

BUILDING CONSENSUS:

A COMPREHENSIVE FRAMEWORK FOR COMBATING TRAFFICKING IN PERSONS AND MODERN SLAVERY IN NEW ZEALAND

**Annotated Insights and Analysis of the
Combating Trafficking in Persons and
Modern Day Forms of Slavery Bill
(Modern Slavery Bill)**

Rebekah Armstrong, Rebecca Kingi, Jacob Parry

December 2024

Foreword

Dr Gail Pacheco, New Zealand's Equal Employment Opportunities Commissioner

Te Kāhui Tika Tangata Human Rights Commission welcomes the Modern Slavery Bill. It is a step in the right direction to upholding human rights and addressing modern slavery in Aotearoa New Zealand and abroad.

People in Aotearoa believe in the importance of dignity, equality and respect for all. We all want a country free from modern slavery. We also want to know that the products we use do not contribute to modern slavery overseas. Unfortunately, we have fallen behind many other countries in making this a reality. For example, Australia and the United Kingdom have already enacted specific modern slavery legislation.

Our current laws do not adequately protect people from the physical and psychological harm caused by modern slavery. Effective legislation is a powerful way to increase these protections. We must act now to uphold human rights and address modern slavery.

MP John McKay - Cosponsor of the Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act

As the co-sponsor of the Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act, I am pleased to offer my support for this legislative initiative. Canada's legislation has been a necessary first step in understanding the nature and extent of the scourge of slavery in our society. It has always been my hope that countries like New Zealand that share a mutual abhorrence of participating in the slavery ecosystem would form a web of legislation that abolishes the trade in goods and persons. This New Zealand legislation takes a significant step toward that goal.

Grace Forrest - Commissioner on the Global Commission on Modern Slavery and Human Trafficking and Founder of Walk Free.

I welcome the introduction of the Modern Slavery Bill in New Zealand. As a country that values human rights and fairness, we encourage New Zealand to take this crucial step to protect vulnerable workers. This will pave the way for businesses to align with international standards and provide the opportunity to introduce due diligence obligations in the future.

Walk Free has worked with New Zealand businesses, investors, government and civil society partners for several years and we have been motivated by the broad and ongoing support for modern slavery legislation.

Walk Free's Global Slavery Index estimates that there are 50 million people living in modern slavery globally, with 8,000 people in New Zealand. The number of people in modern slavery is growing, and there has never been a more urgent time for the Government to act.

Kevin Hyland OBE Former UK Anti-Slavery Commissioner

Modern slavery is a serious crime where exploiters use vulnerability of almost 50 million children, women and men across the world to make over US\$236 billion annually in criminal profit. Victim identification and support is crucial but far more needs to be done to remove the financial incentives and impunity that allow this crime to continue to increase unimpeded.

Introducing legislation in New Zealand will be another step towards making it harder for criminals to prosper and increase opportunities for victims to seek support. The more countries that commit to challenging these crimes and human rights violations will bring us closer to ending this scourge and delivering equality across the world.

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Rebecca Kingi is a subject matter expert in trafficking in persons and modern slavery and an enrolled barrister and solicitor of the High Court of New Zealand. As a legal practitioner, Rebecca specialised in trafficking in persons and modern slavery domestic and international law and policy, representing modern slavery victims and survivors for a number of years in the UK. She has subsequently held senior policy and advocacy roles for humanitarian and anti-trafficking NGOs, providing advice to various governments and stakeholders on legislation and broader efforts to address modern slavery, including as a member of New Zealand’s Modern Slavery Leadership Advisory Group. She has also worked as a senior trafficking in persons advisor for the New Zealand government, representing New Zealand at related United Nations fora and providing subject matter expertise and capacity building to support related government activities. Her current role at ANZ as ‘ESG Initiatives Lead’ includes leadership and delivering ANZ NZ’s modern slavery related ESG work, and broader human rights initiatives and goals.



