

DISCUSSION DOCUMENT

A LEGISLATIVE RESPONSE TO MODERN SLAVERY AND WORKER EXPLOITATION

Towards freedom, fairness and dignity
in operations and supply chains



Te Kāwanatanga o Aotearoa
New Zealand Government

Ministry of Business, Innovation and Employment (MBIE)

Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders. MBIE combines the former Ministries of Economic Development, Science and Innovation, and the Departments of Labour, and Building and Housing.

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Important

To report migrant exploitation, contact the MBIE Service Centre on 0800 200 088 or go to <https://reportmigrantexploitation.employment.govt.nz/>

To report any other worker exploitation, call Employment New Zealand 0800 20 90 20 or fill out a form on <https://www.employment.govt.nz/about/email-us/>

To report anonymously, call Crimestoppers on 0800 555 111 or fill out a form on crimestoppers-nz.org

To report people trafficking, call New Zealand Police 105 or 111 (if it is an emergency)

How to have your say

Making a written submission

The Ministry of Business, Innovation and Employment (MBIE) opened this consultation on 8 April 2022. It seeks submissions by 7 June 2022.

We will accept submissions in any form.

You can provide us with feedback in any way you are comfortable. If you use our submission forms, this will help us to collate submissions.

Your submission may respond to any or all of the issues we ask about.

You do not have to answer all of the questions we ask. You may also want to tell us about other things that you think will help address modern slavery and worker exploitation in supply chains.

You can make your submission by one of these means:

- By online survey at this link <https://www.mbie.govt.nz/have-your-say/modern-slavery>
- By filling in the answer fields in the online document at this link <https://www.mbie.govt.nz/have-your-say/modern-slavery> and emailing your submission to us at modernslavery@mbie.govt.nz
- By printing off a document at this link <https://www.mbie.govt.nz/have-your-say/modern-slavery> and mailing your submission to:

International Labour Policy
Workplace Relations and Safety Policy
Ministry of Business, Innovation & Employment
PO Box 1473
WELLINGTON 6140

Please send any questions to modernslavery@mbie.govt.nz

What do we want to know?

We want to know how best to facilitate lasting cultural change and encourage best practice to support freedom, fairness and human dignity across the operations and supply chains of entities.

We also want to know about the impact of the proposals and options presented in this document. These proposals and options affect all of us, including each of us personally as individual consumers.

We want to hear about the impacts for victims and survivors, entities of all types, and individuals. We want to know what you think the benefits of the proposals and options might be, as well as their costs. We also want your ideas about how the proposals and options could be designed and implemented effectively.

How will we use your submissions?

We will analyse the submissions and publish a summary of the submissions we receive on MBIE's website. This will inform further work on the options.

We may publish individual submissions with any personal information removed. By making a submission we will consider you to have consented to its publication on the MBIE website, unless you clearly specify otherwise. Please clearly signal if your submission contains any information that you do not want published.

If a submitter (that is, a person who makes a submission) provides their contact details, we may contact them if we require clarification of any matters in submissions or would like further information from them.

The *Privacy Act 1993* applies to all submissions. Any personal information you supply to MBIE in the course of making a submission will only be known by the team working on this project. Personal information will be withheld from any information releases and publications.

Submissions may be requested under the *Official Information Act 1982*. MBIE will consult with submitters when responding to requests under the *Official Information Act 1982*.

Background and supporting materials

To support the public consultation, the Minister for Workplace Relations and Safety has proactively released the Cabinet paper that put forward the proposals and options in this paper, as well as briefings the Minister received in advance of the Cabinet paper.

These documents can be found at this link <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-people-trafficking-and-slavery/modern-slavery/>

We have prepared case studies and other supporting materials to help explain the proposals in this document. These materials can be found <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-people-trafficking-and-slavery/modern-slavery/>

Minister's foreword

Treating people fairly and with dignity is the New Zealand way.

New Zealanders have a growing awareness about the issue of worker exploitation and modern slavery in supply chains, and more of us want to make sure the goods and services we purchase are not contributing to harm.

Yet we know that, within New Zealand as well as across the world, worker exploitation and modern slavery persists. The International Labour Organization has estimated that there are over 40 million victims of modern slavery in the world, including 25 million people in forced labour. Meanwhile, Employment New Zealand continues to find cases of temporary migrant worker exploitation, and in 2020 an individual was convicted of people trafficking and slavery for offending that had occurred in New Zealand over 24 years.



Due to the changing nature of modern slavery and the need for an effective all-of-government response, last year I released New Zealand's *Plan of Action against Forced Labour, People Trafficking and Slavery*. A key focus of the Plan of Action was on prevention, and as part of this we committed to exploring the potential for legislation to address modern slavery in supply chains. This builds on and integrates our current work programme to combat temporary migrant worker exploitation.

We have now developed proposals for legislation that are designed to achieve freedom, fairness and dignity across operations and supply chains, both in New Zealand and overseas. Our international trading partners are already taking action to address modern slavery, and we have drawn from their experiences to develop proposals that could make a real difference in New Zealand.

The focus of this discussion document is on what responsibilities and obligations will apply, and who will be covered. It includes higher-level questions on how the legislation will work, covering issues such as independent oversight and the provision of a central register for disclosure statements. You are welcome to comment on as many or as few of the issues as you wish.

These proposals will affect all of us and it is vital that the legislation is informed by a wide range of perspectives. I would like to take this opportunity to thank the Modern Slavery Leadership Advisory Group (LAG) for supporting the development of the proposals to this stage, with special thanks to Rob Fyfe for chairing this Group. The LAG has brought together businesses, non-governmental organisations, unions and academics, and has been instrumental in enabling the development of a set of proposals that are designed to drive meaningful change.

We would now like to hear from you on these proposals. We want to hear from victims and survivors, from all types of organisations, and from individuals.

I know that there is wide public support for modern slavery legislation. Last year I received an open letter signed by over 100 businesses and a public petition signed by more than 37,000 people calling on the Government to implement modern slavery legislation.

For any legislation to be effective it is critical that we achieve lasting cultural change. Thinking about the conditions in which our goods and services are produced needs to be integrated into how we operate and how we make purchasing decisions. I look forward to building on the strong momentum we have now, and to hearing your views on how legislation can be designed to deliver meaningful change and make a real impact for people in New Zealand and around the world.

Hon Michael Wood

Minister for Workplace Relations and Safety

A legislative response to modern slavery and worker exploitation

Foreword from Rob Fyfe, the Chair of the Modern Slavery Leadership Advisory Group

As a businessman and proud New Zealander, I'm acutely aware of the challenges and anxieties that we are all confronting as we navigate the Covid-19 pandemic.

Many of those challenges are immediate and threaten the health and safety of our loved ones, our way of life, the viability of our businesses or our future employment.

As a result, I understand that there will be people that ask "why should I turn my attention to this issue of modern slavery and worker exploitation in our supply chains at this time, when there are more immediate issues to resolve much closer to home?"

I believe as business leaders, consumers and New Zealanders, it's long overdue that we step up and take greater responsibility for protecting the fundamental human freedoms of all those involved in the production of the goods and services we consume.

I find it unimaginable that in 2022 there are over 25 million people around the world who are being forced to work in slave like conditions, who are being exploited, or who have had their freedoms curtailed in material ways, while we continue to consume the products and services they produce. Usually, these practices are not in plain sight, so if we choose not to look, not to do appropriate due diligence and audits, not to follow up on whistle blower complaints and to adopt an attitude of "out of sight, out of mind" – then we implicitly become a party to this evil.

Throughout the last two years, we have all experienced having our freedom of movement curtailed for relatively short periods of time as a result of Covid lockdowns. Imagine the pain and suffering inflicted on people who have this freedom, and many others, curtailed for a lifetime, as they simply try to provide a better future, or any future, for their families.

Sadly, history tells us that at times of global disruption, with economies and supply chains under stress, combined with greater restrictions on our ability to travel and observe firsthand what is going on in our supply chains – the problems of modern slavery and worker exploitation, along with the associated human misery, are amplified.

Over recent years, a number of countries have introduced modern slavery legislation which places greater expectations on businesses to identify and address modern slavery practices in their supply chains. In parallel, within many businesses I'm involved in, we see consumers becoming much more demanding of businesses to take proactive steps on this issue. As a proud trading nation, we have the opportunity to step up and be amongst the countries showing global leadership on this issue, and I believe we must act now.

Over the past 12 months, I have had the privilege of chairing a leadership advisory group comprising business and community leaders along with academic and subject matter experts working alongside Minister Wood and a team from MBIE to develop the framework for the introduction of Modern Slavery Legislation in New Zealand. We are excited that the proposal is now ready for consultation and hope that all New Zealanders will come together and support New Zealand playing our part in eradicating all forms of slavery and worker exploitation.



Contents

How to have your say	2
What do we want to know?	3
How will we use your submissions?	3
Minister’s foreword	4
Foreword from Rob Fyfe, the Chair of the Modern Slavery Leadership Advisory Group	5
Summary	8
Summary of proposed responsibilities.....	13
Summary list of consultation questions	17
Background	23
The Government has committed to exploring modern slavery legislation	23
What is modern slavery and worker exploitation?	23
What are operations and supply chains?	24
Objectives – Ensuring people are treated fairly and with dignity	26
We want to reduce exploitation and ensure people are treated fairly and with dignity ...	26
New Zealand has a reputation as a country that supports human rights and transparency	27
We want to help consumers make informed choices.....	27
New Zealand trades on our reputation.....	27
We want to drive cultural change towards responsible and sustainable practices	28
The Problem – Modern slavery and worker exploitation can cause significant harm	29
Modern slavery is a global problem for us all and has severe impacts on victims	29
There is modern slavery and worker exploitation in New Zealand	31
Modern slavery and worker exploitation are negatively impacting New Zealand organisations	33
Why focus on modern slavery and worker exploitation in supply chains?.....	34
International Action – A collective global effort is needed	35
The Current Approach – New Zealand’s measures to prevent modern slavery and worker exploitation	39
The Opportunity - Strengthening New Zealand’s measures to address modern slavery and worker exploitation	41
Summary of the legislative approaches	43
Proposals to address modern slavery and worker exploitation across operations and supply chains	45
What responsibilities and obligations will apply	46
Responsibility 1 (all entities) – Take reasonable and proportionate action if they become aware of modern slavery in their international operations and supply chains, or modern slavery or worker exploitation in their domestic operations and supply chains	52

Responsibility 2 (small and medium entities) – Undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities where they are the parent or holding company or have significant contractual control...	54
Responsibility 3 (medium and large entities) – Disclose the steps they are taking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains	58
Responsibility 4 (large entities) – Undertake due diligence to prevent, mitigate and remedy modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains	60
How far responsibilities relating to operations and supply chains should apply.....	61
Who will be covered	63
Types of entity.....	63
Threshold type	64
Threshold level	65
Impacts on Māori entities and individuals	66
How the legislation will work	68
Enforcement and remediation	68
Independent oversight of the measures put in place to address modern slavery and worker exploitation	70
Central register and support services	72
Monitoring and evaluation.....	73
Submitter information	74
Public release of submissions	76
Acronyms and glossary	77
Appendix One: New Zealand’s legal framework.....	80
Appendix Two: Case studies of businesses taking action	83

Summary

We are proposing legislative options to help prevent modern slavery and worker exploitation

The Government committed in its 2020 Election Manifesto to continuing “work to stamp out migrant worker exploitation with a focus on exploring the implementation of modern slavery legislation in New Zealand to eliminate exploitation in supply chains”. On 16 March 2021, Workplace Relations and Safety Minister Hon Michael Wood released New Zealand’s all-of-government Plan of Action against Forced Labour, People Trafficking and Slavery ([the Plan of Action](#)). As part of the Plan of Action, the Government committed to considering legislation to address modern slavery in supply chains.

This document proposes legislation that would reduce exploitative practices domestically and overseas. To achieve this we will need to work collaboratively across government and with business and civil society to improve operational and supply chain practices to eliminate worker exploitation.

The primary objective for the proposals set out in this document is to reduce modern slavery and worker exploitation in New Zealand and elsewhere, helping to build practices based on fairness and respect. The secondary objectives that support this primary objective are to:

- enhance New Zealand’s international reputation as a country that supports human rights and transparency
- strengthen New Zealand’s international brand and make it easier for our businesses to continue to trade with the world
- support consumers to make more informed choices in relation to modern slavery and worker exploitation risks associated with good and services
- drive culture and behaviour changes in entities which lead to more responsible and sustainable practices
- level the playing field for entities which act responsibly across their operations and supply chains.

The legislation would only be one part of the picture and it will need to be accompanied by extensive promotion, guidance and support for entities. We need to build a collective understanding of the issues and a long-lasting culture change which encourages collaboration.

Modern slavery and worker exploitation negatively impacts us all

Modern slavery and worker exploitation practices take many forms. At the most extreme end of the spectrum, they can include forced labour, debt bondage, forced marriage, other slavery and slavery like practices, and human trafficking. While there is no internationally agreed definition of modern slavery, it is commonly understood to refer to the most extreme forms of exploitation. In this document, worker exploitation includes non-minor breaches of employment standards in New Zealand.

Modern slavery, whether it occurs here or overseas, has implications for us all. Perpetrators deny people their basic rights, and a victim of slavery can face severe physical and emotional harm that can last for the rest of their life. The direct impact on victims cannot be adequately quantified but it is significant and can undermine a person’s essential rights.

The use of modern slavery and worker exploitation in supply chains creates an environment based on unfair competition, in which exploitative practices can be leveraged to get ahead. On the other hand, taking action to prevent modern slavery and exploitation, and to maintain employment standards can help an entity improve its relationships with suppliers and protect its reputation. Entities which take action may also identify opportunities to reduce costs, improve the quality of their products, and gain certainty of supply by improving their understanding of markets, supply options and operational risks.

We want to ensure that workers in our supply chains are treated fairly and with dignity

New Zealanders want to know that our actions contribute to a fair world where people are treated with respect and dignity. New Zealanders are global citizens and we stand against exploitation here and overseas. Addressing the harms of modern slavery and exploitation requires us to build on our connections and work with partners around the world. Accordingly, our overall focus is on making lasting change to practices and cultural change, so these issues become an ongoing consideration for all entities.

Taking action to advance these values will take collective global effort including at the multilateral (United Nations and International Labour Organization) and individual country levels. As the world becomes more globalised, there are more opportunities for our people and the economy to thrive. However, this also increases the risks of our actions having harmful effects globally.

We would also like to hear more about how kaupapa Māori could help inform the design of the proposals, and about any potential disproportionate impacts on Māori.

New Zealand is not going to be able to solve the global problem of modern slavery on our own. We are a small part of international trade and supply chains. However, other countries, including Australia, France, Germany and the United Kingdom, have recently put measures in place to address modern slavery and worker exploitation. We can help shift practices in the right direction, while also ceasing to contribute to the problem.

We have focused on options that will treat the underlying causes of modern slavery and worker exploitation, rather than just the symptoms. Any solution will require a comprehensive approach aimed at building best practice and working with different parts of the economy and communities.

New Zealand trades on our reputation for fair treatment of workers

New Zealand is a strong advocate of international law, sustainable development, and human rights. Our efforts to protect human rights have helped us to rank second in the world in the Fraser Institute's Human Freedom index.¹ We have sought to include treaty-level provisions on labour and environment in all free trade agreements since 2001. New Zealand was a founding member of the International Labour Organization (ILO) and has had a strong association with it historically, which includes support for conventions aimed at addressing and outlawing slavery.

Addressing exploitation in supply chains and operations will have benefits for New Zealand exporters. Just like in New Zealand, consumers overseas and our trading partners are becoming more concerned about the treatment of workers and want to know that they are not contributing to harm. These concerns are likely to become a bigger part of international trade, as our trading partners are putting additional measures in place to manage the risks of human rights abuses in supply chains and operations. Businesses who can show that their supply chains are free of slavery and exploitation will find it easier to export to these markets.

There is modern slavery and worker exploitation all around the world

While there are significant methodological challenges in attempting to estimate the scale of the problem, current estimates from the International Labour Organization (ILO) and Walk Free Foundation suggest there are over 40 million victims of modern slavery around the world.²

High-profile cases of modern slavery have drawn attention to the severe harm it causes and how widespread it is throughout global supply chains. In 2013, the Rana Plaza collapsed in Dhaka, Bangladesh, killing 1,134 people, including children. After the collapse, journalists reported that the

¹ <https://www.fraserinstitute.org/sites/default/files/human-freedom-index-2021.pdf>

² *Global estimates of modern slavery: forced labour and forced marriage*. International Labour Organization. Available at:

https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf.

workers had been in modern slavery conditions. Many had been forced to work overtime, with evidence of child labour and overcrowding in a building with an obviously compromised structure.

The United Nations (UN) Special Rapporteur has said that 430,000 workers are at risk of exploitation in Italy's agricultural sector, and around 100,000 workers may be suffering severe exploitation.³ Victims reported working up to 17 hour days, with no rest or leave, and undertaking hazardous work with direct exposure to pesticides. Workers often did not have valid visas and there was evidence of physical and sexual violence or threats of violence, withholding wages and documents, and threats against families.

There have been long running reports of modern slavery in Thailand's fishing sector. A worker survey undertaken by Issara Institute and the International Justice Mission suggested that about three quarters of the 140,000 migrant fishers work at least 16 hour days, for less than NZ\$10 a day.⁴ There have been accounts of people being sold as slaves between fishing boats, and of workers being forced to work through the use of severe violence (even murder), incarceration and sleep deprivation.⁵

Modern slavery and worker exploitation are also occurring in New Zealand, while New Zealanders are buying goods and services made by exploited persons here and overseas

We know that modern slavery and worker exploitation are also occurring in New Zealand, and that New Zealanders are contributing to modern slavery and worker exploitation, either knowingly or unknowingly.

The trafficking victims identified in New Zealand to date are unlikely to reflect the full number of people who are subject to modern slavery in New Zealand. The hidden nature of these crimes means vulnerable people are less likely, or able, to seek help or report their experience. Walk Free estimated that in 2016 around 3,000 people in New Zealand were in conditions of modern slavery. World Vision also estimates that an average New Zealand household spends approximately \$34 each week on industries whose products are implicated in modern slavery.⁶

In 2020, Joseph Matamata was sentenced to 11 years in jail for 10 charges of human trafficking and 13 charges of dealing in slaves in New Zealand. Matamata held a matai (family chief) title that commanded significant respect in Samoan culture. He used his respected position to convince younger persons to stay with him and brought in children through adoption pathways, before exploiting their labour for his own benefit. He used violence and the threat of deportation to prevent his victims from speaking out or leaving.

There are also examples of employment standards breaches in New Zealand that have occurred in situations where third parties (entities other than the direct employer) have contributed to the conditions behind the worker exploitation. Under current settings, those third parties are not liable for any harm they have caused or contributed to unless they were directly involved in the worker exploitation. Independent research conducted in 2019 as part of the Government's review into temporary migrant worker exploitation identified that "Throughout this research, migrant worker exploitation has been associated with smaller businesses and, in particular, those operating under sub-contracting and franchise arrangements where the main contractor or franchisee has little oversight of labour practices".⁷

³ *Visit to Italy: Report of the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences*. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/G1922655.pdf>.

⁴ *Not in the Same Boat, Prevalence and patterns of labour abuse across Thailand's diverse fishing industry*, Issara Institute and International Justice Mission, 2016. Available at: <https://www.ijm.org/sites/default/files/studies/IJM-Not-In-The-Same-Boat.pdf>.

⁵ *'Such brutality': tricked into slavery in the Thai fishing industry*. The Guardian. Available at: <https://www.theguardian.com/world/2019/sep/21/such-brutality-tricked-into-slavery-in-the-thai-fishing-industry>.

⁶ See: <https://www.worldvision.org.nz/causes/advocacy/modern-slavery-act/risky-goods/>.

⁷ *Temporary migrant worker exploitation in New Zealand*. Francis Collins and Christina Stringer, July 2019. Available at: <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>.

There are some measures in place to address modern slavery and worker exploitation

The Government's initial focus under the Plan of Action has been on addressing migrant worker exploitation domestically. A package of legislative, policy and operational changes to reduce the exploitation of temporary migrant workers in New Zealand was announced in July 2020. The implementation of these changes is being supported by \$50 million in funding over four years.

The Government also announced in July 2020 that it would introduce a new legislative duty on third parties with significant influence or control over a New Zealand employer. The new duty would require the third party to take reasonable steps to prevent breaches of New Zealand's employment standards by the employer. The duty on third parties has been combined into the proposals in this document because the proposals are integrally linked. Proceeding with a single comprehensive proposal will help ensure that the outcomes are cohesive and effective.

New Zealand also uses our international engagements to address modern slavery and worker exploitation, such as through implementing the United Nations Guiding Principles on Business and Human Rights (UNGPs) through government contracts, including labour chapters in Free Trade Agreements that place obligations on parties in relation to the ILO's Fundamental Principles and Rights at Work, and by contributing to Overseas Development Initiatives to support work addressing slavery and exploitation.

There are gaps in New Zealand's measures to address modern slavery and worker exploitation in supply chains and operations

New Zealand's focus has been on addressing direct exploitation primarily undertaken by employers. We do not regulate broader operations and supply chain practices that contribute to exploitation (except for certain types of government procurement). The current approach has not fixed the environment in which exploitation occurs both domestically and internationally.

