLAG) to support the development of an effective regulatory regime in Aotearoa New Zealand.⁶² Because most of the authors of this paper have been members of the Group at some point, to avoid any actual or perceived conflict of interest no further assessment of the functions or work of the MSLAG will be provided. However, lessons can be taken from a similar Modern Slavery Expert Advisory Group established in Australia in May 2020, comprising of business, service providers and academic members.⁶³

The Australian Government continues to rely on the specialist practical expertise offered by the members in the effective implementation of the *Modern Slavery Act 2018* (Cth).⁶⁴ However, its initial set-up did not go without certain controversies. A coalition of civil society groups and unions presented The Hon. Jason Wood MP, Assistant Minister for Customs, Community Safety and Multicultural Affairs, with an Open Letter expressing their concerns “regarding the alarming absence of union or civil society representation in the Department of Home Affairs’ newly established Modern Slavery Expert Advisory Group” and noted that it was represented overwhelmingly by business interests.⁶⁵ The Australian Government acted upon those concerns and broadened the composition and expertise of the Group by including representatives from civil society.

For a similar New Zealand Advisory Group to fulfil its function and mandate, it is important to ensure transparency of the membership as well as on what basis members were selected to be part of that Group. This will not only ensure that the requisite and diverse expertise is represented, but will also provide the general public with confidence that the Group is independent from, even if led by, the Government. It is important that representatives of workers and survivors of modern slavery are included in the ongoing implementation and review of the legislative scheme.

62 Ensor J, 'Modern slavery: Petition accepted by Michael Wood as Government convenes group to advise on possible legislation', *Newshub* (29 June 2021), <https://www.newshub.co.nz/home/politics/2021/06/modern-slavery-petition-accepted-by-michael-wood-as-government-convenes-group-to-advise-on-possible-legislation.html>.

63 Australian Government, *Modern Slavery Expert Advisory Group appointments* (25 May 2020), <https://minister.homeaffairs.gov.au/jasonwood/Pages/modern-slavery-expert-advisory-group-appointments.aspx>.

64 Australian Government (2021) *Implementing the Modern Slavery Act 2018, 1 January 2020–31 December 2020: The Second Report*, https://www.homeaffairs.gov.au/criminal-justice/files/implementing-the-modern-slavery-act-2018.pdf?mc_cid=2bd3f65591&mc_eid=173238e245.

65 Open letter by the Undersigned Civil Society Organisations and Unions (1 June 2020), https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5ed4a95a3ae6e43edd919f60/1590995292906/Letter_Re_Modern+Slavery+Expert+Advisory+Group.pdf. See also Hurst D, “‘Tick-a-box approach’: fears Australia’s efforts to tackle modern slavery risk being derailed”, *The Guardian* (16 June 2020), <https://www.theguardian.com/australia-news/2020/jun/16/tick-a-box-approach-fears-australias-efforts-to-tackle-modern-slavery-risk-being-derailed>.



Recommendation 8: Penalties for Non-Compliance with Statutory Obligations

The legislation should provide for accountability mechanisms, including financial penalties, exclusion from public tender and public listing as a non-compliant entity if entities fail to discharge obligations, including failure to adhere to mandatory reporting criteria. Centralised government enforcement frameworks must be in place and adequately resourced to monitor and respond to non-compliance.

For legislation addressing modern slavery to have the desired impact, it must be upheld. As such, penalties for non-compliance and enforcement frameworks must be in place to make sure that entities are incentivised to adhere to their obligations. In a regime where there are different types and levels of obligations (e.g., due diligence and transparency duties), accountability mechanisms should be designed to reflect the gravity of the non-compliant activity and with consideration of what the most effective means is to encourage compliance.

The benefits of compliance go beyond the positive impact for people at risk of, or experiencing, modern slavery. For corporate entities, transparency and due diligence (see Recommendations 2 and 3) could provide for an improvement in competitiveness through levelling the playing field, with competitors and peers held to the same standard to ensure more consistent engagement with suppliers by New Zealand entities and to foster collaborative actions. A system is needed where those who take action against modern slavery are rewarded for their efforts in a positively transformed market, while those who cut corners are held to account.