Jacob Parry is a Barrister based in Auckland with expertise in regulatory and enforcement law and significant experience in human trafficking, exploitation and modern-day slavery. Prior to moving to the bar in July 2024, Jacob was a partner at Meredith Connell and a Crown prosecutor. He has conducted trials and appeals on immigration matters, including in relation to human trafficking and exploitation of migrant workers, and provided ongoing advice, training and investigation support to INZ’s investigation teams. Jacob joined Meredith Connell in 2016, having returned from the UK where he worked in the Immigration Team at the Government Legal Department.

The name “Modern Slavery and Trafficking Expert Practitioners Group” (MSTEP Group) can be used when referring to the authors that drafted this report.

Acknowledgments

This bill builds on the foundation of the previous report, *An Opportunity for Impact: Recommendations for Regulating Modern Slavery in Supply Chains in Aotearoa New Zealand* (2022).¹ The authors thank Natalia Szablewska for her review of this bill and the following Report.



Prof. Natalia Szablewska, Professor in Law & Society at The Open University (UK), has over 20 years' experience spanning the public sector, non-governmental organisations and academia in five countries. She specialises in Business and Human Rights, with a particular focus on modern slavery in supply chains, and her research and expertise in this area has been relied on by parliamentary enquiries, non-governmental organisations and media across a number of countries. She is the Chair of the Business and Human Rights Committee for Australian Lawyers for Human Rights, Member of the International Law Association Committee on Business and Human Rights, and served on the Modern Slavery Leadership Advisory Group for the New Zealand Government.

In relation to Part 10, amendments to 98B, 98D and 98F of the Crimes Act 1961, special thanks are also extended to Keir Robinson for his research support, and the following experts for their significant contributions to and work on these provisions:



Clayton Walker started practice in commercial law in Auckland in 1993 but has worked as a Crown prosecutor with the Napier Crown Solicitor's office since 1998 and as a partner since 2005. He practises across the range of criminal and quasi-criminal proceedings and was the prosecutor in *R v Matamata* which was New Zealand's first prosecution for both slavery and trafficking offences together.



Rebecca Thomson is a Crown Counsel at the Crown Law Office, where she has represented the Crown on appeals in trafficking and slavery prosecutions and considered requests for consent to prosecute under s 98F of the Crimes Act 1961.

The presented views and opinions reflected in this report remain those of the authors or contributors as independent experts and should not be associated or attributed with any of their current or past affiliate organisations.

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



Preface

Purpose of report

This bill seeks to expedite stalled progress on modern slavery legislation. A recent amendment to the Standing Orders of the House of Representatives allows bills with support from 61 non-executive members to go directly to the first reading, bypassing the usual ballot process.²

Drafted to reflect political consensus on modern slavery policy, the bill is designed to be co-sponsored by New Zealand's two major political parties, with the potential for broad cross-party support. As such, it represents a pragmatic compromise that balances diverse political perspectives. It aims to establish a comprehensive legal framework to combat trafficking in persons and broader forms of modern slavery, aligning with international standards while also setting out modern slavery reporting requirements for New Zealand entities.

Key provisions include mandatory reporting requirements for reporting entities to disclose their methods of identifying, addressing, mitigating, and remediating risks of trafficking and modern slavery within their operations and supply chains. Additionally, the bill proposes the establishment of an Independent Anti-Slavery Commissioner.

The bill also strengthens the legal framework surrounding trafficking offences by clarifying definitions, strengthening enforcement capabilities, and aligning the provisions with international standards. Further, it increases trafficking victim protection by addressing gaps in the existing identification and support framework, allowing more effective implementation of New Zealand's domestic settings and alignment with international law. This provides entities' reporting obligations with a robust legal foundation.

The authors of this bill acknowledge that, while it has been drafted with the intention of being introduced in its entirety, amendments, variations or extractions may occur, particularly during the parliamentary process. For this reason, this report presents the bill published in its complete form to ensure it can be comprehensively understood and to provide a central reference point for its provisions. It is intended to serve as a valuable resource for a wide range of stakeholders, including politicians, policy makers, and non governmental organisations and their representatives.