Due to the hidden nature of these harms, it is not possible to provide an accurate assessment of how much harm these proposals will fix. However, as noted above, there is clear evidence that this exploitation is still occurring in New Zealand supply chains and operations. We want to hear more about the scale and nature of the harms through the consultation.

Modern slavery offending related to goods and services sold in New Zealand most often occurs outside of New Zealand. Enforcement is largely left to regulators overseas that often face significant challenges in identifying modern slavery and convicting offenders. While the Government works through international forums to share best practice and discuss how to combat modern slavery overseas and in New Zealand, we are reliant on New Zealand organisations voluntarily identifying and addressing modern slavery in their international operations and supply chains.

The problem can also be seen in New Zealand, including in domestically focused operations and supply chains. While New Zealand has more ability to control exploitation within our own borders, we are still seeing exploitation caused by operations and supply chain practices. Entities further up supply chains, including head offices, are setting conditions that make it difficult for some employers to continue a viable business without breaching employment standards.

New Zealand consumers increasingly want to know that the goods and services they consume are not the products of modern slavery or worker exploitation. The 2020 New Zealand Consumer Survey found that 50 per cent of consumers report their purchasing decisions are affected by knowing whether a business treats its works fairly either always or most of the time. This is an increase from 48 per cent in 2018 and 43 per cent in 2016. However, even highly motivated consumers can face barriers in identifying which businesses are doing the right thing, as few organisations publish information on practices across their operations and supply chains.

Some entities in New Zealand are taking action to address exploitation voluntarily, and international organisations are actively promoting best practices.⁸ However, independent reviews of transparency regimes put in place in Australia, the EU and the UK show us that most organisations are not putting in place effective measures to address modern slavery. We have no reason to expect that New Zealand organisations would do any better without stronger incentives and government action.

As production has become more globalised, supply chains have become increasingly complex and larger in size. This means that a collective global effort is needed, with a particular focus on global supply chains. Internationally, more of our trading partners are taking action by introducing legislation aimed at addressing exploitation in supply chains. Inaction by New Zealand may undermine this global effort. New legislation could help to make it easier for New Zealand businesses to trade across the world.

We have heard from businesses and the public that relying on voluntary business practices is not enough.⁹ While we expect that practices will improve over time as organisations, particularly businesses, respond to consumer demand, we do not anticipate that this will happen as quickly or effectively as is needed to address the problem. Organisations that are taking action may currently be undercut by others who are turning a blind eye or contributing to exploitation.

Taken as a whole, the evidence suggests that relying on the status quo and non-legislative options will not sufficiently address modern slavery and worker exploitation here or around the world. We are therefore proposing legislation that places responsibilities on, and encourages collaboration between, government, organisations and consumers.

⁸ See, for example, the United Nations Development Programme's Human Rights Due Diligence assessment tool at <https://hrdd-assessment.org/about/> and Facilitation Guide at <https://www.undp.org/publications/human-rights-due-diligence-training-facilitation-guide>.

⁹ See https://www.parliament.nz/en/pb/petitions/document/PET_111975/petition-of-trade-aid-and-world-vision-new-zealand-take.

Summary of proposed responsibilities

We are proposing new legislation to achieve freedom, fairness and dignity in the operations and supply chains of entities in New Zealand, and to meaningfully respond to modern slavery and worker exploitation both in New Zealand and internationally.

Modern slavery broadly reflects exploitative situations that a person cannot leave due to threats, violence, coercion, deception, and/or abuse of power. We are proposing that modern slavery be defined as including the legal concepts of forced labour, debt bondage, forced marriage, slavery and slavery like practices, and human trafficking.

Exploitation can be seen generally as behaviour that causes, or increases the risk of, material harm to the economic, social, physical or emotional well-being of a person. We are proposing that **worker exploitation** be defined as including non-minor breaches of New Zealand employment standards.¹⁰ This excludes minor and insignificant breaches that are not constant and easily remedied.

What will entities be required to do to address modern slavery and worker exploitation?

Entities will be required to identify and/or take action to address risks of modern slavery in their **international** operations and supply chains, and of modern slavery and worker exploitation in their **domestic** operations and supply chains.

Operations can refer to all activity undertaken by an entity to pursue its objectives and strategy. We are interpreting operations broadly as including all material relationships an entity has which are linked to its activities, including for example: investment and lending activity; material shareholdings; and direct and indirect contractual relationships (such as subcontracting and franchising relationships).

Supply chains are the network of organisations that work together to transform raw materials into finished goods and services for consumers. They include all activities, organisations, technology, information, resources and services involved in developing, providing, or commercialising a good or service into the final product for end consumers.

We are proposing that the international focus will be on modern slavery only, rather than exploitation more broadly. This is because we are not expecting entities to apply New Zealand employment standards across their international operations and supply chains, whereas modern slavery practices are internationally recognised as a fundamental breach of international law and human rights.

These obligations would not apply to consumers purchasing goods or services for personal consumption. For example, a homeowner contracting a painter to paint their house would not have any additional responsibilities. However, consumers play an important role in ensuring the overall effectiveness of the legislation and the proposals aim to help consumers identify whether their goods or services might have been produced using exploitative practices.

What types of entities will be affected and how?

We are proposing a graduated set of responsibilities under which larger entities will be required to do more. This will be based on an entity's annual revenue. Entities that have significant control over another New Zealand entity will also be required to do more.

The definition of size would be based on annual revenue as follows:

- Small size entity – below \$20 million (up to approx. 495,500 entities)

¹⁰ This refers to employment standards as defined in the *Employment Relations Act 2000*, and includes requirements such as providing written employment agreements, keeping wage and time records, providing no less than the minimum wage, and providing annual holiday entitlements. It does not include health and safety requirements, which are part of a separate legislative framework.

- Medium size entity – above \$20 million and below \$50 million (up to approx. 2,200 entities)
- Large size entity – above \$50 million (up to approx. 1,450 entities).

We are proposing that this legislation will create new responsibilities for **all types of entities**, including companies, sole traders, partnerships, state sector organisations, local government, charitable entities, trusts, incorporated societies and Māori trusts and incorporations.

The proposed responsibilities can be summarised at a high-level as follows:

TABLE 1. HIGH-LEVEL SUMMARY OF PROPOSED RESPONSIBILITIES

	Small <\$20m	Medium \$20-50m	Large >\$50m
1. Take reasonable and proportionate action if they become aware of: <ul style="list-style-type: none"> • modern slavery in their international operations and supply chains, or • modern slavery or worker exploitation in their domestic operations and supply chains. 	✓	✓	✓
2. Undertake due diligence to prevent, mitigate and remedy* modern slavery and worker exploitation by New Zealand entities where they are the parent or holding company or have significant contractual control.	✓	✓	✓†
3. Disclose the steps they are taking to address: <ul style="list-style-type: none"> • modern slavery in their international operations and supply chains, and • modern slavery and worker exploitation in their domestic operations and supply chains. 		✓	✓
4. Undertake due diligence to prevent, mitigate and remedy* modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains.			✓

* We are seeking your views on whether entities should be required to remedy harms they have caused or contributed to. Please see the 'enforcement and remediation' section on page 74 of the discussion document.

† For large entities, due diligence responsibilities (Responsibility 4) would apply across their domestic operations and supply chains. This would include any New Zealand entity they have significant control or influence over.

Taking action where an entity becomes aware of modern slavery or worker exploitation could include, for example: reporting a case to the appropriate authority; working with the supplier to address the harm; changing suppliers; and/or any other action that may be appropriate under the circumstances.

Due diligence broadly refers to the process of identifying the risks of exploitation across an entity's operations and supply chains, taking steps to address any risks identified, and evaluating the steps taken.

Disclosure refers to the development and publication of a statement setting out the due diligence an entity is undertaking.

Any action taken to address modern slavery and worker exploitation should be reasonable and proportionate. What is ‘reasonable and proportionate’ could depend on a wide range of factors including the entity’s size and resources, the nature of the control or influence the entity has over its supplier, good practice in the entity’s sector, and the degree and type of harm that could result if no action is taken. Entities may need to initially focus their actions on addressing the most severe risks and impacts, before moving on to address remaining risks and impacts.

There are a wide range of potential measures that could be implemented to prevent and mitigate any identified risks as part of meeting due diligence responsibilities. The appropriate action will depend on the circumstances but could include, for example:

- regularly surveying suppliers to assess competence with protecting human rights and employment standards (e.g. requiring suppliers to submit an annual report which details the assurance systems they have in place, any issues that were identified, and actions that were taken to resolve them)
- commissioning third-party audits of suppliers’ compliance with human rights and employment standards (including using certification and assurance schemes developed by industry bodies or associations)
- establishing mechanisms for people in an entity’s operations or supply chains to report concerns directly to the entity (e.g. a hotline or whistleblowing channel)
- pre-approval assessments of potential supply chain partners to ensure that there is value alignment in terms of worker rights and worker wellbeing
- educating suppliers and workers in their supply chains about relevant rights and obligations in a language accessible to these groups.

Further examples are provided later in this discussion document in the sections on the proposed due diligence responsibilities, and in supporting case studies.

The proposals focus on different types of exploitation within New Zealand and internationally. As illustrated in **Table 2** below, domestically the focus will be on worker exploitation as well as modern slavery, whereas internationally the focus will only be on modern slavery.

TABLE 2. THE DOMESTIC AND INTERNATIONAL HARMS THAT ARE BEING ADDRESSED BY THE PROPOSALS

DOMESTIC	DOMESTIC AND INTERNATIONAL
<p style="text-align: center;">WORKER EXPLOITATION</p>	<p style="text-align: center;">MODERN SLAVERY</p>
<p>The proposals relate to the breaches of employment standards in NZ (but not breaches overseas).</p>	<p>The proposals relate to modern slavery in NZ and internationally.</p>
<p>This includes breaches of the minimum standards in the <i>Employment Relations Act 2000</i>, <i>Holidays Act 2003</i>, <i>Minimum Wages Act 1983</i>, <i>Wages Protection Act 1983</i>, and the <i>Equal Pay Act 1972</i>.</p>	<p>This includes the following crimes: forced labour, debt bondage, forced marriage, other slavery and slavery like practices, and human trafficking.</p>

How will the proposals be implemented?

We understand that entities are currently at different stages of progress in thinking about how modern slavery and worker exploitation manifests in their operations and supply chains, and how risks can be mitigated. While some entities have established due diligence processes, many others are only now beginning to think about how these may be adopted. We are seeking views on what support would be most helpful and whether a phase-in period for the legislation would be needed. Ultimately it is about working collaboratively across government, business and civil society to improve operational and supply chain practices to eliminate modern slavery and worker exploitation.

The proposals aim to ensure that the regulatory burden is proportionate and no greater than necessary to mitigate the risk. This means we have aligned our approach where possible with other jurisdictions and international best practice so that entities who are already taking effective action are not required to take additional measures unnecessarily.

The intention is to take an inclusive and positive approach to improvement and change, rather than a primarily punitive approach. Entities will be encouraged to look for modern slavery and worker exploitation, rather than seek to avoid it. Recognising the proposed legislation will mark the beginning of a journey for many entities, we are proposing that the regime be supported by an enforcement approach which would include a range of tools to ensure the obligations are met. This would include support for entities to improve operational and supply chain practices, as well as financial penalties.

Summary list of consultation questions

There is more information and context about each of these questions in the sections below.

Question 1. What do you think the key policy objectives should be (see, for example, our proposed objectives on page 26)? Which of these objectives do you think are most important?

Click or tap here to enter text.

Question 2. Do you think that enough action is currently taken in New Zealand to address modern slavery and worker exploitation across operations and supply chains?

- Yes, the status quo is satisfactory
- No, more action is needed
- I do not know

Please explain why you think enough action is, or is not, taken in New Zealand. If applicable, please explain what changes you think are needed.

Click or tap here to enter text.

Question 3. Do you think that New Zealand's legislation should be amended to better address modern slavery and/or worker exploitation across operations and supply chains?

- Yes, New Zealand's current legislation is sufficient (but non-legislative changes may be needed)
- No, legislative changes are needed
- Other

Please explain why you think New Zealand's current legislation is or is not sufficient

Click or tap here to enter text.

Question 3A. If applicable, which type of broad approach to new supply chain legislation would you most support?

- Disclosure-based (either general or prescribed)
- Due diligence-based
- Graduated approach incorporating both disclosure and broader due diligence (proposed)
- Other

Please explain why you prefer that approach

Click or tap here to enter text.

Question 4. Do you agree that all entities should have to take reasonable and proportionate action if they become aware of modern slavery in their international operations and supply chains, and/or modern slavery or worker exploitation in their domestic operations and supply chains?

Yes

No

If you answered yes, please explain why. If you answered no, please explain why not.

Click or tap here to enter text.

Question 5. What action(s) do you think would be reasonable and proportionate?

Click or tap here to enter text.

Question 6. Do you agree that small and medium-sized entities should have a responsibility to undertake due diligence to prevent and mitigate modern slavery and worker exploitation in domestic operations and supply chains for New Zealand entities they have significant control or influence over?

Yes

No

If you answered yes, please explain why. If you answered no, please explain why not.

Click or tap here to enter text.

Question 6A. What actions or measures do you think could be reasonable and proportionate for small and medium-sized entities to meet domestic due diligence obligations? Do you think those actions would be reasonable and appropriate generally, or in specific contexts?

Click or tap here to enter text.

Question 7. Do you agree that 'medium' and 'large'-sized entities should be required to annually report on the due diligence they are undertaking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains?

Yes

No

If you answered yes, please explain why. If you answered no, please explain why not.

Click or tap here to enter text.

Question 7A. What information should be compulsory for entities to provide in their annual disclosures?

Click or tap here to enter text.

Question 8. Do you agree that ‘large’-sized entities should be required to meet due diligence obligations to prevent and mitigate modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains?

Yes

No

If you answered yes, please explain why. If you answered no, please explain why not.

Click or tap here to enter text.

Question 8A. What actions or measures do you think could be appropriate for large entities to meet domestic and international due diligence obligations? Do you think those actions would be reasonable and proportionate generally, or in specific contexts?

Click or tap here to enter text.

Question 9. How far across an entity’s operations and supply chains should expectations to undertake due diligence apply?

Click or tap here to enter text.

Question 9A. What could reasonable due diligence activity look like at different supply chain tiers, and how could this be defined or reflected in the legislation?

Click or tap here to enter text.

Question 10. Are there any types of entities that should not be included in this legislation? If so, please specify and explain why they should not be included.

Click or tap here to enter text.

Question 11. Do you agree that ‘medium’ and ‘large’ entities should be defined based on revenue?

Yes

No

Other

Please explain your view

Click or tap here to enter text.

Question 12. What do you think the revenue threshold for defining a medium-sized entity should be? Please specify what you think the amount should be and explain why.

Click or tap here to enter text.

Question 13. What do you think the revenue threshold for defining a large-sized entity should be? Please specify what you think the amount should be and explain why.

Click or tap here to enter text.

Question 14. How could the proposals and/or the implementation of the proposals better reflect Kaupapa Māori and Te Tiriti o Waitangi principles?

Click or tap here to enter text.

Question 15. Are you aware of any disproportionate impacts (positive or negative) this legislation could have on Māori entities? Please explain what impacts may apply, if any.

Click or tap here to enter text.

Question 16. Are you aware of any disproportionate impacts (positive or negative) this legislation could have on Māori individuals? Please explain what impacts may apply, if any.

Click or tap here to enter text.

Question 17. What types of non-compliance should lead to enforcement action?

Click or tap here to enter text.

Question 18. Do you think there should be different offences and tools to deal with non-compliance with different obligations (such as for disclosure versus due diligence)? Should these differ depending on the size of the entity (or other factors, such as whether an entity is run by volunteers)?

Click or tap here to enter text.

Question 19. What comparable legislation do you think we should consider in developing the penalties framework for this legislation?

Click or tap here to enter text.

Question 20. What responsibilities, if any, should members of the governing body of the entity (such as the directors and board of a company) be personally liable for?

Click or tap here to enter text.

Question 21. Should victims onshore and offshore have the ability to bring a civil claim against an entity that has failed to meet its responsibility? If so, please explain why. If not, please explain why not.

Click or tap here to enter text.

Question 22. Should entities be required to remedy any harm they have caused or contributed to, where there is a clear link between their actions and the harm? If so, how should this link be demonstrated and what types of remediation would be appropriate?

Click or tap here to enter text.

Question 23. Is an independent oversight mechanism required, or could this oversight be provided by Government and civil society?

- Yes (an independent oversight mechanism is required)
- No (oversight can be provided by Government and civil society)
- Other

Please explain your view

Click or tap here to enter text.

Question 23A. If independent oversight is required, what functions should the oversight mechanism perform?

Click or tap here to enter text.

Question 24. Do you think a central register for disclosure statements should be established? If so, please explain why. If not, please explain why not.

- Yes
- No

Do you have any other comments or suggestions?

Click or tap here to enter text.

Question 25. What support services, products or other guidance do you think are most needed? What would be of greatest benefit to you?

Click or tap here to enter text.

Question 26. What do you consider would be needed from the regulator to support the adoption of good operational and supply chain practice, and compliance with the proposed responsibilities?

Click or tap here to enter text.

Question 27. Do you consider a phase-in time is needed for this legislation? If so, do you consider the phase-in should apply to the responsibilities or application of penalties, or both? Do you consider a different phase-in period should apply in relation to domestic responsibilities compared to internationally-focused responsibilities?

Click or tap here to enter text.

Question 28. What additional monitoring, evaluations and review mechanisms are needed, if any, to support this legislation?

Click or tap here to enter text.

Background

The government has committed to exploring modern slavery legislation

The Government committed in its 2020 Election Manifesto to continuing “work to stamp out migrant worker exploitation with a focus on exploring the implementation of modern slavery legislation in New Zealand to eliminate exploitation in supply chains”. On 16 March 2021, Workplace Relations and Safety Minister Michael Wood released New Zealand’s Plan of Action against Forced Labour, People Trafficking and Slavery (the Plan of Action), which sets out the all-of-government approach to combatting these crimes. It provides a high-level framework for the actions that agencies will take to combat these practices up to 2025.

As part of this Plan of Action, MBIE has been tasked with considering “legislation requiring businesses to report publicly on transparency in supply chains, to help eliminate practices of modern slavery”. Minister Wood has directed MBIE to investigate whether New Zealand is adequately protecting workers in New Zealand and elsewhere from modern slavery and worker exploitation, and to investigate the options for addressing modern slavery in international supply chains. In July 2020, the Government announced that it would implement a new legislative duty on third parties with significant influence or control over a New Zealand employer. This would require the third party to take reasonable steps to prevent breaches of New Zealand’s employment standards by the employer (this work is also included in the Plan of Action). The duty on third parties has been combined into the proposals in this document because the proposals are integrally linked. Proceeding with a single comprehensive proposal will help ensure that the outcomes are cohesive and effective.

What is modern slavery and worker exploitation?

Modern slavery and worker exploitation practices take many forms. They can range from breaches of minimum employment standards to more controlling and coercive criminal behaviour. At the most extreme end of the spectrum, they can include forced labour, debt bondage, forced marriage, other slavery and slavery like practices, and human trafficking.

While there is no internationally agreed definition of modern slavery, it is commonly understood to refer to the most extreme forms of exploitation. Taken together, they broadly reflect exploitative situations that a person cannot leave due to threats, violence, coercion, deception, and/or abuse of power. The word ‘modern’ is used to distinguish these practices from historical forms of slavery. Modern slavery includes slavery and other forms of abuse conditional on the constraint of a person’s freedom to exit their situation.

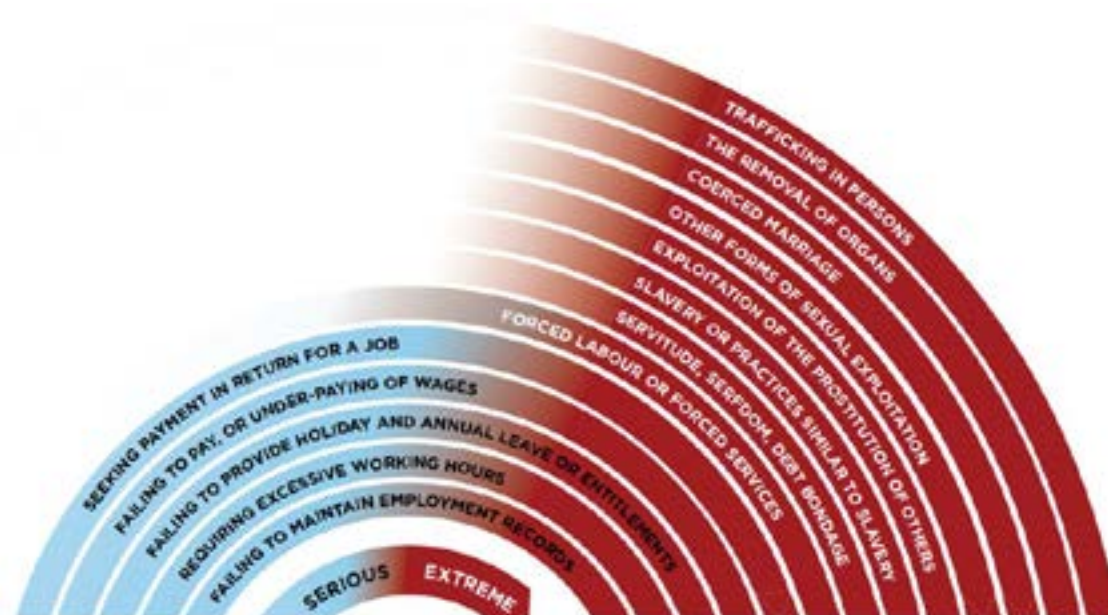
Modern slavery broadly reflects exploitative situations that a person cannot leave due to threats, violence, coercion, deception, and/or abuse of power. For the purpose of this discussion document, we are proposing that modern slavery be defined as including the legal concepts of forced labour, debt bondage, forced marriage, slavery and slavery like practices, and human trafficking.