Examples from other jurisdictions demonstrate that self-regulation is not sufficient.⁶⁶ Without adequate penalty and enforcement provisions, there is non-compliance with legal obligations. For example, the UK *Modern Slavery Act*, while heralded as a landmark piece of legislation, has been critiqued for lacking teeth regarding the transparency in supply chain provisions.⁶⁷ Though the Act provided for injunction powers, these have never been used, and there is no financial penalty scheme or public listing of non-compliant entities in place. Recognising the Act's shortcomings, the UK Government committed to reform the Act, which includes introducing a penalty regime under the new Single Enforcement Body.⁶⁸

66 See, for example, Business & Human Rights Resource Centre and Modern Slavery Registry (2021) *Modern Slavery Act: Five years of reporting conclusions from monitoring corporate disclosure*, https://media.business-humanrights.org/media/documents/Modern_Slavery_Act_2021.pdf.

67 Millar M, 'Five years on, is the UK's landmark anti-slavery law fit for purpose?' *Reuters* (18 October 2019), <https://www.reuters.com/article/us-britain-slavery-expertviews-trfn-idUSKBN1WX02J>.

68 UK Government, Modern Slavery Unit, *UK Government response to the independent review of the Modern Slavery Act 2015* (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf.

Similarly, a recent civil society review of the Australian *Modern Slavery Act* (Cth) showed that companies were failing to comply with the mandatory reporting requirements, including by failing to meaningfully assess the effectiveness of their actions in addressing risks.⁶⁹ The review recommended that, at a minimum, consideration should be given to the addition of penalties and other consequences for companies that fail to report, provide false or misleading information, or submit incomplete reports that fail to address the mandatory criteria.⁷⁰ Also, the current Government's statutory three-year review of the Act explicitly considers the matter of civil penalties as an additional measure to improve compliance with the Act.⁷¹

Global trends indicate that the need for penalties and enforcement to be built into legislation on mandatory human rights due diligence is being recognised. Under the German *Supply Chain Act*, victims can lodge complaints with the Federal Office of Economics and Export Control (BAFA) on a particular situation. BAFA is required to take action on reports and investigate the allegation, and it has powers to impose fines proportional to the company's total turnover and gravity of the violation. The German Act also provides for temporary exclusion from public procurement and fines of at least €175,000.⁷²

The proposed EU mHREDD law will set up a mechanism of accountability by creating new supervisory authorities in EU member states to issue orders and impose dissuasive sanctions for non-compliance.⁷³ Further, companies will have to demonstrate that they have not been sanctioned for due diligence breaches when applying for public contracts.⁷⁴

In light of global developments, the establishment of corporate liability as part of the legislation is an area that Aotearoa New Zealand should explore in more depth and as part of robust consultation. Aotearoa New Zealand should take the opportunity to learn from the reviews of existing regimes and introduce legislation with effective penalties to ensure the regulatory framework complies with and is fit for purpose, and that a level playing field is created through strong expectations of what is required under the law.

69 Sinclair A, Dinshaw F, Nolan J, Marshall S, Zirnsak M, Adams K, Keegan P, Boersma M, Bhakoo V and Moore H (2022) *Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act*, <https://www.hrlc.org.au/reports/2022/2/3/paper-promises-evaluating-the-early-impact-of-australias-modern-slavery-act>.

70 *Ibid.*

71 The Australian Border Force (2022) *Terms of reference for the review of the Commonwealth Modern Slavery Act 2018*, <https://www.homeaffairs.gov.au/criminal-justice/files/terms-of-reference-review-of-modern-slavery-act.pdf>.

72 Business & Human Rights Resource Centre, *German parliament passes mandatory human rights due diligence law* (16 June 2021), <https://www.business-humanrights.org/en/latest-news/german-due-diligence-law/>.

73 European Commission, *Corporate sustainability due diligence: Fostering sustainability in corporate governance and management systems* (23 February 2022), https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en.

74 European Coalition for Corporate Justice, *Dangerous gaps undermine EU Commission's new legislation on sustainable supply chains* (23 February 2022), <https://www.eccj.org/dangerous-gaps-undermine-eu-commission-s-new-legislation-on-sustainable-supply-chains> - ECCJ ([corporatejustice.org](https://www.eccj.org)).