Exploitation can be seen generally as behaviour that causes, or increases the risk of, material harm to the economic, social, physical or emotional well-being of a person. We are proposing that **worker exploitation** be defined as including non-minor breaches of New Zealand employment standards.¹¹ This excludes minor and insignificant breaches that are not constant and easily remedied.

The red parts of the diagram below illustrate where modern slavery practices are commonly considered to fall in the spectrum of exploitation.

¹¹ This refers to employment standards as defined in the *Employment Relations Act 2000*, and includes requirements such as providing written employment agreements, keeping wage and time records, providing no less than the minimum wage, and providing annual holiday entitlements. It does not include health and safety requirements, which are part of a separate legislative framework.

Figure 1. Spectrum of exploitation



While the term modern slavery is imprecise, many of the forms of exploitation within its umbrella are well-defined in New Zealand and international law:

- Forced labour is work exacted from a person under threat and for which the person has not offered themselves voluntarily. It can occur in connection with trafficking or through labour exploitation.
- In its simplest form, people trafficking is the recruitment, transportation, transfer, harbouring or receipt of a person, achieved through coercion, deception, or both, for the purpose of the exploitation of the person. Exploitation for the purpose of trafficking can occur in relation to prostitution or other sexual services, slavery, practices similar to slavery, servitude, forced labour or other forced services, and the removal of organs. In New Zealand, people trafficking can be prosecuted without exploitation having actually occurred.
- Slavery is defined in New Zealand's *Crimes Act 1961* as including, without limitation, a person subject to debt-bondage or serfdom. The Supplementary Convention on the Abolition of Slavery recognises institutions and practices similar to slavery, including debt bondage, serfdom, marriage related and exploitative child labour-related practices.

Appendix One provides further information about the legislation which criminalises these exploitative actions in New Zealand.

What are operations and supply chains?

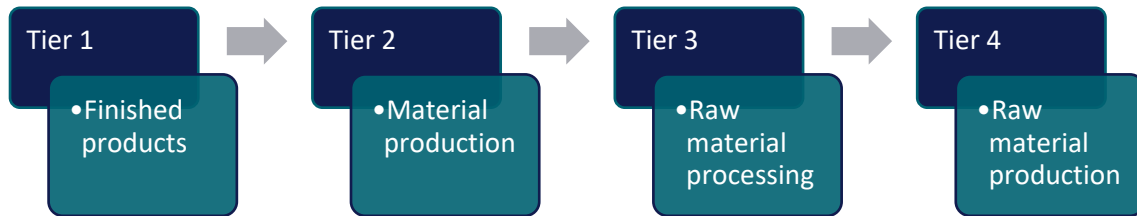
For this discussion document, we are taking a broad interpretation of the terms 'operations' and 'supply chains' so as to cover a wide range of relationships.

Operations can refer to all activity undertaken by an entity to pursue its objectives and strategy. We are interpreting operations broadly as including all material relationships an entity has which are linked to its activities, including for example: investment and lending activity; material shareholdings; and direct and indirect contractual relationships (such as subcontracting and franchising relationships).

Supply chains are the network of organisations that work together to transform raw materials into finished goods and services for consumers. They include all activities, organisations, technology, information, resources and services involved in developing, providing, or commercialising a good or service into the final product for end consumers.

The diagram below provides a simplified view of a supply chain relating to a manufactured good:

Figure 2. Example of a supply chain for a manufactured good



A finished good could be composed of components that are sourced and manufactured from thousands of suppliers located all across the world. This means that many more steps and processes than suggested in the diagram above can be involved in practice, such as the transport of goods, warehousing, wholesale and retail.

Objectives – Ensuring people are treated fairly and with dignity

This document focuses on options that address indirect contributions to exploitative practices domestically and overseas, with a view to working collaboratively across government and with business and civil society to improve operational and supply chain practices to eliminate worker exploitation.

The legislation would only one part of the picture and will need to be accompanied by extensive promotion, guidance and support for entities. We need to build a collective understanding of the issues and a long-lasting culture change which encourages collaboration.

We need to build a collective understanding of the issues and a long-lasting culture change which encourages collaboration.

The primary objective for the proposals set out in this document is to reduce modern slavery and worker exploitation in New Zealand and elsewhere, helping to build practices based on fairness and respect. The secondary objectives that support this primary objective are:

- enhance New Zealand’s international reputation as a country that supports human rights and transparency
- strengthen New Zealand’s international brand and make it easier for our businesses to continue to trade with the world
- support consumers to make more informed choices in relation to modern slavery and worker exploitation risks associated with good and services
- drive culture and behaviour changes in entities which lead to more responsible and sustainable practices
- level the playing field for entities which act responsibly across their operations and supply chains.

We want to reduce exploitation and ensure people are treated fairly and with dignity

New Zealanders are global citizens and we stand against modern slavery and worker exploitation here and overseas. Addressing the harms of modern slavery and worker exploitation requires us to build on our connections and work with partners around the world.

We can see these core values and principles reflected in the steps we as a country have taken to enshrine and respect human rights. From the beginning, New Zealand was a vocal advocate for putting human rights in the UN Charter before the UN was founded.

Taking action to advance these values will take a collective global effort. As the world becomes more globalised, there are more opportunities for our people and the economy to thrive. However, this also increases the risks of our actions having harmful impacts globally.

We would like to hear more about how kaupapa Māori could help inform the design of the proposals, and about any potential disproportionate impacts on Māori. The principles that are relevant to this work could include:

- kaitiakitanga, which means that we should act as guardians of people, place and planet, today and for future generations.

- manaakitanga, which is about respecting others’ mana and showing generosity, care and protection for others. The options in this paper are about supporting people and recognising their mana, their inherent human dignity.

New Zealand has a reputation as a country that supports human rights and transparency

New Zealand is a strong advocate of international law, sustainable development, and human rights. Our involvement in the ILO and observance of international labour standards complements and supports these interests and contributes to maintaining New Zealand’s reputational influence in the broader international system. Our efforts to protect rights have helped us to rank second in the world in the Fraser Institute’s Human Freedom index.¹²

The ILO is a specialised UN agency of 187 member states, established in 1919 to set and promote international labour standards, encourage employment and decent work, promote social protection and encourage social dialogue on work-related issues. New Zealand was a founding member of the ILO and has had a strong association with it historically.

We have committed to ILO Conventions and human rights treaties including the ILO’s Forced Labour Convention, 1930 (No. 29) and Forced Labour Protocol, the UN Slavery Convention, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. It is important that we work with international organisations, such as the UN, because modern slavery and exploitation in operations and supply chains are not problems that will be solved by New Zealand alone.

We want to help consumers make informed choices

New Zealanders increasingly want to know that the goods and services they consume are not the products of modern slavery or worker exploitation. There is an increasing societal expectation for good supply chain practices, including practices to address modern slavery and worker exploitation. For example, information from the New Zealand Consumer Survey¹³ shows that:

- In 2020, 50% of adult NZ consumers reported that knowing a business treats its workers fairly ‘always/most of the time’ affects their decision on where to purchase
- The proportion of consumers reporting that knowing a business treats its workers fairly ‘always/most of the time’ affects their decision on where to purchase has been steadily increasing since 2016 (43% in 2016, 48% in 2018 and 50% in 2020).

New Zealand trades on our reputation

Just like in New Zealand, consumers overseas and our trading partners are becoming more concerned about the treatment of workers and want to know that they are not contributing to harm. These concerns are likely to become a bigger part of international trade, as our trading partners are putting additional measures in place to manage the risks of human rights abuses in supply chains and operations.

Demonstrating that we are taking steps domestically and internationally to ensure that workers are treated fairly is a key part of our trading relationships, and taking action to address exploitation will help exporters get their goods into markets overseas. For example, many of our exporters’ practices are assessed as part of their Global Good Agricultural Practice certification, which they have to pass before they export to many of our key trading partners.

The Government seeks economic growth that boosts living standards for all people while ensuring protection for labour standards. We have sought to include treaty-level provisions on labour and environment in all free trade agreements since 2001. Recently, as part of our free trade negotiations

¹² <https://www.fraserinstitute.org/sites/default/files/human-freedom-index-2021.pdf>

¹³ Ministry of Business, Innovation and Employment. *New Zealand Consumer Survey 2020*.

with the UK, we have agreed in principle that the labour chapter will “reflect our ambition to tackle modern slavery in global supply chains”. Also, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership that New Zealand Ratified in 2018 requires parties to adopt and maintain laws that affirm key rights from the (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998).

New Zealand is not going to be able to solve modern slavery internationally on our own. We are a small part of international trade and supply chains. However, other countries, including Australia, France, Germany and the United Kingdom, have recently put measures in place to address modern slavery and exploitation. We can help shift practices in the right direction, while also ceasing to contribute to the problem.

We want to drive cultural change towards responsible and sustainable practices

We have focused on options that will treat the underlying causes of modern slavery and worker exploitation, rather than just the symptoms. This requires a comprehensive approach aimed at building best practice and working with different parts of the economy and communities. Our overall focus is on making lasting change to practices and cultural change, where these issues are an ongoing consideration for all entities.

The proposed approach is about business, government and civil society working together. It acknowledges that the legislation itself is only one part of the picture and that it will need to be accompanied by extensive promotion, guidance and support for entities. We need to build a collective understanding of the issues and a long-lasting culture change which encourages collaboration.

In the development of this document and policy, we have worked closely with stakeholders and experts in this area. The development of the proposals in this document has been supported by the expertise of the Modern Slavery Leadership Advisory Group, which is chaired by Rob Fyfe and brings together a wide range of perspectives, including business, academia, unions and civil society organisations. The members were chosen based on their work in this field already, and their experiences addressing modern slavery and worker exploitation.

The collaborative approach taken to date has been invaluable, and it is essential that this approach continues throughout the next stages of this work and through to the implementation of what is agreed. By harnessing the knowledge, reach and purpose of our civil society partners and other stakeholders, the response and end result will be strengthened.

Question 1. What do you think the key policy objectives should be for considering legislation (see, for example, our proposed objectives on page 26)? Which of these objectives do you think are most important?

Click or tap here to enter text.

The Problem – Modern slavery and worker exploitation can cause significant harm

While the focus of any steps taken to address modern slavery and worker exploitation should be primarily on reducing the harm caused to victims, there can also be significant benefits to entities and communities when commercial relationships are predicated on respect and responsibility for all affected parties. With this in mind, this section covers what we know about the harms caused to victims and the benefits of a system where entities build relationships with their suppliers in a way that mitigates risks of modern slavery and worker exploitation occurring.

Modern slavery is a global problem for us all and has severe impacts on victims

Modern slavery, whether it occurs here or overseas, has direct and indirect implications for us all. It includes the denial of personal and economic agency, and a victim of slavery can face severe physical and emotional harm that can last for the rest of their life. The direct impact on victims cannot be adequately quantified but it is significant and can undermine a person's essential rights.

Modern slavery also impacts productivity across global supply chains, with domestic and international economic implications. It can create an uneven playing field where businesses that exploit workers can leverage low labour costs to get ahead.

While there are significant methodological challenges in attempting to estimate the scale of the problem, current estimates from the ILO and Walk Free Foundation suggest there are over 40 million victims of modern slavery around the world (comprising 25 million victims of forced labour, including sexual exploitation, and 15 million victims of forced marriage).¹⁴

Women and girls accounted for 71 per cent of modern slavery victims, including 63 per cent of victims of forced labour and 84 per cent of victims of forced marriage, and children account for one in four victims of modern slavery.¹⁵ The UN Human Rights High Commissioner and the ILO has warned that the number of victims of modern slavery could significantly increase as a result of COVID-19.¹⁶ The UN Secretary General Report on trafficking in women and girls acknowledges that “the harms of trafficking are known to be more severe for women and girls than for men and boys given the exposure of the former to specific forms of exploitation such as sexual exploitation and violence, domestic servitude and forced marriage.”¹⁷ The proposals in this paper are not targeted at addressing forced marriage.

The ILO's most recent estimate of forced labour is higher than its previous estimate in 2012, which indicated there were 21 million people in forced labour. That 2012 estimate is higher than the earlier ILO estimate in 2005 (the first of this kind), suggesting there were a *minimum* of 12.3 million people in forced labour at the time. However, none of these estimates are directly comparable against each other due to the significant methodological differences between them.¹⁸

¹⁴ *Global estimates of modern slavery: forced labour and forced marriage*. International Labour Office (ILO), Geneva, 2017. Available at:

https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf.

¹⁵ Ibid.

¹⁶ See [OHCHR | COVID-19 could push millions into exploitation or slavery, UN expert warns](#), and [Rights at work: Fundamental rights at work can help build back better from COVID-19 \(ilo.org\)](#)

¹⁷ UN The Inter-Agency Coordination Group against Trafficking in Persons, *The Gender Dimensions of Human Trafficking*, <https://icat.un.org/sites/g/files/tmzbd1461/files/publications/icat-ib-04-v.1.pdf>

¹⁸ See https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf and https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081913.pdf for the 2012 and 2005 reports respectively.

High-profile cases of modern slavery have drawn attention to the severe harm it causes and how widespread it is through global supply chains. In 2013, the Rana Plaza collapsed in Dhaka, Bangladesh, killing 1,134 people, including children. About 4,000 garment workers were inside the Rana Plaza at the time, making clothes for large international brands. After the collapse, journalists reported that the workers had been in modern slavery conditions, many forced to work overtime, with evidence of child labour, and overcrowding in a building with an obviously compromised structure. The building had recently been inspected for working conditions and had passed the audit. 38 people directly involved in the factory and construction were charged with murder but none of the international clothing companies were held legally responsible.

The UN Special Rapporteur has said that 430,000 workers are at risk of exploitation in Italy's agricultural sector, and around 100,000 workers may be suffering severe exploitation.¹⁹ Victims have reported working up to 17 hour days with no rest or leave, and undertaking hazardous work with direct exposure to pesticides. Some seriously injured workers have been abandoned near hospitals for emergency treatment with instructions not to disclose where they had been hurt. Workers were sourced through middlemen, or gangmasters, that provided the workers with food, accommodation (often informal housing such as tents or abandoned buildings) and transport. Workers often did not have valid visas, and there was evidence of physical and sexual violence or threats violence, withholding wages and documents, and threats against families. Exploitation has been particularly evident in tomato farms. Most of the canned tomatoes in New Zealand supermarkets are sourced from Italy.²⁰

There have been long running reports of forced labour and people trafficking in Thailand's fishing sector. A worker survey undertaken by Issara Institute and the International Justice Mission suggested that about three quarters of the 140,000 migrant fishers work at least 16 hour days, for less than NZ\$10 a day.²¹ More than one third of workers surveyed had been clearly trafficked, while a further 49 per cent had been possibly trafficked. There have been accounts of people being sold as slaves between fishing boats, and of workers being forced to work through the use of severe violence (even murder), incarceration and sleep deprivation.²²

Concerns about working conditions for migrant workers fishing in New Zealand waters have also been raised in the past. A Ministerial enquiry in 2012 received reports of serious human rights breaches on board foreign flagged vessels, identified clear breaches of the Code of Practice, and found that "the response of both the industry and government agencies has been inadequate".²³

Debt bondage in international glove manufacturing

Malaysia produces about two thirds of the world's disposable gloves. The manufacturers rely heavily on labourers who travel from Bangladesh, Nepal and Myanmar. Investigations by journalists and NGOs found that workers were paying recruiters fees of up to \$US 4,800 to get a job with a Malaysian glove manufacturer. This could be more than a year's worth of pay, and the high-interest loans required to meet the fee could take years to pay off. There was also evidence of coercive work-floor practices such as withholding an employee's passport and excessive mandatory overtime requirements.

On 15 July 2020, the USA government banned disposable glove imports from Top Glove due to forced labour concerns. The USA Customs and Border Protection agency then seized shipments from Top Glove

¹⁹ Visit to Italy: Report of the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/G1922655.pdf>.

²⁰ *Are we buying slave-picked tinned tomatoes?* Newsroom. Available at: <https://www.newsroom.co.nz/are-we-buying-slave-picked-tomatoes>.

²¹ *Not in the Same Boat, Prevalence and patterns of labour abuse across Thailand's diverse fishing industry*. Issara Institute and International Justice Mission, 2016. Available at: <https://www.ijm.org/sites/default/files/studies/IJM-Not-In-The-Same-Boat.pdf>.

²² *'Such brutality': tricked into slavery in the Thai fishing industry*. The Guardian, <https://www.theguardian.com/world/2019/sep/21/such-brutality-tricked-into-slavery-in-the-thai-fishing-industry>.

²³ Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, <https://www.mpi.govt.nz/dmsdocument/4008-Report-of-the-Ministerial-Inquiry-into-the-use-and-operation-of-Foreign-Charter-Vessels>.

in the USA. The USA agency relies on evidence from other organisations, such as journalists and NGOs when making determinations. The comprehensive investigations and reporting in the year before the ban were key to the determination.

Three weeks after the USA ban came into place, Top Glove announced that it would pay remediation to employees that had paid recruiters for their jobs. Malaysia's 4 biggest glove manufacturers Top Glove, Kossan, Hartalega, and Supermax went on to announce in 2020 that they would repay recruitment costs of \$US 36 million, \$US 12.5 million, \$US 9.5 million, and \$US 5.5 million, respectively. They have paid out over 20,000 workers.

Auditing had not remedied the risks or occurrence of forced labour. Top Glove claimed that in 2017 and 2018, they had undertaken 28 Social Responsibility audits in accordance with commonly accepted international standards.

Given the data limitations, it is not possible to determine with confidence whether the prevalence of modern slavery is increasing or decreasing. However, it is clear that modern slavery is a significant global problem and the efforts undertaken to date have not effectively addressed the problem.

There is modern slavery and worker exploitation in New Zealand

We know that modern slavery and worker exploitation also occur in New Zealand, and that some New Zealanders are contributing to modern slavery and worker exploitation.

Most of the 51 human trafficking victims identified in New Zealand up to 2021 have been migrant men who were trafficked for the purpose of labour exploitation. This is unlikely to reflect the full spectrum of people who are subject to modern slavery in New Zealand, as the hidden nature of these crimes means that vulnerable people are less likely, or able, to seek help or report their experience. Walk Free estimated that in 2016 around 3,000 people in New Zealand were in conditions of modern slavery.²⁴

There are significant challenges in attempting to accurately measure the extent of worker exploitation in New Zealand. However, the available administrative, survey and qualitative interview data suggests that worker exploitation is a serious issue in New Zealand. The review into temporary migrant worker exploitation undertaken in 2019 found that the number of complaints of migrant worker exploitation had been increasing, and a large proportion of complaints that were investigated had been substantiated.²⁵

The population identified as being most at risk of worker exploitation in New Zealand to date has been migrant workers, RSE workers and former refugees, who are likely to have a limited knowledge of New Zealand employment laws or the resources to use them. Exploitation in this context often involves using the immigration status of employees to force them into exploitative conditions. An exploitative employer might seize a passport, fail to provide an employment agreement or charge premiums in exchange for employment or assistance with migration.

The identification and enforcement of modern slavery and worker exploitation remains a challenge for governments across the world. Challenges arise for a range of reasons including the hidden nature of the offending, the evidential requirements for cases of such severity, and the potential transnational nature of the offending which can require substantial cooperation between regulators in different jurisdictions.

²⁴ See the Walk Free Foundation's Global Slavery Index and accompanying information at <https://www.globalslaveryindex.org/>. Walk Free's country assessment of New Zealand is available at <https://www.globalslaveryindex.org/2018/data/country-data/new-zealand/>.

²⁵ See <https://www.mbie.govt.nz/immigration-and-tourism/immigration/temporary-migrant-worker-exploitation-review/>.

Matamata Case – the most severe penalty imposed for slavery in New Zealand

Joseph Matamata was sentenced to 11 years in jail in 2020 after a jury found him guilty of 10 charges of human trafficking and 13 charges of dealing in slaves, and ordered to pay about \$183,000 to his victims. Matamata held a matai (family chief) title that commanded significant respect in Samoan culture. He used his respected position to convince younger persons to come stay with him in New Zealand, then exploited their labour for his own benefit. He used violence and the threat of deportation to prevent his victims from speaking out or leaving.

Mr Matamata was sentenced for bringing 10 victims into New Zealand over two decades on the false representation that they would receive a decent income through him for horticultural work, which they could then send back to their families in Samoa. The victims were paid very small amounts of money such as \$10 or \$20 a week. Some of the charges additionally related to children Mr Matamata brought into New Zealand through adoption pathways.

Mr Matamata took advantage of the victims' vulnerable situations. The victims all had low levels of education and had limited income. Most could not speak English and some could not read. Mr Matamata arranged short term visas for them, which would not allow them to work in New Zealand, and then he took their passports from them when they arrived in New Zealand.

The Court defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership is exercised." The Court went on to say that ownership is about control, and that control can be exercised by depriving a person of their individual liberty through violence, threats of violence or coercion.

The victims lived on Mr Matamata's property when they arrived and were instructed to remain on the property when they were not performing horticultural work or at church. They were also told not to communicate with anyone they came across or with their families in Samoa unless Mr Matamata allowed it.

If the victims did not comply with Mr Matamata's instructions, they were assaulted including with the use of objects and blows to the head. Some of those assaults caused scarring.

On their return to Samoa, most of the victims felt shame about what had happened to them and did not want to talk about it. This sense of shame was reinforced by Mr Matamata's respected matai status.

There are also examples of employment standards breaches in New Zealand that have occurred in situations where third parties (entities other than the direct employer) have contributed to the conditions behind the exploitation. Under current settings, those third parties are not liable for any harm they have caused or contributed to unless they were directly involved in the exploitation. Independent research conducted in 2019 as part of the Government's review into temporary migrant worker exploitation identified that "Throughout this research, migrant worker exploitation has been associated with smaller businesses and, in particular, those operating under sub-contracting and franchise arrangements where the main contractor or franchisee has little oversight of labour practices".²⁶

In recent years there have also been a number of employment standards breaches in the liquor retail industry, where third parties with significant control or influence may have been able to take steps to mitigate the risk of the breach occurring. For example, six employers were ordered to pay \$516,379 to five employees in September 2021 for not providing their minimum employment entitlements and charging premiums contrary to the *Wages Protection Act 1983*.²⁷ The proposals in this document would allow the regulator to look at entities, such as franchisors and holding companies, that have significant

²⁶ *Temporary migrant worker exploitation in New Zealand*. Francis Collins and Christina Stringer, July 2019. Available at: <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>.

²⁷ Employment Court, [2021] NZEmpC 149, [2021-NZEmpC-149-Labour-Inspector-v-Samra-Holdings-t-a-Te-Puna-Liquor-Centre.pdf](https://www.employment.govt.nz/decisions/2021-149-labour-inspector-v-samra-holdings-t-a-te-puna-liquor-centre.pdf)

control or influence over employers to determine whether they put in place appropriate measures to prevent the risk of worker exploitation occurring.

In relation to subcontractors, 'shop floor' practices can be beyond the sight of the main contractor particularly where they occur several tiers down a supply chain. The case study below, for example, highlights the exploitation identified amongst subcontractors involved in New Zealand's rollout of ultrafast broadband.

Exploitation in New Zealand's rollout of ultrafast broadband

Significant exploitation was identified from the third tier of subcontracting associated with New Zealand's ultrafast broadband rollout. This led to Chorus commissioning an independent review of their contracting model.²⁸

The Labour Inspectorate investigation of the Ultra-Fast Broadband (UFB) rollout supply chain found potential employment standards breaches in 73 out of 75 employers the Labour Inspectorate initially investigated.

Breaches observed included employers failing to: maintain employment records; pay employees' minimum wage or holiday entitlements; and provide employment agreements. In a number of cases it was found that contractors deliberately used practices such as 'volunteering' or extended trial and training periods without pay.

The prevalence of exploitation found across otherwise independent employers strongly suggested there were systemic problems and that these were driven by features of the contracting model. Further, the review noted that around 50-60 per cent of the workforce was comprised of temporary migrant workers. However, all cases of non-compliance found had involved employers of migrant workers – suggesting that migrants were disproportionately affected by those systemic problems.

Chorus has subsequently taken steps to identify and address issues and mitigate the risk of further exploitation through breaches of employment standards occurring within the ultrafast broadband supply chain. They have developed a worker welfare programme organised around six themes: Lead, Govern, Plan, Educate, Protect, and Monitor. These include the following actions:

- Mapping their UFB supply chain
- Implementing a supplier code of conduct which mandates minimum operation standards
- Reviewed governance frameworks for monitoring workforce risks; worker exploitation risks are now regularly reported to the board, and monitored by the Board Audit and Risk Management Committee
- Developed and implemented education programs for all parties (technicians, subcontractors, service companies and Chorus staff)
- Implementing a whistle-blowing platform for technicians to report exploitation.

Modern slavery and worker exploitation are negatively impacting New Zealand organisations

The use of modern slavery and worker exploitation in supply chains creates an environment based on unfair competition, in which exploitative practices can be leveraged to get ahead. On the other hand, taking action to prevent modern slavery and worker exploitation in supply chains can help an entity improve its relationships with suppliers and protect its reputation.²⁹ Entities which take preventative

²⁸ MartinJenkins. *Independent Review of Chorus' Next Generation Network Connection Contracting Model*. April 2019. Available at: <https://www.martinjenkins.co.nz/assets/Uploads/Client/Final.Independent.Review.of.Chorus.Contracting.Model-April.2019.pdf>.

²⁹ OECD Guidance. See: [OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf](#)

action may also identify opportunities to reduce costs, improve the quality of their products, and gain certainty of supply by improving their understanding of markets, supply options and operational risks.

For many entities considering steps to address modern slavery risks in their supply chains, there may be uncertainty about the overall benefits, particularly if their competition is not taking responsible steps and appear to be undercutting them. The ILO has estimated that forced labour in the private sector generates profits of over USD\$150 billion per year, of which \$99 billion is generated by forced sexual exploitation and \$51 billion by other forms of forced labour exploitation.

While there is growing support from governments, businesses and consumers to put measures in place to address modern slavery, the conditions and incentives are not sufficient for all entities to do so voluntarily. Also, while more consumers want to buy from responsible businesses, it is not always easy for a consumer to determine which businesses have put effective measures in place. Kantar's Better Futures Survey found that 79 percent of shoppers consider that "it is really hard to tell which products are good or bad ethically" and 67 percent of shoppers "don't have enough information about how ethical/sustainable different products are".³⁰ The survey also found that New Zealanders are more actively thinking about these issues than Australian and UK shoppers.

Many businesses are making claims about their practices but the vast majority of consumers will not be in a position to verify those claims. Businesses that are taking significant steps may find it hard to stand out from businesses that have taken more superficial actions.

On 29 June 2021, Minister for Workplace Relations and Safety Hon Michael Wood accepted a petition at Parliament from Trade Aid and World Vision. The petition was signed by 37,000 people and requested that legislation is introduced urgently to address modern slavery in supply chains. Also, over 100 New Zealand companies have signed an open letter calling on the Government to investigate whether a Modern Slavery Act would be appropriate for New Zealand.

Why focus on modern slavery and worker exploitation in supply chains?

Supply chains have become increasingly complex and larger in size over the last few decades as production has become more globalised. Technological change has also meant it has become more common for global supply chains to include both goods and services. These developments have led to significant trade benefits, but have also generated new risks. This includes the role that supply chains play in contributing to modern slavery, which can occur at any stage of the supply chain.

World Vision also estimates that an average New Zealand household spends approximately \$34 each week on industries whose products are implicated in modern slavery.³¹ It is not just the operators overseas that are causing the problem. Entities based in New Zealand are putting pressure on their suppliers which can exacerbate exploitative practices.

Most modern slavery offending related to goods and services sold in New Zealand occurs outside of New Zealand's jurisdiction. Enforcement is largely left to regulators overseas that often face significant challenges in identifying modern slavery and convicting offenders. This means that even if modern slavery is found in a country or region, it is challenging for New Zealand to take enforcement action against those who are directly responsible. The low chance of conviction combined with the potential for significant profit can create a situation where risk-reward considerations are skewed in favour of exploitation.

³⁰ [PowerPoint Presentation \(kantarnz.com\)](#)

³¹ See <https://www.worldvision.org.nz/causes/advocacy/modern-slavery-act/risky-goods/>.

International Action – A collective global effort is needed

The developments noted above mean that tackling modern slavery will take a collective global effort, with a particular focus on global supply chains.

International institutions are encouraging governments to address the role of supply chains in contributing to modern slavery. While the practices often taken to comprise modern slavery are prohibited at the international level, they are enforced through domestic regulatory systems. The treaties which New Zealand has ratified that define and set out obligations to directly address forced labour, people trafficking and slavery include:

- the ILO's Forced Labour Convention, 1930 (No. 29), and the 2014 Protocol to the Forced Labour Convention ('Forced Labour Protocol')
- the UN Convention against Transnational Organised Crime, and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ('Trafficking Protocol'; often referred to as the Palermo Protocol)
- the UN Slavery Convention, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

New Zealand has also ratified a range of international legal instruments which place obligations on us to take action in relation to women and children, who are internationally recognised as being disproportionately affected by modern slavery. These include the UN *Convention on the Elimination of All Forms of Discrimination against Women*, the UN *Convention on the Rights of the Child* and its *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, the ILO *Worst Forms of Child Labour Convention*, and the Hague Conference on Private International Law's *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

New Zealand's approach is further shaped by our obligations and commitments under broader international instruments including the UN *Universal Declaration on Human Rights*, *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights*. They are in turn supported by further instruments including the UN *Guiding Principles on Business and Human Rights* and the OECD *Guidelines for Multinational Enterprises*.

The UN Guiding Principles on Business and Human Rights ([UNGPs](#)) are the most concrete articulation of the international community's position on the subject, and the proposals in this document are generally based on the UNGPs. The Organisation for Economic Cooperation and Development (OECD) has incorporated this formulation of due diligence in its *Guidelines for Multinational Enterprises* ('[OECD Guidelines](#)'), and the ILO has reflected it in their Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

The United Nations Guiding Principles on Business and Human Rights (UNGPs)

The UNGPs were published in 2011 and are aimed at supporting businesses to enhance their "standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization". While the UNGPs acknowledge that states are not always responsible for the actions private individuals take, they propose that states should take steps to prevent abuse abroad by business enterprises within their jurisdiction. They recommend that states implement measures to set out the expectation that business enterprises domiciled in their territory respect human rights throughout their operations.

The UNGPs are based around a framework of Protect, Respect, and Remedy. In the UNGPs, corporate due diligence means to "identify, prevent, mitigate and account for" adverse impacts on human rights, not only in their own operations but throughout their supply chains.

A company detecting actual or potential negative human rights impacts arising from its activities should take action consistent with its degree of involvement. Involvement is described in three forms in terms of proximity to the impact: the company may cause, contribute to, or be directly linked to a human rights impact. Based on their level of involvement:

- A business that causes an adverse impact should do what is necessary to stop it.
- A business that exacerbates an adverse impact should cease its contribution and do what lies within its power to mitigate any remaining impact.
- A business connected to an adverse impact through its operations, products or services should use its leverage to mitigate the adverse impact. If the business lacks effective leverage over the entity causing a human rights violation, it should try to increase that leverage and terminate the relationship if it cannot acquire sufficient leverage.

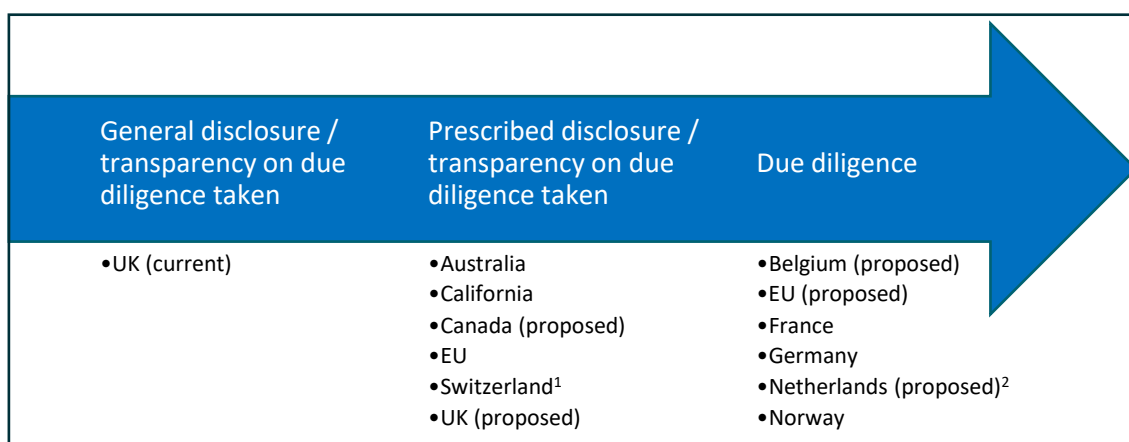
The UNGPs and OECD Guidelines together provide principles and recommendations for protecting and respecting human rights in the context of commercial activities. In broad terms, they call on entities to undertake human rights due diligence by:

- a. undertaking risk assessments across their operations and supply chains (including those of any subsidiaries) to identify potential risks
- b. undertaking action as is appropriate to address any risks
- c. monitoring and evaluating the effectiveness of the actions they take, and
- d. being transparent about the risks they identify, the actions they are taking and how they are monitoring and evaluating those actions.

There is a growing consumer and business focus on addressing modern slavery, and more governments are focused on addressing modern slavery in global supply chains through their domestic legislation. This attention has been driven in part by legislative changes in countries including the UK, Australia and France which now require large businesses to publicly report on their supply chain practices.

The UNGP's general notions of risk identification, action, evaluation and communication are common themes across supply chain legislation around the world. However, the mechanisms to achieve them differ. Supply chain legislation to address modern slavery and worker exploitation internationally takes a wide range of forms, from non-prescriptive reporting obligations (as currently in the United Kingdom) through to the mandatory creation and implementation of human rights action plans (as with the French 'Duty of Vigilance' law [see next page]). **Figure 3** below highlights current international legislative approaches, which we have categorised into groups broadly referenced as 'disclosure-based' and 'due diligence-based' approaches:

Figure 3. High-level categorisation of international legislation addressing modern slavery and worker exploitation through supply chain disclosure and due diligence



Note: The approaches taken across Continental Europe (at the regional and country-levels) generally relate to human rights more broadly (and in conjunction with environmental issues), whereas non-European approaches generally focus on modern slavery more specifically.

¹ Switzerland has adopted a disclosure model that includes further due diligence obligations for enterprises trading in conflict minerals or goods and services produced with a founded suspicion of child labour.

² The Netherlands has adopted due diligence requirements in relation to child labour. It is currently considering broader due diligence requirements in relation to human rights, labour rights and the environment (collectively).

The **‘general disclosure’ approach** requires entities to publish a statement outlining the due diligence activity they are undertaking to address modern slavery and worker exploitation. However, it provides flexibility in the content of this reporting and could permit the submission of a statement indicating the entity is doing nothing. We are not proposing to use this approach as the current evidence suggests it has not been effective in incentivising detailed and accurate disclosures, nor has it led to a critical mass of behaviour change across businesses, investors and consumers.³² While this approach was ground-breaking when first introduced, more proactive approaches have since been adopted internationally and accepted as the norm.

The **‘prescribed disclosure’ approach** requires entities to publish statements on the due diligence they are undertaking with mandatory reporting criteria. These reports can require entities to provide information on, for example:

- the risks of modern slavery and worker exploitation in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls
- the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes
- how the reporting entity assesses the effectiveness of such actions.

Both the UK and Australian national supply chain transparency legislation aims to address information asymmetries by requiring large entities to publish the steps they are taking to address modern slavery. These disclosure-based models rely on consumers, investors and advocacy groups to interpret the information supplied by entities, and act based on their assessment of the information provided.

Due diligence approaches move a step further than disclosure by requiring that regulated entities undertake particular actions, in addition to making disclosures (as above). The particular actions set out across jurisdictions can vary, but broadly align with the due diligence framework set out in the UNGPs.

³² See report *Impact and effectiveness of modern slavery legislation* on consultation website.

In recent years, this type of approach has been introduced in France, Germany and Norway. As it is still new, there is little direct empirical evidence available regarding its effectiveness. However, we consider that a due diligence approach would better meet the policy objectives (see page 26) compared to a disclosure-based approach as it would: provide a more direct means of ensuring that appropriate action is taken to address modern slavery and worker exploitation across operations and supply chains; be more responsive to changes in best practice over time; and reflect the approach currently being considered and adopted by a range of jurisdictions internationally.

France has introduced a Duty of Vigilance law, for example, that requires publication of a vigilance plan as well as the taking of certain steps to prevent human rights violations. The European Parliament is actively considering a legal framework imposing a duty on business entities to exercise due diligence for human rights and environmental harms. It intends to base this framework on the UNGPs' concept of due diligence.

France's Duty of Vigilance law

Under the French duty of vigilance law, businesses with at least 5,000 employees in France, or 10,000 employees throughout the corporate group, must publish a vigilance plan detailing measures for risk identification and the prevention of severe violations of human rights resulting directly or indirectly from their operations, as well as the operations from companies they control, and certain subcontractors and suppliers.

Businesses must regularly assess risks, take action to mitigate risks or prevent serious violations, create an alert mechanism to identify risks, and have a monitoring scheme to follow up on the efficiency of implementation measures. Interested parties may enjoin companies to implement the plan and may sue if certain harms occur that could have been avoided if the companies had an effective vigilance plan in place

The Current Approach – New Zealand’s measures to prevent modern slavery and worker exploitation

New Zealand’s framework for addressing exploitation domestically includes the prohibition of modern slavery and worker exploitation practices. Certain modern slavery-related offences in the *Crimes Act 1961* also allow a person to be charged for offending which takes place outside New Zealand. These include: dealing in persons under 18 for sexual exploitation, removal of body parts, or engagement in forced labour; trafficking in persons; dealing in slaves; and organising or promoting child sex tours (which applies to arrangements for travel outside of New Zealand). Extraterritorial jurisdiction also applies to the crime of participation in an organised criminal group, which can include participation in a group that obtains material benefits from modern slavery practices.

The Government Procurement Rules were updated in 2019 to require agencies to consider, and incorporate where appropriate, broader outcomes when purchasing goods, services or works. This includes a priority outcome to improve conditions for workers and future-proof the ability of New Zealand businesses to trade. For example, the *Government Procurement Rule 19: Improving conditions for New Zealand workers* requires agencies to conduct sufficient monitoring of designated contracts to ensure that commitments made in contracts for ensuring good conditions for workers are delivered and reported on.

Employment New Zealand has developed and published a range of resources to support fair work places by placing a focus on employment standards, labour and human rights.³³ The purpose of the resources is to help users to understand and apply ethical and sustainable work practices, in relation to how workers are treated, within their organisations and supply chains. The suite includes targeted resources for employers, procurers, franchisors, recruiters and employment brokers, directors, and investors. A case study of these resources is included in the Bali Process Working Group on Trafficking in Persons’ recently released [Compendium of Good Practice Examples to Combat Exploitation in Supply Chains](#).

In July 2020, the Government announced a package of legislative, policy and operational changes to reduce the exploitation of temporary migrant workers in New Zealand. The implementation of these changes is being supported by \$50 million in funding over four years. This includes:

- increasing compliance and enforcement activity by Employment New Zealand and Immigration New Zealand
- a new visa to support migrants to leave exploitative situations quickly and remain lawfully in New Zealand
- a new dedicated phone line and online reporting system that connect to a specialised migrant exploitation reporting and triaging function to support the joint work of the two main regulators in this area
- implementing an information and education action plan.

New Zealand also uses our international engagements to address exploitation, such as through:

- implementing the UN Guiding Principles on Business and Human Rights through government contracts
- including labour chapters in Free Trade Agreements placing obligations on parties in relation to the ILO’s Fundamental Principles and Rights at Work

³³ See <https://www.employment.govt.nz/workplace-policies/ethical-sustainable-work-practices/>.

- contributing to Overseas Development Initiatives to support work addressing exploitation, focusing on the Pacific and Asia.

New Zealand supports the *OECD Guidelines for Multinational Enterprises*, including through the resourcing of a [National Contact Point](#) to (among other activities) assess and investigate complaints made against multinationals operating or headquartered in New Zealand. However, the OECD Guidelines are voluntary and the National Contact Point's role (in the case of a failure to meet the standards) is to provide resolution assistance such as through mediation.

The Opportunity - Strengthening New Zealand's measures to address modern slavery and worker exploitation

New Zealand's focus has been on addressing direct exploitation primarily undertaken by employers. We do not regulate broader operations and supply chain practices that contribute to exploitation (except for certain types of government procurement). The current approach has not fixed the environment in which exploitation occurs both domestically and internationally.

Due to the hidden nature of these harms, it is not possible to provide an accurate assessment of how much harm these proposals will fix. However, as noted above, there is clear evidence that this exploitation is still occurring in New Zealand supply chains and operations. We want to hear more about the scale and nature of the harms through the consultation.

Modern slavery offending related to goods and services sold in New Zealand most often occurs outside of New Zealand. Enforcement is largely left to regulators overseas that often face significant challenges in identifying modern slavery and convicting offenders. While the Government works through international forums to share best practice and discuss how to combat modern slavery overseas and in New Zealand, we are reliant on New Zealand organisations voluntarily identifying and addressing modern slavery in their international operations and supply chains.