Recommendation 9: Remedies and Compensation

The legislation should provide remedy for workers subjected to modern slavery, including mechanisms to seek redress. There should be consideration of establishing entity liability for harms, including those committed by their subsidiaries, contractors and suppliers.

Currently, there are significant hurdles for victims of modern slavery who wish to pursue legal remedy against companies for harms they have suffered. Often, it is unclear how they can make a complaint, because many companies do not provide independent, trusted and accessible grievance mechanisms. Moreover, the high cost of litigation and challenges in securing legal aid, as well as difficulties with limitation periods, limited access to evidence, as well as issues with legal standing, are all barriers that prevent access to justice and accountability for harms.⁷⁵ Those who have suffered harm and exploitation should not be left to rely on voluntary remediation processes alone to secure remedy and restoration, which are also prescribed by the Third Pillar of the UNGPs.

The European Commission's proposals to minimise businesses' negative impact on workers includes liability for companies for harms committed by their subsidiaries, contractors and suppliers (at home or abroad).⁷⁶ Survivors will have the ability to bring legal action before the EU courts.⁷⁷ Though this is an important and welcomed provision in the proposals, there is concern that the proposals are not robust enough because it is implied that companies could fulfil their obligations through clauses in contracts with their suppliers and offloading verification to third parties, outsourcing responsibility, and limiting access to justice and remedy for survivors.⁷⁸

Reviews from existing legislation have highlighted the need for legal provisions to provide for the establishment of liability. Specifically, a recent civil society review of the Australian *Modern Slavery Act* (Cth) recommends that the law be reformed to include **"a specific cause of action so that workers subjected to modern slavery can seek redress in the event that companies have failed to undertake adequate due diligence to prevent modern slavery in their operations and supply chains."**⁷⁹

75 European Coalition for Corporate Justice, *Dangerous gaps undermine EU Commission's new legislation on sustainable supply chains* (23 February 2022), [Dangerous gaps undermine EU Commission's new legislation on sustainable supply chains - ECCJ \(corporatejustice.org\)](https://www.eccj.org/dangerous-gaps-undermine-eu-commission-s-new-legislation-on-sustainable-supply-chains).

76 European Commission, *Proposal for a Directive on corporate sustainability due diligence and annex* (23 February 2022), https://ec.europa.eu/info/publications/proposal-directive-corporate-sustainable-due-diligence-and-annex_en.

77 European Coalition for Corporate Justice, *Dangerous gaps undermine EU Commission's new legislation on sustainable supply chains* (23 February 2022), [Dangerous gaps undermine EU Commission's new legislation on sustainable supply chains - ECCJ \(corporatejustice.org\)](https://www.eccj.org/dangerous-gaps-undermine-eu-commission-s-new-legislation-on-sustainable-supply-chains).

78 *Ibid.*

79 Sinclair A, Dinshaw F, Nolan J, Marshall S, Zirnsak M, Adams K, Keegan P, Boersma M, Bhakoo V and Moore H (2022) *Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act*, p. 8, <https://www.hrlc.org.au/reports/2022/2/3/paper-promises-evaluating-the-early-impact-of-australias-modern-slavery-act>.

In response to weaknesses with the UK Act's transparency provisions, there have been calls for the establishment of a business and human rights regulation that would create a duty to prevent corporate human rights abuses, including a civil remedy for those who have experienced them.⁸⁰

Remedy and restoration for victims of harm must be central to legislative design to ensure it is effective. Thus, Aotearoa New Zealand should take heed of learnings from other jurisdictions and corresponding recommendations, and ensure that domestic law provides for a route of legal and non-legal redress for those harmed by New Zealand entities. Ensuring an ongoing consultative and collaborative approach to engagement with diverse stakeholders should be integral to the process of improving access to remedies.

80 Modern Slavery and Human Rights Policy and Evidence Centre, *Effectiveness of Section 54 of the Modern Slavery Act: Evidence and comparative analysis* (February 2021), <https://modernslaverypec.org/assets/downloads/TISC-effectiveness-report.pdf>.