The problem can also be seen in New Zealand, including in domestically focused operations and supply chains. While New Zealand has more ability to control exploitation within our own borders, we are still seeing exploitation caused by operations and supply chain practices. Entities further up supply chains, including head offices, are setting conditions that make it difficult for some employers to continue a viable business without breaching employment standards.

Most notably in recent times, significant levels of migrant exploitation were found in subcontracting chains associated with New Zealand's ultrafast broadband rollout (see case study on page 33). These were linked to a contracting model which did not adequately take into account the changing nature of exploitation risks as the proportion of its migrant workforce increased.

New Zealand consumers increasingly want to know that the goods and services they consume are not the products of modern slavery or worker exploitation. However, even highly motivated consumers can face barriers in identifying which businesses are doing the right thing, as few organisations publish information on practices across their operations and supply chains.

Some entities in New Zealand are taking action to address exploitation voluntarily, and international organisations are actively promoting best practices.³⁴ However, independent reviews of transparency regimes put in place in Australia, the EU and the UK show us that most organisations are not putting in place effective measures to address modern slavery. We have no reason to expect that New Zealand organisations would do any better.

The increasing size and complexity of global supply chains means that a collective global effort is needed with a particular focus on global supply chains. Internationally, more of our trading partners are taking action by introducing legislation aimed at addressing exploitation in supply chains. Inaction by New

³⁴ See, for example, the United Nations Development Programme's Human Rights Due Diligence assessment tool at <https://hrdd-assessment.org/about/> and Facilitation Guide at <https://www.undp.org/publications/human-rights-due-diligence-training-facilitation-guide>.

Zealand may undermine this global effort, while new legislation could help to make it easier for New Zealand businesses to trade across the world.

We have heard from businesses and the public that relying on voluntary business practices is not enough.³⁵ While we expect that practices will improve over time as organisations, particularly businesses, respond to consumer demand, we do not anticipate that this will happen as quickly or effectively as is needed to address the problem. It is very difficult for consumers to determine which businesses are doing the right thing, as there is no common approach to supply chain transparency. Organisations that are taking action may currently be undercut by others who are turning a blind eye or contributing to exploitation.

Taken as a whole, the evidence suggests that relying on the status quo and non-legislative options will not sufficiently address modern slavery and worker exploitation here or around the world. We are therefore proposing legislation that places responsibilities on, and encourages collaboration between, government, organisations and consumers.

³⁵ See https://www.parliament.nz/en/pb/petitions/document/PET_111975/petition-of-trade-aid-and-world-vision-new-zealand-take.

Summary of the legislative approaches

There are a wide range of changes that could be made to address modern slavery and worker exploitation across operations and supply chains. Legislative changes (which involve changing the law) could include:

- the introduction of disclosure or due diligence requirements for certain entities (proposed in this discussion document)
- the establishment of import bans against goods produced through modern slavery.

Meanwhile, non-legislative changes could include:

- the development of information and guidance materials for entities³⁶
- providing services to facilitate the development of sustainable practices
- awareness-raising activity
- providing aid or other support targeted at vulnerable workers.

Our proposed approach is to introduce a disclosure and due diligence-based legislative framework, supported by non-legislative changes. We are focusing on disclosure and due diligence legislation rather than import bans at this time, as we consider this is likely to be more effective in addressing modern slavery. While there is currently limited evidence on the effectiveness of different approaches, early evidence suggests that disclosure and due diligence obligations are more likely to:

- lead to wider culture and behaviour changes by businesses and consumers
- reach deeper into supply chains, including into service supply chains, and
- target the source of the problem.

When evaluating options that meet these objectives, we are also aiming to ensure that the regulatory burden is proportionate to and no greater than necessary to mitigate the risk. This can mean aligning our approach where possible with other jurisdictions and international best practice so that entities who are already taking effective action are not required to take additional measures unnecessarily.

We wish to seek your feedback broadly on whether you think New Zealand's current legislative framework is sufficient to address modern slavery and worker exploitation, and what changes you think are needed.

Question 2. Do you think that enough action is currently taken in New Zealand to address modern slavery and worker exploitation across operations and supply chains?

Yes, the status quo is satisfactory

No, more action is needed

I do not know

Please explain why you think enough action is, or is not, taken in New Zealand. If applicable, please explain what changes you think are needed.

Click or tap here to enter text.

³⁶ See, for example: <https://www.employment.govt.nz/workplace-policies/ethical-sustainable-work-practices/>.

Question 3. Do you think that New Zealand’s legislation should be amended to better address modern slavery and/or worker exploitation across operations and supply chains?

- Yes, New Zealand’s current legislation is sufficient (but non-legislative changes may be needed)
- No, legislative changes are needed
- Other

Please explain why you think New Zealand’s current legislation is or is not sufficient

Click or tap here to enter text.

Question 3A. If applicable, which type of broad approach to new supply chain legislation would you most support?

- Disclosure-based (either general or prescribed)
- Due diligence-based
- Graduated approach incorporating both disclosure and broader due diligence (proposed)
- Other

Please explain why you prefer that approach

Click or tap here to enter text.

Proposals to address modern slavery and worker exploitation across operations and supply chains

The remainder of this discussion document is structured based on the following three key themes:

- What responsibilities and obligations will apply:
 - **Responsibility 1 (all entities)** – Take reasonable and proportionate action if they become aware of modern slavery in their international operations and supply chains, or modern slavery or worker exploitation in their domestic operations and supply chains
 - **Responsibility 2 (small and medium entities)** – Undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities where they are the parent or holding company or have significant contractual control
 - **Responsibility 3 (medium and large entities)** – Disclose the steps they are taking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains
 - **Responsibility 4 (large entities)** – Undertake due diligence to prevent, mitigate and remedy modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains
 - How far responsibilities relating to operations and supply chains should apply
- Who will be covered
 - Types of entity
 - Threshold type
 - Threshold level
- How the legislation will work
 - Enforcement and remediation
 - Independent oversight of the measures put in place to address modern slavery
 - Central register and support services
 - Monitoring and evaluation.

These obligations would not apply to consumers purchasing goods or services for personal consumption. For example, a homeowner contracting a painter to paint their house would not have any additional responsibilities. However, consumers play an important role in ensuring the overall effectiveness of the legislation and the proposals aim to help consumers identify whether their goods or services might have been produced using exploitative practices.

We wish to test specific proposals relating to what obligations will apply and who will be covered. Questions on how the legislation will work are generally more open-ended and exploratory in nature.

While the document is substantially based around our proposal to introduce operational and supply chain due diligence legislation, we also invite views on whether you think different types of legislative or non-legislative options should be undertaken. We also welcome any feedback you may have on any other relevant issues not directly covered in this discussion document.

What responsibilities and obligations will apply

We are proposing a graduated set of responsibilities under which larger entities will be required to do more. This will be based on an entity’s annual revenue. Entities that have significant control or influence over another New Zealand entity will also be required to do more. In summary, we are proposing the following high-level responsibilities will apply to entities of different sizes:

TABLE 1. HIGH-LEVEL SUMMARY OF PROPOSED RESPONSIBILITIES

	Small <\$20m	Medium \$20-50m	Large >\$50m
1. Take reasonable and proportionate action if they become aware of: <ul style="list-style-type: none"> • modern slavery in their international operations and supply chains, or • modern slavery or worker exploitation in their domestic operations and supply chains. 	✓	✓	✓
2. Undertake due diligence to prevent, mitigate and remedy* modern slavery and worker exploitation by New Zealand entities where they are the parent or holding company or have significant contractual control.	✓	✓	✓†
3. Disclose the steps they are taking to address: <ul style="list-style-type: none"> • modern slavery in their international operations and supply chains, and • modern slavery and worker exploitation in their domestic operations and supply chains. 		✓	✓
4. Undertake due diligence to prevent, mitigate and remedy* modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains.			✓

* We are seeking your views on whether entities should be required to remedy harms they have caused or contributed to. Please see the ‘enforcement and remediation’ section on page 74 of the discussion document.

† For large entities, due diligence responsibilities (Responsibility 4) would apply across their domestic operations and supply chains. This would include any New Zealand entity they have significant control or influence over.

We consider a graduated approach would be most appropriate for the New Zealand context, as it would: broadly align with the expectations set out in the UNGPs; be consistent with developments internationally, taking into account the available evidence on their impact³⁷; best suit New Zealand’s circumstances given the size and currently capabilities of New Zealand entities; and achieve the policy

³⁷ See report *Impact and effectiveness of modern slavery legislation* on consultation website.

objectives while limiting the greatest regulatory burdens to those entities with the largest size and/or risk.

The proposals focus on different types of exploitation within New Zealand and internationally. As illustrated in **Table 2** below, domestically the focus will be on breaches of employment standards as well as modern slavery, whereas internationally the focus will only be on modern slavery.

TABLE 2. THE DOMESTIC AND INTERNATIONAL HARMS THAT ARE BEING ADDRESSED BY THE PROPOSALS

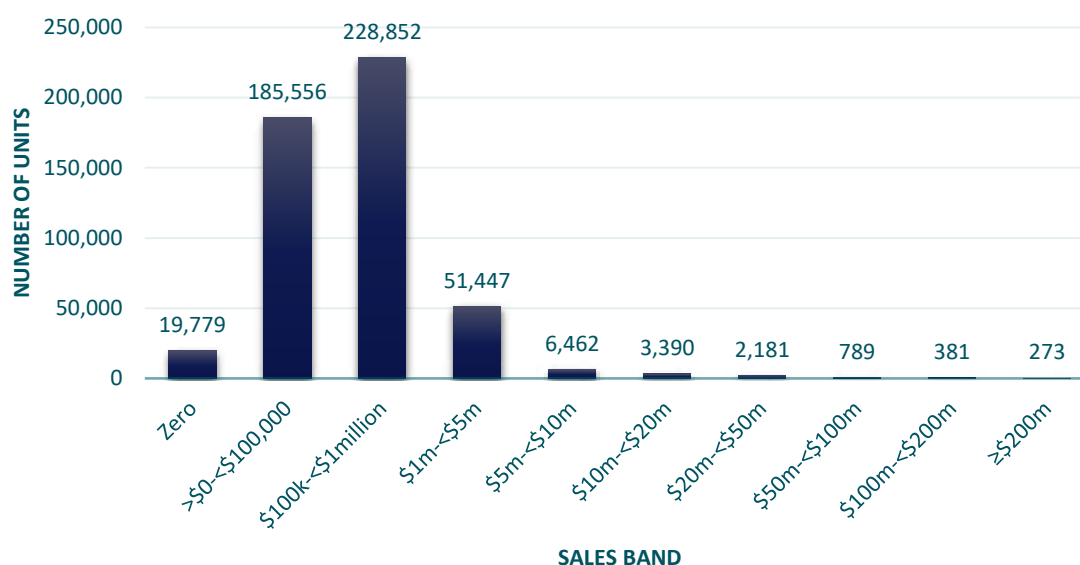
DOMESTIC	DOMESTIC AND INTERNATIONAL
<p style="text-align: center;">WORKER EXPLOITATION</p>	<p style="text-align: center;">MODERN SLAVERY</p>
<p>The proposals relate to the breaches of employment standards in NZ (but not breaches overseas).</p>	<p>The proposals relate to modern slavery in NZ and internationally.</p>
<p>This includes breaches of the minimum standards in the <i>Employment Relations Act 2000</i>, <i>Holidays Act 2003</i>, <i>Minimum Wages Act 1983</i>, <i>Wages Protection Act 1983</i>, and the <i>Equal Pay Act 1972</i>.</p>	<p>This includes the following crimes: forced labour, debt bondage, forced marriage, other slavery and slavery like practices, and human trafficking.</p>

Effective due diligence measures can provide a range of benefits to the entities that take those measures, as well as to the victims and survivors of modern slavery and worker exploitation. Stakeholders including consumers and investors are becomingly increasingly aware and concerned by the conditions under which goods and services are provided, and are increasingly inclined to make purchasing or investment decisions based on how any risks are addressed.

The benefits and opportunities associated with due diligence are not limited to large entities. Taking action to prevent modern slavery and worker exploitation, and to maintain employment standards, can help an entity improve its relationships with suppliers and protect its reputation. Entities which take action may also identify opportunities to reduce costs, improve the quality of their products, and gain certainty of supply by improving their understanding of markets, supply options and operational risks.

In the New Zealand context, a significant proportion of our entities are relatively small in size. Statistics New Zealand’s Annual Enterprise Survey suggests that, of the approximately 500,000 economically significant enterprises in New Zealand, around 434,000 enterprises have annual sales of \$1 million or less:

Figure 4. New Zealand enterprises, summary financial statistics by sales bands (Annual Enterprise Survey)³⁸



Source: Annual Enterprise Survey 2020, Statistics New Zealand

We are proposing that, as part of a graduated legislative response to modern slavery and worker exploitation, entities of all sizes will have responsibilities. Smaller entities would not have direct disclosure or proactive due diligence responsibilities (except where they have significant influence or control over another New Zealand entity). However, they would be encouraged and supported to proactively undertake due diligence, enabling them to be better prepared to meet the due diligence responsibilities that will apply when they grow. This approach is intended to be consistent with the UNGPs, which suggest that:

“The means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size. Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size.”

Table 3 below provides in more detail the specific responsibilities we are proposing will apply to entities of different sizes:

Table 3. Detailed overview of proposed responsibilities for entities of different sizes

Entity size	Responsibilities
Small (<\$20 million revenue)	<p><u>To take reasonable and proportionate action if they become aware of modern slavery in their <i>international</i> operations and supply chains, or modern slavery or worker exploitation in their <i>domestic</i> operations and supply chains</u></p> <p>This could include:</p> <ul style="list-style-type: none"> reporting the case to the appropriate authority, and/or working with their supplier to address the harm, and/or changing suppliers, and/or

³⁸ This data reflects the population of economically significant enterprises that operate within New Zealand. For the Annual Enterprise Survey, an enterprise is defined as a legal entity operating in New Zealand and can be a company, partnership, trust, estate, incorporated society, voluntary organisation or self-employed individual.

	<ul style="list-style-type: none"> any other action that may be reasonable and appropriate under the circumstances. <p>Penalties could apply for failing to take appropriate action.</p> <p>Note that this responsibility does <i>not</i> require entities to undertake due diligence to proactively investigate whether there is modern slavery or worker exploitation in their operations and supply chains, unless they have significant control or influence over another New Zealand entity (see below). Entities would be encouraged to take due diligence as appropriate for their circumstances and supporting resources would be available for them.</p> <p><u>To undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities where they are the parent or holding company or have significant contractual control</u></p> <p>An entity will fall in scope of this responsibility where they:</p> <ul style="list-style-type: none"> are the parent or holding company of another New Zealand entity; or have significant contractual control, whether direct or indirect, over another New Zealand entity's affairs (including over corporate, operational or employment matters). <p>Duty holders (entities meeting either of the tests above) would be required to:</p> <ol style="list-style-type: none"> identify and assess the risk of modern slavery and worker exploitation by entities in their operations and supply chains that they have significant control or influence over consider measures that they could implement to address and manage any identified risk of modern slavery and worker exploitation, and assess whether the measures are reasonable in their circumstances and proportionate to the risk implement measures that are reasonable in the circumstances and proportionate to the risk implement systems to evaluate the measures taken. <p>Penalties would apply for failing to adequately undertake due diligence.</p>
<p>Medium (\$20+ million revenue)</p>	<p><u>To take reasonable and proportionate action if they become aware of modern slavery in their <i>international</i> operations and supply chains, or modern slavery or worker exploitation in their <i>domestic</i> operations and supply chains</u></p> <p>See section above. This responsibility would apply in the same way for medium-sized entities.</p> <p><u>To undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities where they are the parent or holding company or have significant contractual control</u></p> <p>See section above. This responsibility would apply in the same way for medium-sized entities.</p> <p><u>To disclose the steps they are taking to address modern slavery in their <i>international</i> operations and supply chains, and modern slavery and worker exploitation in their <i>domestic</i> operations and supply chains</u></p>

	<p>This responsibility would require the preparation of an annual statement which discloses information on prescribed issues, such as the following (in line with Australia):</p> <ul style="list-style-type: none"> • The operations and supply chains of the entity • The risks of modern slavery in the international operations and supply chains of the entity, and of modern slavery and worker exploitation in the domestic operations and supply chains of the entity • The actions taken by the entity, and any of its subsidiaries, to address those risks • How the entity monitors and evaluates the effectiveness of the actions it has taken • The process of consultation undertaken with any subsidiaries of the entity • Any other relevant matter. <p>Penalties could apply for failing to prepare an annual disclosure or for providing inaccurate or misleading information. While this responsibility would not hold entities liable for failing to undertake due diligence, stakeholders such as consumers and investors may make decisions based on the steps an entity is taking. Due diligence activity would be strongly encouraged.</p>
<p>Large (\$50+ million revenue)</p>	<p><u>To take reasonable and proportionate action if they become aware of modern slavery in their <i>international</i> operations and supply chains, or modern slavery or worker exploitation in their <i>domestic</i> operations and supply chains</u></p> <p>See the section above for further detail on what this responsibility entails.</p> <p>In contrast to small and medium-sized entities, large entities would also be required to undertake due diligence to proactively investigate whether there is modern slavery or worker exploitation in their operations and supply chains (see below).</p> <p>If a large entity becomes aware of modern slavery or worker exploitation in its operations or supply chains, there may be a greater expectation that they endeavour to work with their supplier(s) to address risks before deciding to change suppliers (whereas that may be the only practical option for a small entity). Entities should take a victim-centric, as well as risk-based, approach in determining the appropriate course of action.</p> <p><u>To undertake due diligence to prevent, mitigate and remedy modern slavery in their <i>international</i> operations and supply chains, and modern slavery and worker exploitation in their <i>domestic</i> operations and supply chains</u></p> <p>This responsibility is aligned with the responsibility for small and medium-size entities to undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities they have significant control over (see above). However, for large entities the scope will be significantly wider:</p> <ul style="list-style-type: none"> • The responsibility would apply to the international operations and supply chains of the entity, though only in connection to modern slavery rather than worker exploitation. • Domestically, this responsibility will apply across a large entity's entire operations and supply chain. It will not be limited to other entities the large entity has significant control or influence over (as is the case for small and medium-sized entities). <p>The specific steps to be taken by a large entity, whether domestically or internationally, should continue to be influenced by its risk assessments and</p>

consideration of measures to address identified risks in a reasonable and proportionate manner.

We anticipate that the measures taken by entities to meet their due diligence responsibilities would generally be similar across domestic and international operations and supply chains. However, adjustments may be required to reflect different contexts (for example, the focus of an audit of an international supplier may focus exclusively on modern slavery practices whereas domestically it may include employment practices).

Penalties would apply for failing to adequately undertake due diligence. We are interested in seeking feedback on whether large entities should be liable for remediation where they have caused or contributed to harms in their international operations and supply chains.

To disclose the steps they are taking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains

See section above (in connection with the 'medium' entity group). This responsibility would apply in the same way for large entities.

Case studies that detail the actions businesses are already taking and how they are responding to their obligations under the Australian Commonwealth legislation are included at **Appendix Two**.

The following subsections seek your views on whether and how these proposals for entities of different sizes should apply.

Responsibility 1 (all entities) – take reasonable and proportionate action if they become aware of modern slavery in their international operations and supply chains, or modern slavery or worker exploitation in their domestic operations and supply chains

We are proposing that entities of all sizes should have a responsibility to take reasonable and proportionate action if they become aware of:

- modern slavery in their **international** operations and supply chains, or
- modern slavery or worker exploitation in their **domestic** operations and supply chains.

To develop the culture change necessary to enable freedom, fairness and dignity across operations and supply chains, it is important that entities of all sizes are aware of modern slavery and worker exploitation risks and are able to take appropriate action to address them.

Internationally, supply chain legislation to address modern slavery has to date typically targeted larger-sized entities on the basis that they have the greatest resources and capacity to influence change. Smaller entities are affected to the extent that they are subject to the due diligence undertaken by those larger entities.

However, a focus on large entities limits the opportunity to foster the broader culture change that is needed. Small and medium-sized entities are often part of global operations and supply chains, and in some cases the risk of modern slavery or worker exploitation occurring in those operations and supply chains may be high.

Determining whether an action is reasonable and proportionate could depend on a wide range of factors including the entity's size and resources, the nature of the control or influence the entity has over its supplier, good practice in the entity's sector, and the degree and type of harm that could result if no action is taken.

Depending on the circumstances, taking action could involve the entity:

- reporting the case to the appropriate authority
- working with their supplier to address the harm
- changing suppliers, and/or
- any other action that may be reasonable and proportionate under the circumstances.

While dependent on circumstances (including the factors noted above), there will generally be greater expectations on larger entities to endeavour to work with their supplier(s) to address harm before deciding to change suppliers. For smaller entities, on the other hand, changing suppliers could be the only practical option. Entities should take a victim-centric, as well as risk-based, approach to determining the appropriate course of action.

As part of this responsibility, entities would not be required to proactively undertake due diligence to investigate whether there was modern slavery or worker exploitation in their operations and supply chains (unless they have significant control or influence over a New Zealand entity – see 'Responsibility 2' below). However, entities would be encouraged to take due diligence as appropriate for their circumstances and supporting resources would be available for them.

Hypothetical case study example

Business A manufactures bags in New Zealand using imported components, and has an annual revenue of \$5m. There is no requirement for Business A to identify or assess the risks of modern slavery occurring in its supply chain.

An NGO has obtained significant evidence indicating that Manufacturer B has likely been producing its leather conditioner using children in forced labour exploitation. The NGO is aware that Business A uses Manufacturer B's leather conditioner, and provides the evidence of exploitation to Business A.

Business A is now aware that modern slavery practices are likely occurring in its supply chain and must take appropriate action. Business A contacts Manufacturer B regarding the concern, and asks whether

Manufacturer B is taking steps to stop the exploitation. Manufacturer B denies the allegations, but refuses Business A's requests for further information on its practices.

On the strength of the evidence of forced labour and Business A's limited ability to work constructively with Manufacturer B, Business A must stop using Manufacturer B's leather conditioner unless they are able to verify through alternative means that modern slavery is not used in the production of the conditioner.

Under this proposal, action must be taken in any instance where the entity becomes aware of modern slavery in their international operations or supply chains, or modern slavery or worker exploitation in their domestic operations or supply chains. Penalties could apply for failing to take appropriate action.

In cases where no reasonable or proportionate action can be taken, including where there is no ability to change to a different supplier, the expectation would be that the entity nonetheless ceases their engagement with the supplier. We acknowledge the possibility that in some cases this could mean that the entity's ongoing operations become unviable.

We wish to seek your feedback on what actions you consider could be reasonable and proportionate under a requirement to take action if an entity (of any size) becomes aware of modern slavery or worker exploitation in their operations or supply chains. We are also open to receiving views regarding other responsibilities and obligations that could apply, particularly to small entities, such as simplified annual reporting obligations or the completion of an information and education module on supply chains.

Question 4. Do you agree that all entities should have to take reasonable and proportionate action if they become aware of modern slavery in their international operations and supply chains, and/or modern slavery or worker exploitation in their domestic operations and supply chains?

Yes

No

If you answered yes, please explain why. If you answered no, please explain why not.

Click or tap here to enter text.

Question 5. What action(s) do you think would be reasonable and proportionate?

Click or tap here to enter text.

Responsibility 2 (small and medium entities) – undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities where they are the parent or holding company or have significant contractual control

In a domestic context, we are proposing that due diligence responsibilities will apply to small and medium-sized entities with significant control over another New Zealand entity. These domestic due diligence obligations would apply only in relation to those entities they have significant control over.

Small and medium-sized entities would be considered to have significant control over another New Zealand entity where they:

- are the entity’s parent or holding company; or
- have significant contractual control, whether direct or indirect, over the entity’s affairs (including over corporate, operational or employment matters).

A ‘New Zealand entity’ would include any entity operating in New Zealand, including any entity that is an employer which is required to comply with New Zealand minimum employment standards.

Contractual control over an entity’s affairs could be demonstrated in a range of circumstances, including:

- where the entity grants the other New Zealand entity a right to operate a business supplying goods or services using the entity’s brand (including business systems) for an upfront or ongoing fee, or for a percentage of the New Zealand entity’s annual turnover, or
- where the entity requires the other New Zealand entity to:
 - purchase or sell stipulated products or services
 - purchase products from a stipulated supplier
 - use specified equipment, branding (including store fit-outs and uniforms) or marketing, or
 - run their business at a particular site or location, or according to specified operational rules, guidelines or strategies (including utilities; hours of operation; payroll, retail, Human Resource or other similar operational systems; financial targets or corporate strategy).

We note that contractual control could be established even where the entities do not have a direct contractual relationship, for example in subcontracting models where a principal contractor’s terms and conditions are cascaded down the contracting chain and impact the day-to-day business of subcontractors in other tiers.

Table 4 provides examples of the types of business relationships that would and would not be within scope of the responsibility as proposed. Note these examples are provided for illustrative purposes only. All references to companies are fictional and any similarities to real events are coincidental.

Table 4. Examples of business relationships in and out of scope of Responsibility 2

Example of business relationship	Required to meet the responsibility?
Kitchenz, a small kitchen design and sales firm, contracts building firm, Buildingz, to install its products. Buildingz has three employees. Kitchenz has an exclusive contract with Buildingz which establishes that Kitchenz does all the sales and marketing, sets prices for installation, sets guidelines for how Buildingz conducts its business and requires Buildingz to use Kitchenz’s branding and not undertake any work for other customers.	Yes – Kitchenz has contractual control over Buildingz.

<p>Fixtures is a small interior decorating firm that regularly subcontracts a small number of construction firms to help complete its decorating work. Plaster Masters employs four plasterers to regularly carry out work for Fixtures but also does work for other companies and directly to consumers. The contract price is negotiated between the two parties for each job. Fixtures does contractually require Plaster Masters to carry out work to a required quality.</p>	<p>No – Fixtures does not have contractual control over Plaster Masters.</p>
<p>Fryer Tuck’s is a medium sized fast-food franchisor with 10 restaurants across New Zealand. The restaurants are independently owned but Fryer Tuck’s sets the prices, opening hours, requires the business to be run within specific guidelines, chooses suppliers and provides all the advertising and branding material.</p>	<p>Yes – Fryer Tuck’s has contractual control over its franchisees.</p>
<p>Tools Inc is a medium sized tool manufacturer that licenses the rights to sell its tools to Bob’s Hardware Store, which has 6 employees. Tools Inc provides training on its tools, advertising and other promotional materials and engages in nationwide sales and marketing. Tools Inc has no control or oversight over Bob’s working or opening hours, employment practices or accounting systems. Bob’s is also free to sell other types of tools and products.</p>	<p>No – Tools Inc does not have contractual control over Bob’s Hardware Store.</p>
<p>Smokey Hoki is medium sized fish processor and supplier for boutique restaurants. Smokey Hoki contracts Blue Fish, a New Zealand firm with 2 fishing boats, to catch and supply fish for its processing facility. The contract between Smokey Hoki and Blue Fish requires Blue Fish to supply 200kg of fish to Smokey Hoki at a set price every week.</p>	<p>No – Smokey Hoki does not have contractual control over Blue Fish.</p>
<p>Smart Martz is an electronics retailer with franchisees in New Zealand. The franchisees independently own their stores. Smart Martz contracts Organised as the master franchisor to manage its relationship with its franchisees. The contract between Smart Martz and Organised allows Smart Martz to set conditions that Organised must put in place for the running of the franchisees, including opening hours, locations of business, marketing practices and limiting suppliers. Organised is also required to enter into contracts with the franchisees that allow Organised to decide how the franchisees run their businesses. The franchisees pay Organised for marketing and access to suppliers.</p>	<p>Yes – Smart Martz has indirect contractual control over the franchisees through its contract with Organised.</p>

Also note that for all the examples above, if the entity were to become aware that their supplier, franchisee, or regular service provider was breaching New Zealand's employment standards, the entity would be required to take action consistent with Responsibility 1 described in this document. Determining whether the action taken is reasonable and proportionate could depend on, among other factors, the nature of the control or influence the entity has over its supplier.

Entities with domestic due diligence responsibilities would be required to:

- identify and assess the risk of modern slavery and worker exploitation in their operations and supply chains
- consider measures that they could implement to address or manage any identified risk of modern slavery and worker exploitation, and assess whether the measures are reasonable in their circumstances and proportionate to the risk
- implement measures that are reasonable in the circumstances and proportionate to the risk
- implement systems to periodically evaluate what measures could be taken to address or manage the risk(s), the effectiveness of the measures they have taken, and whether those measures are reasonable in the circumstances and proportionate to the risk(s).

There are a wide range of potential measures that could be implemented to prevent and mitigate any identified risks. These could include, without limitation:

- taking steps to ensure that tendered, set, accepted or varied prices do not increase the risk of modern slavery or worker exploitation in the entity's operations or supply chains (e.g. asking suppliers to break down costs, and checking that the cost of labour is fair)
- pre-approval assessments of potential supply chain partners to ensure that there is value alignment in terms of worker rights and worker wellbeing
- educating suppliers and workers in their supply chains about relevant rights and obligations in a language accessible to these groups
- regularly surveying suppliers to assess competence with protecting human rights and employment standards (e.g. requiring suppliers to submit an annual report which details the assurance systems they have in place, any issues that were identified, and actions that were taken to resolve them)
- commissioning third-party audits of suppliers' compliance with human rights and employment standards (including using certification and assurance schemes developed by industry bodies or associations)
- establishing mechanisms for people in an entity's operations or supply chains to report concerns directly to the entity (e.g. a hotline or whistleblowing channel)
- directly surveying or interviewing people in the entity's operations or supply chains on a regular basis, to identify potential exploitation
- investigating exploitation and human rights issues as they arise, and working with suppliers and other relevant groups to resolve them or escalating them to an appropriate regulator if necessary, and
- supporting impacted people where issues arise, for example through remediation or other services.

Whether an action is reasonable and proportionate could depend on a wide range of factors including the entity's size and resources, the nature of the control or influence the entity has over its supplier, good practice in the entity's sector, sector-specific risks, and the degree and type of harm that could result if no action is taken. This would be consistent with the consideration that entities should have in meeting their responsibility to take action if they become aware of modern slavery.

The example below provides an indicative illustration of the actions an entity could take, based on the circumstances of 'Kitchenz' as described in the first row of Table 4 above.

Hypothetical example of due diligence actions and approach

Kitchenz is a small business that only has contractual control over Buildingz. So, Kitchenz would only have to undertake due diligence in relation to Buildingz' compliance with New Zealand employment standards. This starts with an assessment of the risks. Kitchenz should ask the manager at Buildingz about their employment practices, focusing on the common risk factors in the building sector. Kitchenz should also check that Buildingz' charges would reasonably cover the wages of employees carrying out the work.

If no risks are identified Kitchenz does not need to put any additional measures in place, but should regularly check in with Buildingz to see if anything has changed. If there are risks, such as poor record-keeping of work hours, Kitchenz should work with Buildingz to put systems in place to manage the risks. Kitchenz could also let Buildingz employees know that they can raise any employment standards breaches directly with Kitchenz and the labour inspectorate, and check in with Buildingz employees regularly.

What is reasonable and proportionate is also likely to change over time for individual entities as their size and operations change, and as tools and mechanisms to support due diligence are improved.

We are seeking your views on whether you agree with the proposed due diligence responsibility linked to significant control or influence, and why you do or do not agree. We are also interested in your views regarding whether entities should be required to remedy harms they have caused or contributed to. Please see the 'enforcement and remediation' section on page 68 for questions relating to remediation.

Question 6. Do you agree that small and medium-sized entities should have a responsibility to undertake due diligence to prevent and mitigate modern slavery and worker exploitation in domestic operations and supply chains for New Zealand entities they have significant control or influence over?

Yes

No

If you answered yes, please explain why. If you answered no, please explain why not.

Click or tap here to enter text.

Question 6A. What actions or measures do you think could be reasonable and proportionate for small and medium-sized entities to meet domestic due diligence obligations? Do you think those actions would be reasonable and appropriate generally, or in specific contexts?

Click or tap here to enter text.

Responsibility 3 (medium and large entities) – disclose the steps they are taking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains

We are proposing that disclosure-based responsibilities would apply to medium and large entities in New Zealand. We are proposing that medium would be defined as having annual revenue of above NZ \$20 million (see page 63 for further information and consultation questions regarding who will be covered by the legislation, including on the proposed revenue threshold). Up to approximately 3,650 entities could fall under this definition (see Figure 4).

Disclosure-based legislation aims to improve operational and supply chain practices through transparency. This approach requires the regulated entities to publish annual reports detailing the steps they are taking to address modern slavery and worker exploitation in their operations and supply chains. Disclosure-based legislation addressing modern slavery has been introduced across the world including in Australia, California, the European Union, Switzerland and the United Kingdom. The Parliament of Canada is also currently considering the introduction of a disclosure-based Modern Slavery Act.

We are proposing that medium and large entities will have a responsibility to disclose the due diligence they are undertaking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their New Zealand domestic operations and supply chains. In practice we assume that the steps an entity takes could be broadly similar across their international and domestic operations and supply chains (subject to the nature of individual relationships), though adjustments may be required to reflect each context and the broader domestic scope.

We are proposing a ‘prescribed disclosure’ approach, under which entities would be required to disclose information on specified issues, as the available evidence suggests this will be more effective than a general disclosure approach.³⁹ The UK model currently allows entities to publish any information they wish (including that they have taken no steps); however, an independent review of their legislation found that “while it has contributed to greater awareness of modern slavery in companies’ supply chains, a number of companies are approaching their obligations as a mere tick-box exercise, and it is estimated around 40 per cent of eligible companies are not complying with the legislation at all.”⁴⁰ In response to the review, in 2021 the UK agreed to prescribe mandatory reporting criteria in their legislation, along similar lines to the approach taken in Australia.

Notably, entities that do business in Australia and have over NZ \$105 million (AUD \$100 million) in revenue will likely already be subject to Australian Commonwealth modern slavery reporting obligations. These require reporting entities to prepare annual statements that (among other matters):

- a. describe the structure, operations and supply chains of the reporting entity
- b. describe the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls
- c. describe the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes
- d. describe how the reporting entity assesses the effectiveness of such actions, and
- e. describe the process of consultation with any entities that the reporting entity owns or controls.

We consider that these appear broadly consistent with the UNGPs and provide a useful reference for what mandatory disclosures could apply in New Zealand. We note that aligning New Zealand’s annual

³⁹ See report *Impact and effectiveness of modern slavery legislation* on consultation website.

⁴⁰ United Kingdom Home Office. *Independent Review of the Modern Slavery Act 2015: Final Report*. 2019. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

disclosure requirements with Australia could also help to reduce duplication in the disclosures required amongst entities subject to both sets of legislation.

Due diligence activity would be strongly encouraged for medium-sized entities. However, they would be liable only in relation to disclosures, not for failing to undertake appropriate due diligence (except where they have significant control or influence over a New Zealand entity – see Responsibility 2 above). Penalties could apply for failing to prepare an annual disclosure or for providing inaccurate or misleading information. We also expect that stakeholders, such as consumers and investors, will make decisions based on the steps an entity is taking.

Question 7. Do you agree that ‘medium’ and ‘large’-sized entities should be required to annually report on the due diligence they are undertaking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains?

Yes

No

If you answered yes, please explain why. If you answered no, please explain why not.

Click or tap here to enter text.

Question 7A. What information should be compulsory for entities to provide in their annual disclosures?

Click or tap here to enter text.

Responsibility 4 (large entities) – undertake due diligence to prevent, mitigate and remedy modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains

We are proposing that due diligence obligations would apply to large entities in New Zealand, defined as having annual revenue of above NZ \$50 million. This will require that they undertake due diligence to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains. Up to approximately 1,450 entities could fall under this definition (see Figure 4).

Whereas disclosure-based approaches are intended to leverage consumer (and other stakeholder) sentiment to encourage behavioural change, due diligence approaches entail concrete actions that more directly change behaviours. On that basis we consider a due diligence-based approach is likely to be more effective in achieving the policy objectives. Due diligence legislation has been introduced in France, Germany and Norway, and it is currently under active consideration in Belgium, the European Union, and the Netherlands.

For large entities, the steps required as part of due diligence will be the same as the steps required for small and medium-sized entities to meet their due diligence responsibilities (under ‘responsibility 2’ above). Accordingly, we are proposing that a large entity would be required to:

- identify and assess the risk of modern slavery in their international operations and supply chains, and of modern slavery and worker exploitation in their domestic operations and supply chains
- consider measures that they could implement to address or manage any identified risk of modern slavery and worker exploitation, and assess whether the measures are reasonable in their circumstances and proportionate to the risk
- implement measures that are reasonable in the circumstances and proportionate to the risk
- implement systems to periodically evaluate what measures could be taken to address or manage the risk(s), the effectiveness of the measures they have taken, and whether those measures are reasonable in the circumstances and proportionate to the risk(s).

There are a wide range of potential measures that could be implemented to prevent and mitigate any identified risks. These could include the same general measures small and medium entities may use to meet their responsibilities under ‘responsibility 2’:

- taking steps to ensure that tendered, set, accepted or varied prices do not increase the risk of modern slavery or worker exploitation in the entity’s operations or supply chains (e.g. asking suppliers to break down costs, and checking that the cost of labour is fair)
- pre-approval assessments of potential supply chain partners to ensure that there is value alignment in terms of worker rights and worker wellbeing
- educating suppliers and workers in their supply chains about relevant rights and obligations in a language accessible to these groups
- regularly surveying suppliers to assess competence with protecting human rights and employment standards (e.g. requiring suppliers to submit an annual report which details the assurance systems they have in place, any issues that were identified, and actions that were taken to resolve them)
- commissioning third-party audits of suppliers’ compliance with human rights and employment standards (including using certification and assurance schemes developed by industry bodies or associations)
- establishing mechanisms for people in an entity’s operations or supply chains to report concerns directly to the entity (e.g. a hotline or whistleblowing channel)
- directly surveying or interviewing people in the entity’s operations or supply chains on a regular basis, to identify potential exploitation

- investigating exploitation and human rights issues as they arise, and working with suppliers and other relevant groups to resolve them or escalating them to an appropriate regulator if necessary, and
- supporting impacted people where issues arise, for example through remediation or other services.

Whether an action is reasonable and proportionate could depend on a wide range of factors including the entity's size and resources, the nature of the control or influence the entity has over its supplier, good practice in the entity's sector, sector-specific risks, and the degree and type of harm that could result if no action is taken.

Illustrative case study examples of actions that large entities in New Zealand have taken to identify and respond to exploitation in their supply chains are published on the MBIE consultation web page.

Entities may also need to prioritise the risks they respond to first, if it is not possible to address all risks and adverse impacts simultaneously. In such cases, entities should prioritise the risks and adverse impacts that are the most severe (for example, those which could have the highest harm, affect the most people and/or be irremediable if action is delayed), before moving on to address remaining risks and impacts.

What is reasonable and proportionate is also likely to change over time for individual entities as their size and operations change, and as tools and mechanisms to support due diligence are improved.

While the desired outcomes are the same across both disclosure and broader due diligence approaches, their enforcement will vary. Whereas medium-sized entities could be penalised for failing to meet disclosure obligations (such as by failing to prepare an annual disclosure), large entities could additionally be penalised for failing to appropriately: identify and assess risks in their supply chains; take action to prevent and mitigate those risks; or evaluate the effectiveness of their actions. In practice, we anticipate that large entities which fully meet Australia's modern slavery expectations, in line with both its legislation and official guidance, will likely also meet the proposed high-level due diligence obligations.

Question 8. Do you agree that 'large'-sized entities should be required to meet due diligence obligations to prevent and mitigate modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains?

Yes

No

If you answered yes, please explain why. If you answered no, please explain why not.

Click or tap here to enter text.

Question 8A. What actions or measures do you think could be appropriate for large entities to meet domestic and international due diligence obligations? Do you think those actions would be reasonable and proportionate generally, or in specific contexts?

Click or tap here to enter text.

How far responsibilities relating to operations and supply chains should apply

Global supply chains can be extensive and extend across a large number of 'tiers', processes and actors. The ability of entities to influence practices across their supply chain will vary based on a range of factors including, for example, the size of the entity and the nature of its relationships. It may be the case that an entity will, for example, have a more limited ability to influence the practices of suppliers at

the fifth tier compared to those at the first tier of its supply chain. However, this should also be weighed against the risk of modern slavery occurring across different tiers and suppliers in the entity's supply chain.

We propose that responsibilities should apply across the entire supply chain of an entity and not be limited to any set number of tiers. In line with our broad interpretation of operations and supply chains (see page 24), we propose that a wide range of relationships would also fall in scope. For large investment management entities, for example, this could mean that you must consider modern slavery and worker exploitation risks associated with both your internal operations and across your investment portfolio.

We consider this approach would be broadly consistent with international settings. Internationally, jurisdictions have typically not specified in legislation the number of supply chain tiers their legislation applies to. However, accompanying guidance has clarified that action should be taken across all tiers to the extent reasonable. The Australian *Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities*, for example, suggests "You need to consider modern slavery risks that may be present anywhere in the global and domestic operations and supply chains... This includes risks that may be present deep in supply chains, such as the mining of conflict minerals and the production of raw materials."

While broad in scope, in practice any activity would be subject to reasonableness and proportionality considerations which would take into account a wide range of factors such as the entity's size and resources, the nature of the control or influence the entity has over its supplier, good practice in the entity's sector, sector-specific risks, and the degree and type of harm that could result if no action is taken.

Question 9. How far across an entity's operations and supply chains should expectations to undertake due diligence apply?

Click or tap here to enter text.

Question 9A. What could reasonable due diligence activity look like at different supply chain tiers, and how could this be defined or reflected in the legislation?

Click or tap here to enter text.

Who will be covered?

Widespread culture change is necessary to effectively achieve freedom, fairness and dignity across global and domestic operations and supply chains. We therefore consider that this legislation should be broad ranging in its application, while at the same time recognising the differences in what can reasonably be undertaken by different types of entity.