Recommendation 10: Import Bans

The New Zealand Government should review international legislative developments regarding banning imports linked to all forms of forced labour and consider whether a similar legal tool could complement legislation addressing modern slavery for supply chains in Aotearoa New Zealand.

Acknowledging the resource burden on Government to enforce, ensuring that Aotearoa New Zealand has legislation that provides for the prevention of the importation of goods mined, produced or manufactured from regions or countries using modern slavery would be of great assistance to New Zealand businesses in identifying modern slavery risk as part of mHREDD.

Forced labour import bans stop goods produced abroad at the port of entry if they are suspected to be linked to forced labour.⁸¹ This has been identified as an area of concern for Aotearoa New Zealand; an estimated 3.1 billion imported products were linked to child and forced labour in 2019, amounting to more than 5 per cent of Aotearoa New Zealand's total imports. These goods came mainly from Bangladesh, Brazil, China, Colombia, Ecuador, Ghana, Guatemala, Indonesia, Malaysia, Thailand, Turkey and Vietnam.⁸²

The development of tools banning imports linked to forced labour is increasingly seen as a complementary measure to legislation addressing modern slavery in supply chains. For example, the European Parliament has recently called on a new EU instrument that allows for import bans relating to severe human rights violations, such as forced or child labour,⁸³ which has been identified as a tool that “could be a complementary measure to the EU legislation on corporate human rights and environmental due diligence along supply chains which is currently being developed.”⁸⁴

81 Modern Slavery and Human Rights Policy and Evidence Centre, *Policy brief: Effectiveness of forced labour import bans* (December 2021), https://modernslaverypec.org/assets/downloads/ImportBans_briefing-updated-final.pdf.

82 World Vision New Zealand (2021) *Risky goods: New Zealand imports*, <https://www.worldvision.org.nz/getmedia/6904e490-14b7-4fbf-b11e-308ddf99c44a/WVNZ-research-risky-goods-nz-imports/>, p10.

83 Business and Human Rights Resource Centre, *European Parliament calls for import ban on forced labour* (15 February 2022), <https://www.business-humanrights.org/es/%C3%BAltimas-noticias/european-parliament-calls-for-import-ban-on-forced-labour/>.

84 *Ibid.*

Globally, countries have been taking legislative steps to address this issue. For example, the USA has prohibited the importation of products created by forced labour through section 307 of the *Tariff Act 1930*. The USA has recently also passed the *Uyghur Forced Labor Prevention Act 2021*, which imposes importation limits on goods produced using forced labor in the People's Republic of China, especially the Xinjiang Uyghur Autonomous Region, and imposes sanctions relating to such forced labour.⁸⁵ Similarly, Canada has banned goods produced by forced or compulsory labour through the USA–Mexico–Canada Agreement on 1 July 2020.⁸⁶ Australia⁸⁷ and the UK have also recently considered banning imports relating to forced Uighur labour in Xinjiang.⁸⁸

Aotearoa New Zealand currently only prohibits only goods made by prison labour through the *Customs and Excise Act 2018*. The amendment of this Act to include all forms of forced labour should be considered by the Government as legislation to address modern slavery is explored. It is important to note that import bans can have unintended consequences; for example, affecting the livelihoods of children or migrant workers who are already vulnerable and who may work on products that become banned in a country.⁸⁹ These risks should factor into the Government's decision-making when considering banning imports linked to forced labour/modern slavery as a complementary mechanism to providing greater transparency and accountability in supply chains.

85 US Government Publishing Office, *The Uyghur forced labor prevention act* (Pub. L. 117-78), <https://www.govinfo.gov/content/pkg/PLAW-117publ78/html/PLAW-117publ78.htm>.

86 Boscaroli J, Taborda A and Zaccaria M, *Mitigating risk exposure to forced labour in the supply chain: Part II – Canada's response to forced labour*. (2 November 2021).

87 See the Customs amendment (Banning goods produced by forced labour) Bill 2021.

88 World Vision New Zealand (2021) *Risky goods: New Zealand imports*, <https://www.worldvision.org.nz/getmedia/6904e490-14b7-4fbf-b11e-308ddf99c44a/WVNZ-research-risky-goods-nz-imports/>, at 19.