The following section seeks your views on how broadly this legislation should extend regarding the entities that would have responsibilities, and on how groups with different responsibilities should be defined.

Please note that the information and accompanying questions to follow in this section should be read in conjunction with the previous section ('what obligations will apply').

Types of entity

An entity can be defined broadly as "something that exists apart from other things, having its own independent existence" (Cambridge dictionary). Types of entities can include companies, state sector organisations and charitable entities.

Most entities have supply chains and relationships with other entities, regardless of whether they have commercial or non-commercial objectives, and they are therefore exposed to modern slavery and worker exploitation. Accordingly, we consider that the scope of any modern slavery legislation should be broad regarding the types of entities it covers, and not be limited to for-profit companies. We consider it should apply to all types of entities including companies, sole traders, partnerships, state sector organisations, local government, charitable entities, trusts, incorporated societies and Māori trusts and incorporations.

We consider that other factors, such as an entity's size or the sectors it operates in, are more relevant for the purpose of determining the responsibilities they will have, rather than whether or not they should be included in the legislation.

Internationally, modern slavery legislation has typically targeted commercial activity but can extend further. UK Home Office guidance suggests its legislation can apply to organisations with charitable or educational aims, provided they engage in commercial activities. Australian guidance suggests their legislation "applies to a wide range of entity types, including individuals, partnerships, associations and legal entities such as companies, trusts, superannuation funds and other types of investment organisations."

Our only proposed exception would be for individual consumers, who would have no obligations under this legislation. However, consumers will play an important role in ensuring the overall effectiveness of the legislation and would be encouraged to make modern slavery and worker exploitation considerations part of their consumption decisions. This legislation would enable consumers to make informed choices about the goods and services they consume.

Question 10. Are there any types of entities that should not be included in this legislation? If so, please specify and explain why they should not be included.

Click or tap here to enter text.

Threshold type

International approaches to modern slavery (and broader human rights) legislation have tended to target larger entities through the use of 'bright-line' thresholds. These have typically been determined based on revenue, asset and employee thresholds (whether as standalone thresholds or in combination), with revenue being the most commonly used. The Australian legislation, for example, applies to entities with annual revenue above AUD 100 million (approximately NZD 105 million) while the UK threshold is set at GBP 36 million (approximately NZD 70 million).

While bright-line measures based on revenue, assets or employee numbers do not directly connect to supply chain activity, they serve as proxies for identifying the entities that are likely to have the most significant operations and supply chains. They also reflect a general view that larger entities will have a greater ability to control or influence practices across their operations and supply chains.

We propose that a revenue threshold should be used, rather than a threshold based on assets or employees or an alternative measure, to define medium and large entities. This would apply in addition to a test for significant control or influence (see page 54) which would introduce domestic due diligence responsibilities for small and medium entities.

Revenue is a well-understood and accepted measure that is already used in existing legislative frameworks within New Zealand. A clearly defined revenue threshold should therefore enable regulated entities, as well as other stakeholders, to more easily determine what legislative obligations would apply to them.

We propose that the revenue measure should be based on an entity's consolidated annual revenue over its most recent financial year. This would take into account the revenue of any of the entity's subsidiaries (including those based offshore and any offshore revenue), but not those of any parent of the entity (provided the parent entity does not itself trade in New Zealand). It would also take into account all sources of revenue, including for example grants or donations. This approach would be consistent with those used internationally, which generally exclude entities based offshore that trade insignificantly or incidentally within their jurisdiction.

A different type of threshold could involve using a principles-based test. For example, this could place obligations (or more obligations) on entities whose supply chains are associated with a higher risk of modern slavery or worker exploitation occurring. This approach could be better targeted towards risk, but would be more complicated to administer. Alternatively, particular groups could be targeted based on certain risk factors. For example, targeting importers could provide a focus on entities that generally have higher risks of modern slavery occurring (compared to entities that do not import goods). We are interested in your views on whether any alternatives to a revenue-based threshold should be used, and what you consider the pros and cons of these alternatives to be.

Question 11. Do you agree that 'medium' and 'large' entities should be defined based on revenue?

- Yes
- No
- Other

Please explain your view

Click or tap here to enter text.

Threshold level

In determining what the appropriate threshold levels should be for New Zealand, we consider there is a need to balance our domestic context and the objective of supporting widespread culture change with practical considerations regarding how feasible the obligations would be on entities of different sizes. On that basis we are proposing:

- medium-sized entities should be defined as exceeding an annual revenue level of \$20 million (up to approx. 2,200 entities – see **Figure 4** on page 48)
- large-sized entities should be defined as exceeding an annual revenue level of \$50 million (up to approx. 1,450 entities).

‘Small’ would include any entity with revenue below the medium threshold. Based on our proposed thresholds, a small entity would include any entity with annual revenue below \$20 million.

We are proposing these thresholds given the New Zealand context, as a small but highly integrated trading nation. However, we welcome all feedback on where they should be set including whether they should be higher or lower than our proposed values. We would also welcome any comments regarding your rationale for suggesting a different threshold level.

International jurisdictions vary significantly in the thresholds they set for determining which entities are required to meet disclosure or broader due diligence obligations. Revenue-based thresholds range from NOK 70 million (approximately NZD 12 million) in Norway, through to AUD 100 million (approximately NZD 105 million) and USD 100 million (approximately NZD 144 million) in Australia and the US State of California respectively. We note it is likely that many entities in New Zealand with over \$100 million in annual revenue will also be carrying on business in Australia and therefore subject to the Australian Modern Slavery Act.

Reflecting our smaller size, New Zealand has a higher percentage of micro, small and medium-sized enterprises than other countries. Enterprises considered large in a New Zealand context are generally smaller in comparison to those overseas. Many small businesses in the United States, for example, would be considered a large business in New Zealand.

The New Zealand Productivity Commission has also identified that, given the small size of New Zealand’s domestic market, New Zealand firms often engage in international exports relatively early in their lifecycle.⁴¹ Firms based in larger domestic markets or adjoining markets within free-trade blocs are usually much larger before seeking to export goods or services.

We are proposing that medium-sized entities will be required to disclose the due diligence they are undertaking (as well as undertake due diligence in relation to New Zealand entities they have significant control or influence over), while large entities will have due diligence obligations across their domestic and international operations and supply chains.

We would like to seek views, particularly from potential regulated entities, on whether the proposed obligations are likely to be feasible based on the suggested revenue thresholds. We note that due diligence actions expected of entities will depend on what is reasonable based on factors including their size and risks.

We also note that the development of guidance and toolkits could mitigate costs for regulated entities. Separately, we would also like to hear from you regarding what support services you think are needed to support the implementation of this legislation (please see page 72 for further information and questions on support services).

⁴¹ *New Zealand firms: Reaching for the frontier*. New Zealand Productivity Commission (2021). Available at: <http://www.productivity.govt.nz/inquiries/frontier-firms/>.

Question 12. What do you think the revenue threshold for defining a medium-sized entity should be? Please specify what you think the amount should be and explain why.

Click or tap here to enter text.

Question 13. What do you think the revenue threshold for defining a large-sized entity should be? Please specify what you think the amount should be and explain why.

Click or tap here to enter text.

Impacts on Māori entities and individuals

We are not aware of any disproportionate positive or negative impacts that these proposals would have on Māori entities or individuals but would like to seek your views on this issue. We also wish to seek views from Māori on how the proposals and/or the implementation of the proposals could better reflect Kaupapa Māori and Te Tiriti o Waitangi principles.

The actions required for all entities to meet due diligence responsibilities would depend on a wide range of factors, including the entity's size and resources and sector-specific risks. Māori entities could be disproportionately affected by the legislation to the extent that they operate in sectors with higher risks of modern slavery or worker exploitation. However, an additional cost at an individual entity level will also depend on the practices an entity has in place already. We also expect that the benefits of undertaking due diligence are generally likely to apply across entities regardless of their ownership.

Based on international evidence, we also know that some of the key factors affecting vulnerability to modern slavery and worker exploitation include age, gender, poverty and ethnicity. International research has identified that children, women, individuals in poverty and individuals experiencing social and cultural exclusion, among others, are more vulnerable to modern slavery.⁴² In a New Zealand context, we know that the Māori population is younger than the non-Māori population⁴³ and disproportionately experiences poorer socioeconomic outcomes⁴⁴. Based on these risk factors, it is likely that some Māori will be especially vulnerable to serious exploitation in New Zealand.

New Zealand's experience in prosecuting modern slavery to date does not reflect global trends (so far having most often identified migrant men trafficked for labour exploitation). However, this is unlikely to reflect the full spectrum of people who are trafficked or exploited in New Zealand, as the hidden nature of these crimes means that vulnerable people are less likely or able to seek help or report their experience.

While we do not have strong evidence regarding the prevalence or nature of modern slavery or worker exploitation within New Zealand, one of the key aims of the proposed legislation is to enhance the identification of those practices.

⁴² See, for example, the United Nations Office on Drugs and Crime background paper *An Introduction to Human Trafficking: Vulnerability, Impact and Action*. Available at: https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf.

⁴³ Statistics New Zealand data at 30 June 2021 identifies that the median ages for Māori males and females were 25.3 and 27.3 years respectively, compared with national median ages of 36.7 and 38.8 years respectively. It also finds that 36 per cent of the Māori population is aged under 18 years (314,100 of the total estimated population of 875,300). See <https://www.stats.govt.nz/information-releases/maori-population-estimates-at-30-june-2021>.

⁴⁴ For example, Statistics New Zealand's child poverty statistics for the year ending June 2021 identifies that Māori (and Pacific) children were more likely to live in households with low income or material hardship compared to European children. See <https://www.stats.govt.nz/information-releases/child-poverty-statistics-year-ended-june-2021>.

Question 14. How could the proposals and/or the implementation of the proposals better reflect Kaupapa Māori and Te Tiriti o Waitangi principles?

Click or tap here to enter text.

Question 15. Are you aware of any disproportionate impacts (positive or negative) this legislation could have on Māori entities? Please explain what impacts may apply, if any.

Click or tap here to enter text.

Question 16. Are you aware of any disproportionate impacts (positive or negative) this legislation could have on Māori individuals? Please explain what impacts may apply, if any.

Click or tap here to enter text.

How the legislation will work

Enforcement and remediation

International experience suggests that effective enforcement, including penalties, is necessary to ensure that disclosures and due diligence are undertaken. We propose that a range of enforcement tools should be introduced, including specific offences for failing:

- to take action if the entity becomes aware of modern slavery or worker exploitation in their operations or supply chains
- to prepare or publish an annual disclosure in accordance with the legislative requirements
- to undertake appropriate due diligence.

Consideration will also be given to other tools such as infringements, improvement notices and enforceable undertakings, and the publication of both good and bad practice. Internationally, for example, penalties for non-compliance include 'naming and shaming', financial penalties, criminal penalties (in the case of the Netherlands, for serious and sustained non-compliance), and the ability for harmed individuals to sue a business directly.

Penalties are yet to be determined, but there are a range of existing regulatory regimes in New Zealand that can be compared against in developing an appropriate penalties framework. Examples include the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009*, *Financial Markets Conduct Act 2013*, and *Health and Safety at Work Act 2015*. Each of these pieces of legislation require disclosure and/or due diligence to achieve their purposes. Financial penalties for non-compliance by body corporates under those frameworks can range from \$600,000 up to \$5 million.

We note that the appropriate level of any penalties will depend on final decisions regarding what obligations will apply and to which parties. However, the above comparators provide an indicative view of where the penalties could sit. We do not consider criminal penalties are likely to be appropriate, noting that existing criminal penalties cover situations where a person is directly involved in modern slavery offending. We would be interested in any views you may have regarding other comparable legislation to inform the development of an appropriate penalty framework.

We note that different responsibilities will apply to entities of different sizes. While all entities would be required to take action if they become aware of modern slavery or worker exploitation in their operations or supply chains, disclosure obligations would only apply to medium and large entities while direct due diligence obligations would apply to large entities (as well as any small and medium entity with significant control or influence over another New Zealand entity). We would be interested in your views regarding whether different types of entities should be subject to different enforcement mechanisms and penalties. This could include differentiation based on the size of the entity or other factors, such as in cases where an entity is run by volunteers.

We would like to seek your views on whether victims (onshore and offshore) should also have the ability to bring a claim leading to penalties. Doing so may allow victims to take more direct legal action with a view to ensuring that appropriate due diligence is undertaken by entities in New Zealand, but this could also lead to a more adversarial or litigious system.

In addition to a penalties-based regime, we wish to also seek your views on the use of remediation. The UNGPs recommend that businesses should remedy any harms that they have caused or contributed to, by engaging directly with those that have been harmed and working alongside other contributors to put things right. The UNGPs do not recommend a strict remediation approach where adverse impacts have occurred that the business has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship. The UN suggests that remediation could take the following forms:

Depending on the specific harm, remedy may take a number of forms including an apology, compensation (financial or otherwise), the cessation of a particular activity or relationship,

arrangements to ensure the harm cannot recur, or another form agreed upon by the parties and which meets the effectiveness criteria set out in Guiding Principle 31.⁴⁵

Remediation could form part of the due diligence obligations applicable to large entities but can also be thought of as part of a broader penalty framework. We are interested in your views regarding whether entities should be required to remedy any harm they have caused or contributed to where there is a clear link between their actions and the harm, and how this could be reflected. For example, whether you consider that an entity should remedy the harm where possible and that the regulator should only impose a penalty when an entity has not appropriately remedied the harm.

Question 17. What types of non-compliance should lead to enforcement action?

Click or tap here to enter text.

Question 18. Do you think there should be different offences and tools to deal with non-compliance with different obligations (such as for disclosure versus due diligence)? Should these differ depending on the size of the entity (or other factors, such as whether an entity is run by volunteers)?

Click or tap here to enter text.

Question 19. What comparable legislation do you think we should consider in developing the penalties framework for this legislation?

Click or tap here to enter text.

Question 20. What responsibilities, if any, should members of the governing body of the entity (such as the directors and board of a company) be personally liable for?

Click or tap here to enter text.

Question 21. Should victims onshore and offshore have the ability to bring a civil claim against an entity that has failed to meet its responsibility? If so, please explain why. If not, please explain why not.

Click or tap here to enter text.

Question 22. Should entities be required to remedy any harm they have caused or contributed to, where there is a clear link between their actions and the harm? If so, how should this link be demonstrated and what types of remediation would be appropriate?

Click or tap here to enter text.

⁴⁵ UNGP Guiding Principle 31 suggests that effective non-judicial grievance mechanisms are those which are legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue.

Independent oversight of the measures put in place to address modern slavery and worker exploitation

An independent commissioner, ombudsman or other oversight role can help positively steer the implementation of a legislative regime by providing a trusted and impartial view. Their independence makes it easier for them to bring parties together. Notably, the independent body would need to be well-resourced to effectively provide this role.

Various jurisdictions have established independent bodies to support the delivery of their modern slavery or broader human rights regimes. The table below provides a high-level description of the approaches taken in some other countries:

Table 5. Examples of independent bodies established to address modern slavery and broader adverse impacts on human rights

Country	Role	Relevant functions
Australia (New South Wales)	Anti-slavery Commissioner	Advocating for and promoting action to combat modern slavery, identifying and supporting victims, providing information and education, raising awareness, and monitoring reports on the risks of modern slavery occurring in the supply chains of government agencies.
Canada	Canadian Ombudsperson for Responsible Enterprise (CORE)	Looking into complaints about possible human rights abuses when they happen in Canadian companies that work outside Canada in the garment, mining, in the oil and gas sectors. Advise Canadian companies on ways to create responsible business practices and offer informal mediation services.
Finland	Ombudsman for Minorities	Monitoring action against human trafficking in Finland, human trafficking more broadly, compliance with international obligations, and the effectiveness of national legislation.
Netherlands	National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children	Reporting on the nature and extent of human trafficking and sexual violence against children in the Netherlands and the effects of government policies.
United Kingdom	Independent Anti-Slavery Commissioner	Encouraging good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, as well as in the identification of victims. Act as an independent advisor to the UK Government on the success of the Modern Slavery Act.

More detail on the UK model is set out below as an example to provide additional context. In the UK, the Role of the Commissioner is to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, as well as in the identification of victims. The

Commissioner is independent from Government, but responsible delivering a strategic plan, and fulfils his/her duties by:

- working with providers to improve the quality of victim care
- supporting law enforcement and prosecutions
- identifying best practice and raising awareness
- working with source countries on specific programs funded by the UK Government's international modern slavery fund
- reporting on issues as directed by Ministers
- supporting and undertaking research, including developing strategic partnerships.

The UK Commissioner works with across the modern slavery sector as part of fulfilling these duties, maintaining relationships with enforcement, inspection and support agencies, local authorities, charities, NGOs, faith groups, business and academia. In addition, the Commissioner is supported by an Advisory Panel, whose role it is to provide guidance, challenge and support. The panel meets quarterly and is comprised of a body of experts across the modern slavery sector.

Independent oversight bodies can also potentially provide an opportunity for victims, regulated entities and other stakeholders to engage where they otherwise may not. For example, victims may be reluctant to come forward if they have limited trust in regulatory authorities while regulated entities may prefer to engage and work with a body which sits independently from the regulator.

In New Zealand, the role of an independent oversight mechanism would need to be considered in the context of our current settings. For example, currently the remit for different aspects of modern slavery policy and enforcement in New Zealand is shared between multiple government agencies including the Ministry of Business, Innovation and Employment, New Zealand Police, Ministry of Justice, Oranga Tamariki — Ministry for Children, Ministry of Foreign Affairs and Trade, New Zealand Customs Service, and the Department of Internal Affairs (among other agencies).⁴⁶ These agencies work in partnership with civil society organisations, businesses, unions and international partners to address modern slavery and worker exploitation within and outside of New Zealand.

We do not currently have proposals for whether an independent oversight mechanism should be introduced, or what functions it should or could have. We are interested in your views on both issues, and welcome any perspectives you may have regarding potential benefits or risks associated with such a mechanism.

Question 23. Is an independent oversight mechanism required, or could this oversight be provided by Government and civil society?

- Yes (an independent oversight mechanism is required)
- No (oversight can be provided by Government and civil society)
- Other

Please explain your view

Click or tap here to enter text.

Question 23A. If independent oversight is required, what functions should the oversight mechanism perform?

Click or tap here to enter text.

⁴⁶ For further information, see the *Plan of Action against Forced Labour, People Trafficking and Slavery, 2020-25*. Available at: <https://www.mbie.govt.nz/dmsdocument/13568-combatting-modern-forms-of-slavery-plan-of-action-against-forced-labour-people-trafficking-slavery>.

Central register and support services

Central registers have been introduced in Australia and (more recently) in the UK to support their disclosure-based legislation. These central registers provide a platform for entities to submit their annual disclosures and for members of the public to view those statements.

We are interested in your views regarding whether a central register should be introduced in New Zealand and, if so, how it should be designed and function. For example, it could potentially accept voluntary statements as well as those from regulated entities, or it could serve as a central ‘hub’ providing toolkits and other guidance for entities.

In addition, we recognise that good supporting guidance and toolkits will be important to the effective implementation of the proposed legislation. This could be provided in the form of published documents, online modules, templates or other resources. We would like to seek your feedback on what support services you think are needed and would be of greatest benefit to you, whether as a regulated entity or as a consumer or other stakeholder.

Finally, we recognise that a phase-in time may be needed to enable entities to effectively meet their responsibilities under the legislation by the time it comes into force. A phase-in could apply across the legislation as a whole or to specific components, for example due diligence responsibilities could come into force after disclosure responsibilities are introduced (or vice versa). A phase-in could also apply only to penalties. This could mean that, while obligations could apply to entities from the outset, the regulator would have no ability to penalise entities for non-compliance until a later point in time. We note that entities (and individuals) directly involved in modern slavery or worker exploitation can be held liable for their involvement under existing legislation, and this would continue to be the case regardless of any phase-in period.

We would like to seek your views regarding whether a phase-in period is needed, and how it could work, to support entities to effectively meet their responsibilities.

Question 24. Do you think a central register for disclosure statements should be established? If so, please explain why. If not, please explain why not.

Yes

No

Do you have any other comments or suggestions?

Click or tap here to enter text.

Question 25. What support services, products or other guidance do you think are most needed? What would be of greatest benefit to you?

Click or tap here to enter text.

Question 26. What do you consider would be needed from the regulator to support the adoption of good operational and supply chain practice, and compliance with the proposed responsibilities?

Click or tap here to enter text.

Question 27. Do you consider a phase-in time is needed for this legislation? If so, do you consider the phase-in should apply to the responsibilities or application of penalties, or both? Do you consider a different phase-in period should apply in relation to domestic responsibilities compared to internationally-focused responsibilities?

Click or tap here to enter text.

Monitoring and evaluation

Monitoring, evaluation and review are important components of the policy development process and in ensuring that legislation remains fit for purpose and effective once introduced.

Internationally, the UK had an independent review of their legislation undertaken four years after it came into force. The UK Independent Anti-Slavery Commissioner also holds responsibilities to encourage good practice in the detection and prevention of modern slavery, and may provide advice and make recommendations to Ministers on best practice. The Australian *Modern Slavery Act 2018* requires annual reports about implementation and a review after three years covering:

- the operation of this Act and any rules over the period of 3 years after this section commences
- compliance with this Act and any rules over that period
- whether additional measures to improve compliance with this Act and any rules are necessary or desirable, such as civil penalties for failure to comply with the requirements of this Act
- whether a further review of this Act and any rules should be undertaken, and if so, when
- whether it is necessary or desirable to do anything else to improve the operation of this Act and any rules; and
- whether this Act or any rules should be amended to implement review recommendations.

In New Zealand, government agencies undertake monitoring and evaluation activity as part of their ongoing regulatory stewardship role. MBIE, which is likely to be the administering agency for this legislation, undertakes regulatory system assessments to provide insights into how well regulatory systems are working at particular points in time within existing policy and institutional frameworks. Policy reviews may also be undertaken periodically to provide analysis and advice on what the rules should be.

To ensure entities are complying with any new obligations, the regulator would need to be given the ability to effectively monitor and enforce compliance with the obligations. There are already a number of regulators and industry bodies in New Zealand's employment standards, workplace health and safety and corporate governance systems, including:

- Employment New Zealand
- WorkSafe
- The Financial Markets Authority
- The External Reporting Board

Each of these organisations have their own areas of expertise and capability which could be drawn on to inform and support the work of the regulator for the proposed legislation, as well as broader work to monitor and evaluate compliance and the success of the legislation. Possible new functions such as an independent oversight body (see page 70) could also potentially have a significant role to play in this area.

Question 28. What additional monitoring, evaluations and review mechanisms are needed, if any, to support this legislation?

Click or tap here to enter text.

Submitter information

We would like to seek some information about you to help us make sure that the views of different groups and sectors are reflected in our analysis.

Questions marked with a * are mandatory.

***Question A. What is your name?**

Click or tap here to enter text.

***Question B. Who are you making a submission as?**

- Business
- Charitable entity
- State sector organisation
- Individual
- Other (please specify)

Click or tap here to enter text.

Question C. If applicable, what is the name of the entity you are submitting on behalf of?

Click or tap here to enter text.

Question D. What sector(s) are relevant to your work or business, or other interest? You can tick more than one. The industry codes listed below are based off the Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006.

- General submission – no specific sector
- A Agriculture, Forestry and Fishing
- B Mining
- C Manufacturing
- D Electricity, Gas, Water and Waste Services
- E Construction
- F Wholesale Trade
- G Retail Trade
- H Accommodation and Food Services
- I Transport, Postal and Warehousing
- J Information Media and Telecommunications
- K Financial and Insurance Services
- L Rental, Hiring and Real Estate Services
- M Professional, Scientific and Technical Services
- N Administrative and Support Services
- O Public Administration and Safety

- P Education and Training
- Q Health Care and Social Assistance
- R Arts and Recreation Services
- S Other services
- Other (please specify)

Click or tap here to enter text.

The following question does not apply if you are submitting as an individual.

Question E. What is your annual revenue (based on your most recent financial year)?

- N/A
- Less than \$10 million
- Between \$10 and \$30 million
- Between \$30 and \$50 million
- Between \$50 and \$100 million
- Over \$100 million

Public release of submissions

We will prepare a summary of the submissions we receive and publish this on MBIE's website. Please see page 3 for further information on how we will use your submission.

We may also publish individual submissions with personal information removed. By making a submission we will consider you to have consented to its publication on the MBIE website, unless you clearly specify otherwise.

If your submission contains any sensitive information that you do not want to be published, please indicate this in your submission by using square brackets around your comments [like this].

Please note that submissions may also be requested and released under the *Official Information Act 1982*, regardless of whether you have requested that information be withheld in part or in full. Should you wish for some or all of the information you have provided to be withheld from release, please clearly specify your objections. We will take any objections into account and consult with you when responding to requests under the *Official Information Act 1982*.

Question F. Would you prefer your submission to be withheld from public release, either in part or in full?

Personal information such as your name and contact details will not be released.

- No, my submission may be publicly released
- Yes, please withhold my submission in part as indicated by square brackets in my submission
- Yes, please withhold my submission in full

Please specify any objections you have regarding the release of part, or all, of the information you have provided.

Click or tap here to enter text.

The following question is optional. We are asking this in case we want to contact you further regarding your submission. We will not publish or release your personal information.

Question G. What are your contact details?

Email (preferred) Click or tap here to enter text.

Phone Click or tap here to enter text.

Acronyms and glossary

Acronym	In full
ILO	International Labour Organization
MBIE	Ministry of Business, Innovation and Employment
OECD	Organisation for Economic Co-operation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights

Term	What it means
Coercion	The use of force or intimidation to obtain compliance. Section 351 of the <i>Immigration Act 2009</i> identifies coercive behaviours such as an employer preventing their employees from leaving their employment, leaving New Zealand, finding out or seeking their entitlements under New Zealand law, or telling someone about the circumstances of their employment.
Debt bondage	Defined in the <i>Crimes Act 1961</i> as the status or condition arising from a pledge by a debtor of his or her personal services, or of the personal services of any person under his or her control, as security for a debt, if the value of those services, as reasonably assessed, is not applied towards the liquidation of the debt or if the length and nature of those services are not limited and defined.
Disclosure	Refers to the development and publication of a statement setting out the due diligence an entity is undertaking.
Due diligence	Simply put, this broadly refers to the process of identifying the risks of exploitation across an entity's operations and supply chains, taking steps to address any risks identified, and evaluating the steps taken.
Employment standards	The set of minimum standards that employers must comply with under various employment laws. These standards set out certain rights for employees and obligations that employers must meet, and include entitlements such as being paid at least the minimum wage; being provided annual leave and holiday pay; and being paid wages that have not had illegal deductions.
Enforcement	This has a broad meaning, but here it means investigations where it is suspected a breach of the law or policy has occurred; and also means the resulting action taken, such as penalising the person or entity that committed the breach.
Entity	Something with its own independent existence, such as a company or charitable entity.
Exploitation	This can be seen generally as behaviour that causes, or increases the risk of, material harm to the economic, social, physical or emotional well-being of a person. Worker exploitation and modern slavery fall within the spectrum of exploitation.
Forced labour	Forced labour is work exacted from a person under threat and for which the person has not offered themselves voluntarily. It can occur in connection with trafficking or through labour exploitation.
Forced marriage	A marriage in which one and/or both parties have not personally expressed their full and free consent to the union. In New Zealand, coerced marriage occurs where a person intends to cause another person to enter into a

	marriage or civil union through coercion (for example, intimidation, threats or violence), and is punishable by up to five years imprisonment.
Holding company	Generally this means a body corporate with control over another company. See section 5 of the <i>Companies Act 1993</i> for more detail.
Legislation / legislative	The whole or a part of an Act (law that has been agreed by Parliament) or any secondary legislation. <i>See also the meaning of 'regulation'</i>
Liability	The state of being legally responsible for an action or obligation.
Modern slavery	This broadly reflects exploitative situations that a person cannot leave due to threats, violence, coercion, deception, and/or abuse of power. We are proposing that modern slavery be defined as including the legal concepts of forced labour, debt bondage, forced marriage, slavery and slavery like practices, and human trafficking.
Non-compliance	An action that is in breach of standards or obligations set in law.
Operations	All activity undertaken by an entity to pursue its objectives and strategy. We are interpreting 'operations' broadly as including all material relationships an entity has which are linked to its activities, including for example: investment and lending activity; material shareholdings; and direct and indirect contractual relationships (such as subcontracting and franchising relationships).
Regulation	Subordinate legislation made under delegated authority of an Act. Regulations usually deal with matters of detail or implementation, technical matters, or those likely to require frequent updating.
People trafficking	In its simplest form, people trafficking (also known as "trafficking in persons" and "human trafficking") is the recruitment, transportation, transfer, harbouring or receipt of a person, achieved through coercion, deception, or both, for the purpose of the exploitation of the person. Exploitation for the purpose of trafficking can occur in relation to prostitution or other sexual services, slavery, practices similar to slavery, servitude, forced labour or other forced services, and the removal of organs. In New Zealand, people trafficking can be prosecuted without exploitation having actually occurred. Further detail is set out in Appendix One of this discussion document, and in section 98D of the <i>Crimes Act 1961</i> .
Serfdom	Defined in the <i>Crimes Act 1961</i> as the status or condition of a tenant who is by any law, custom, or agreement bound to live and labour on land belonging to another person and to render some determinate service to that other person, whether for reward or not, and who is not free to change that status or condition.
Slavery	Defined in New Zealand's <i>Crimes Act 1961</i> as including, without limitation, a person subject to debt-bondage or serfdom. The Supplementary Convention on the Abolition of Slavery recognises institutions and practices similar to slavery, including debt bondage, serfdom, marriage related and exploitative child labour-related practices.
Subsidiary	A company controlled by a holding or parent company. See section 5 of the <i>Companies Act 1993</i> for more detail.
Supply chain	The network of organisations that work together to transform raw materials into finished goods and services for consumers. They include all activities, organisations, technology, information, resources and services involved in developing, providing, or commercialising a good or service into the final product for end consumers.

Temporary migrant worker	A migrant who holds a temporary work visa, which provides temporary employment for a migrant in New Zealand.
Worker exploitation	Worker exploitation is defined in this document as including non-minor breaches of New Zealand employment standards. This excludes minor and insignificant breaches that are not constant and easily remedied.

Appendix One: New Zealand’s legal framework

This section provides information supplementary to that included in the ‘What is modern slavery and worker exploitation?’ section from page 23. The most serious forms of exploitation (referenced in Figure 1 on page 24) are criminalised in New Zealand under the *Crimes Act 1961* and *Immigration Act 2009*. These offences include:

Offence	Provision	Maximum prison sentence
Dealing in slaves (defined as including, without limitation, a person subject to debt bondage or serfdom)	Crimes Act s 98	Up to 14 years
Dealing in people under 18 for: <ul style="list-style-type: none"> sexual exploitation removal of body parts engagement in forced labour 	Crimes Act s 98AA	Up to 14 years
Trafficking in persons (see next page for further information on this offence)	Crimes Act s 98D	Up to 20 years, fine up to \$500,000
Coerced marriage or civil union	Crimes Act s 207A	Up to 5 years
Exploitation of unlawful employees and temporary workers	Immigration Act s 351	Up to 7 years, fine up to \$100,000

Various employment legislation provides for minimum employment standards, including the *Holidays Act 2003*, the *Minimum Wage Act 1983*, and the *Wages Protection Act 1983*. While there are a wide range of employment standards and penalties for non-compliance, some of those standards and their associated penalties include:

Breach	Provisions	Penalty
Seeking payment in return for a job	Wages Protection Act s 13; Employment Relations Act s 135, s 142G	Up to \$10,000 for an individual and \$20,000 for a corporation.
Failing to pay, or under-paying of wages	Employment Relations Act s 135, s 142G; Minimum Wage Act s 10	Or in the case of a pecuniary penalty for serious breaches of minimum entitlement provisions: up to \$50,000 for an individual and up to the greater of \$100,000 or 3 times the financial gain for a body corporate.
Failing to provide holiday and annual leave or entitlements	Employment Relations Act s 142G; Holidays Act s 75	

Breach	Provisions	Penalty
Requiring excessive working hours ⁴⁷	Employment Relations Act s 135; Health and Safety at Work Act s 49	Up to \$10,000 for an individual and \$20,000 for a corporation. Or in the case of failing to comply with a duty under the HSWA: Up to \$50,000 for an individual who is not a person conducting a business or undertaking (PCBU) or PCBU officer; up to \$100,000 for an individual who is a PCBU or a PCBU officer; and up to \$500,000 for any other person.
Failing to maintain employment records	Employment Relations Act s 135	Up to \$10,000 for an individual and \$20,000 for a corporation

The difference between forced labour and people trafficking, and worker exploitation

It is not always clear when breaches of employment standards and workplace exploitation are forced labour or people trafficking. Differences lie in the purpose, level and gravity of exploitative conduct, as well as whether there is (or is intent to engage in) coercion or deception of the victim.

Forced labour and people trafficking sit at the extreme end of workplace exploitation. A business or employer may have deliberately recruited or received the worker with the purpose of exploiting them. Forced labour and people trafficking can also occur outside the workplace and can include, for example, sexual exploitation and the exploitation of children.

Worker exploitation includes breaches of employment standards, such as the withholding or underpayment of wages or requiring excessive hours of work, which are indicators that forced labour and/or people trafficking may be occurring. A business or employer may have deliberately recruited or received the worker with the purpose of exploiting their labour for financial gain.

Trafficking in Persons in the Crimes Act 1961

In 2002, New Zealand criminalised people trafficking by amending the *Crimes Act 1961* (the Crimes Act) and introducing a new section 98D ('trafficking in persons'), giving effect to the United Nations [Protocol to Prevent, Suppress and Punish Trafficking in Persons](#). The Crimes Act includes people trafficking which:

- Occurs both across borders and within the country
- Victimises any person – with no distinction based on, for example, visa status, nationality or gender
- Takes place with or without the involvement of organised crime groups
- Is undertaken for any of a range of exploitative purposes, *as well as* for knowing that the entry or exit of the person across national borders involves one or more acts of coercion and/or deception against the person.

The exploitative purposes which section 98D of the *Crimes Act* covers are:

- prostitution or other sexual services

⁴⁷ This may be a breach under employment law, including the Employment Relations Act, if the requirement to work excessive working hours constitutes a breach of an employment agreement. It may also be a failure to comply with a duty under the Health and Safety at Work Act where, for example, the PCBU fails to ensure, so far as is reasonably practicable, the health and safety of the worker.

- slavery, practices similar to slavery, servitude, forced labour, or other forced services
- the removal of organs.

Those convicted of people trafficking may be penalised through a maximum term of imprisonment not exceeding 20 years, a fine not exceeding \$500,000, or both. Providing for a fine enables an appropriate penalty to be imposed on businesses or organisations that engage in people trafficking.

In New Zealand and under the Crimes Act:

- a person does not need to be moved across an international border
- it is irrelevant whether a victim may have consented to being trafficked, where they have been coerced or deceived
- a perpetrator does not have to achieve their intended action, for example to recruit or receive a person
- victims do not need to have experienced exploitation.

Appendix Two: Case studies of businesses taking action

Kathmandu aims to build partnerships that matter

The global outdoor gear and clothing brand has redefined what success means for their organisation. Tackling the underlying cause rather than the symptoms of modern slavery required a change in mindset refocusing from growth to benefit for everyone involved. They are aspiring to not only be the best *in* the world, but be best *for* the world.

The geographic risks are significant as Kathmandu sources most of their product from Asia where an estimated 30 million people are trapped in some form of modern slavery. Second only to tech, the apparel and footwear industry funnels more money toward Modern Slavery than any other industry. Unauthorised sub-contracting is common within the apparel industry which brings increased risks and makes transparency more challenging.

Materials commonly used in the outdoor industry include cotton, leather and rubber, each having their own inherent risks of forced labour. Kathmandu has full visibility of tier 1 factories (assembly, cutting and sewing), partial visibility of tier 2 (weaving, dyeing), and limited visibility of tier 3 (raw material processing) and tier 4 (raw material production).

Kathmandu has focused on improving transparency and trust, and helping workers to raise issues directly. They have created strategic and collaborative partnerships with suppliers and factories, professional service agencies, multi stakeholder initiatives, other brands, customers and civil society organisations. To avoid fuelling modern slavery, Kathmandu's Responsible Purchasing Policy ensures that suppliers have an ability to delay or decline orders to avoid overtime. Rather than enforcing compliance with their code of conduct, Kathmandu has found it important to focus on a willingness to be honest about the many imperfections in their supply chain so they can improve them.

As a result of these changes, suppliers were more willing to discuss the challenges they are facing. Their partners and suppliers had culturally relevant expertise that helped them identify meaningful actions to take. This saved time and money by avoiding complicated strategies and endless auditing that can ultimately fail to improve the wellbeing of workers, and may even increase the risk of a supplier concealing the truth.

The three key lessons Kathmandu have learned are:

1. They cannot address the risks of Modern Slavery alone
2. A focus on minimising the risk to the business through auditing suppliers and enforcing compliance is ineffective in facilitating any meaningful change and is prohibitively expensive
3. Slavery thrives in the shadows, so they must build trust in their supply chain in order to have transparency.

Completing their first Modern Slavery Statement under the Australian legislation required the input and collaboration of the entire Kathmandu team. The journey itself allowed Kathmandu to identify several gaps in their supply chain, cement lasting partnerships with other sectors and improve their overall business in the process.

AustralianSuper is creating responsible systems and processes

The retirement savings of more than one in ten working Australians are managed by AustralianSuper, which means they have a significant global impact with over AUD\$244 billion in assets.

AustralianSuper recognise they have a role in addressing modern slavery and raise awareness of this issue. As a responsible investor they understand that managing supply chain risks leads to better investment performance for their members as well as the reduction of modern slavery risks for the most vulnerable people globally.

AustralianSuper contracted Fair Supply (an Australian consultancy firm) to conduct an independent modern slavery risk assessment of 2,500 companies listed in their equities portfolio, analysing modern slavery risk down to tier 10 of the supply chain. It identified the top modern slavery risks by geography and industry. The assessment took a 'risk to people' approach, focusing on the areas where the risk of being subjected to modern slavery practices was highest for individuals, even if those areas are smaller in terms of spend or impact to AustralianSuper's investment performance.

They know that often modern slavery risks do not appear at the surface level for prospective investments but can show up when looking deeper. Most of the tangible risks typically appear below tier 2 of the supply chain, where it can be hard to find reliable information.

AustralianSuper has a direct engagement program with listed companies that prioritises increased disclosure on how the business is addressing modern slavery risks, deepening understanding of the company's supply chains beyond tier 1, and the development of supplier relationships beyond reliance on auditing activity. If the company is not making sufficient progress, they use their shareholder right of voting at company meetings to support the mitigation of modern slavery risk.

Examples of measures in place to address modern slavery

As an investor

- Assessment of how external investment managers address Environmental, Social and Governance (ESG) issues as part of their investment approach
- Engagement with companies directly and/or through peak bodies to ensure alignment on outcomes and actions relating to modern slavery issues
- Actively participating in key associations, such as the Cleaning Accountability Framework and the Responsible Investment Association Australasia Human Rights Working Group

As a business

- A modern slavery questionnaire to assess the modern slavery risk profile of suppliers
- Amending services agreements to include modern slavery obligations
- A Whistleblower Policy that applies to staff, contractors and suppliers, helping to ensure that they capture and escalate grievances throughout their supply chain.

Initially, AustralianSuper found that investee companies were aware of modern slavery risks but not necessarily the extent of their exposure to it. Observationally, it took about 12-18 months for companies to look deeper and better assess the risk. The adoption of the *Modern Slavery Act 2018* (Cth) in Australia was a key catalyst for action. AustralianSuper has an expectation that risk assessment and identification will continue to evolve but now, most companies would have foundational processes to do so.

The precise numerical value on the benefits of addressing modern slavery depends on the individual investment's context. There are clear, public cases where businesses have lost value when labour and social issues come to light.

All of this work contributes to the quality of AustralianSuper's investment portfolio and increases the long-term value of investments. This, in turn, helps them deliver better returns to members. They value transparency in their investment activities and believe it's important for members to understand what they are invested in.

Karma Drinks connect with the communities growing their ingredients

Karma Drinks is a New Zealand based business that has sold 35 million drinks in 24 countries. They believe that a fizzy drink can be a force for good, helping the people that grow their ingredients. For Karma Drinks it is not about giving back – they aim to share the benefits with those involved in the first place.

Slavery and forced labour is more evident in commodity products where businesses are buying from the spot market, which includes Karma Drinks' key ingredients, such as sugar and cola. They aim to work directly with certified producers to avoid the pitfalls of the spot market, meeting with producers overseas and building transparency into their supply chain.

Karma Drinks has not focused on modern slavery specifically, instead starting with a basis in fair trade principles. They champion education through the Karma Cola Foundation to support the economic independence of the communities they work with in Sierra Leone and to help them develop their own sustainable resources, enterprises, healthcare and food security. They also meet with the growers in person, use third party certification and in some cases have established community projects to help ensure the community where the products are sourced from benefits as well.

Karma Drinks are confident that fair trade certification for their key ingredients (e.g. sugar, kola nut, ginger, and vanilla) and their work with growing communities well exceed modern slavery standards.

There are still risks of modern slavery practices in the smaller flavouring ingredients used. A relationship with the grower and supplier is not always possible with tiny ingredients. For example, it can be hard to find out the origins of lemons used to produce the flavour from their supplier. They consider that there is still an opportunity to go further with those ingredients, which comprise about 2 per cent of the overall product.

There were a limited number of fair trade suppliers for Karma Drinks to connect with initially, but those suppliers were actually easy to find because they are keen to capitalise on the work they have done setting up responsible businesses. Other businesses that have gone down the fair trade route have been happy to share their experiences and engage with those interested in fair trade.

The main benefit for Karma Drinks is the ability to be transparent with consumers and other stakeholders who want products that align with their values. It creates a competitive advantage in a market where brand loyalty is important. They are pleased to say, hand on heart, that there no labour issues with their ingredients.



Te Kāwanatanga o Aotearoa
New Zealand Government