89 Modern Slavery and Human Rights Policy and Evidence Centre, *Policy brief: Effectiveness of forced labour import bans* (December 2021), https://modernslaverypec.org/assets/downloads/ImportBans_briefing-updated-final.pdf.

Conclusion

Eradicating modern slavery is a global challenge and, as such, requires coordinated efforts by all sectors of society and inter- and intra-cooperation among governmental bodies nationally, locally and internationally. At the national level, the eradication of conditions allowing for modern slavery to flourish must focus on the activities of all entities with supply chains, including public, private and non-profit sectors, enabling those with good practices to flourish and preventing those who do not from avoiding responsibility for their impact on human rights and environmental protection, wherever it may occur.

In line with international principles and guidelines, including the UNGPs and *OECD Guidelines for Multinational Enterprises*, along with sector-specific codes of conduct and corporate best practice, New Zealand businesses need to be an integral part of eradication efforts. There is a strong case for companies to improve the transparency of their supply chains and carry out due diligence for their business activity. Leveling the playing field, with competitors and peers held to the same standard, as well as increasing leverage with third parties in supply chains through a non-negotiable standard, improves competitiveness and economic performance.

In responding to the consequences of the recent pandemic, it is critical that the experiences learned guide sustainable recovery and build resilience to future globally disruptive events. The COVID-19 pandemic has greatly impacted the global workforce across all sectors, with the deepest social and economic impacts experienced in fragile contexts and countries, which already had higher risks of modern slavery.⁶⁵ With a sharp focus on building greater resilience and efficiency in supply chains because of the pandemic, new models of due diligence and action are required to address modern slavery risks effectively. Long-term relationships and partnerships with suppliers, regional and industry-wide approaches, and greater involvement of workers directly in building solutions will all be key factors in mitigating risks to workers, businesses and investors alike.

International research into the challenges faced by businesses in addressing modern slavery in supply chains, while also responding to COVID-19 disruptions, shows that companies see supply chain visibility or transparency as increasingly important in the midst of the disruptions brought on by the pandemic.⁹⁰ More companies are mapping their supply chains, and particularly mapping further upstream, where they believe modern slavery is more likely to exist. Though mapping and the need to increase visibility has increased, due diligence and auditing of the supply chain have had to reduce dramatically, with new suppliers urgently being brought on board and physical visits severely restricted as a result of the pandemic. Moves towards building supply chain resistance through flexible sourcing and increasingly rapid enlistment of new suppliers further increase modern slavery risks. These challenges should instigate a more robust regulatory approach, rather than increase the protection gap.

Consequently, we call for Aotearoa New Zealand to introduce a due diligence-type of regulation that focuses on both human rights and environmental risks. This approach would be the most effective in eradicating modern slavery and would recognise the mutually reinforcing nature of modern slavery, along with wider human rights and environmental risks. This approach would also offer a streamlined practice for entities to identify and address the various interconnected risks that harm people and the planet.

90 Pinnington B, Meehan J and Trautrim A (2021) *Challenges in supply chain management posed by Covid-19*, <https://modernslaverypec.org/research-projects/challenges-in-supply-chain-management-posed-by-covid-19>.

Even though we should not aim merely for a TISC and reporting-type of legislation, the requirement and practice of transparency across entities' activities is the first step to effective due diligence and so, it should inform the legal reforms in this respect in Aotearoa New Zealand. What is reported by entities must be transparent and based on mandatory criteria for it to be an effective tool for monitoring and peer-to-peer learning and sharing of best practices.

Eliminating modern slavery from supply chains goes hand in hand with regulating global business activities more widely, including through trade bans and sanctions. Accordingly, Aotearoa New Zealand needs to consider preventing the importation of goods produced and that benefit from services offered by unlawful labour practices and other grievous forms of human exploitation, which also supports businesses in making informed decisions when complying with expectations and internationally accepted standards and norms.

Szablewska N, Kingi R, Armstrong R and Lake Q (2022) *An opportunity for impact. Recommendations for regulating modern slavery in supply chains in Aotearoa New Zealand.* Available from www.modernslaveryrecommendations.nz