2. Rule 288(3), Parliamentary Rules, Chapter 5: Legislative procedures (5 October 2023)
<https://www.parliament.nz/en/pb/parliamentary-rules/standing-orders-2023-by-chapter/chapter-5-legislative-procedures/>



Background

Drafted as a consensus bill, the authors have prioritised aspects of proposed legislation where there is clear political and stakeholder consensus.³ The proposed bill is not a stand alone template developed in isolation, but rather a legislative proposal designed specifically for the New Zealand context. It reflects the country's existing regulatory and operational framework, while incorporating areas of political agreement to facilitate cross-party support and policy advancement.

Appendix 2 provides a comparison analysis, demonstrating where provisions have been included or excluded on this basis.

In pursuit of political consensus and neutrality, the bill has been drafted:

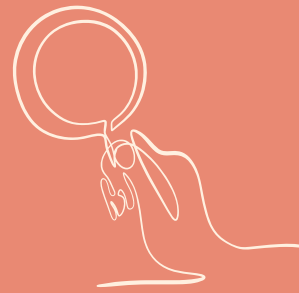
1. With provisions that have (in principle) support from New Zealand's two largest political parties, ensuring alignment with shared policy objectives, and;
2. To give effect to existing domestic mechanisms to combat modern slavery (specifically trafficking in persons), including by addressing gaps and resolving misalignment with international definitions and standards.

The authors support and advocate for robust consultation as a cornerstone of effective policy development. Due to the tight drafting timeline associated with the parliamentary term, and the need for swift introduction of the bill, the opportunity for formal public consultation on the bill will be through the parliamentary process. Specifically, the Select Committee process will provide an avenue for independent oversight and transparent stakeholder engagement. The Select Committee's consultation should include:

- Engagement with survivors to incorporate survivor-informed perspectives and expertise into the legislation; and
- Engagement with Iwi to ensure that the principles of the Treaty of Waitangi/Te Tiriti o Waitangi and a Te Ao Māori perspective are fully integrated into the development and enactment of this bill.

The authors have worked to incorporate widely supported elements from the extensive 2022 public consultation on modern slavery and worker exploitation, where relevant to the scope of this bill.⁴ They have also sought to reflect broader stakeholder perspectives expressed during ongoing modern slavery discussions. Additionally, they have considered recommendations from reviews of comparable legislation, ensuring the bill represents diverse voices and interests across New Zealand society while aligning with international best practice. Whilst the bill was drafted prior to publication of the Australian Government's response to the Australian Modern Slavery Act review, a high level comparative summary is provided at Appendix 3, demonstrating the bill's compatibility with Australia's legislative direction.

3. There are some elements introduced to align with standard practice where there is no known lack of political consensus.
4. MBIE. Consultation on Legislation to Address Modern Slavery and Worker Exploitation. Summary of Feedback. September 2022. Available here: <https://www.mbie.govt.nz/assets/consultation-on-legislation-to-address-modern-slavery-and-worker-exploitation-summary-of-feedback.pdf>



Terminology and scope

‘Modern Slavery’

The scope of this bill is confined to ‘modern slavery’, for which a definition is provided, acknowledging that there is no universally agreed definition of ‘modern slavery’ under international law. The bill incorporates formal terms and specific forms of exploitation recognised in international law: forced labour, slavery, and trafficking in persons. These terms are further defined within the bill to ensure clarity and alignment with New Zealand’s domestic legal context.

While many cases of ‘worker exploitation’ are likely to fall within the bill’s definitions and would thus be addressed by its provisions, ‘worker exploitation’ is not expressly defined or included in this bill. In some respects, the bill adopts a narrower scope than the legislative proposals put forward by the Labour government for consultation in 2022, particularly regarding the express inclusion of worker exploitation and associated duties of all New Zealand entities. However, in other respects, the bill is broader, encompassing provisions related to criminal offences and victim support. The authors support and welcome further policy developments aimed at addressing exploitation along the continuum. Tackling worker exploitation serves as a critical mechanism to address modern slavery, including by preventing exploitative conduct from escalating in severity. It is anticipated that this bill will encourage the subsequent introduction of additional policy measures to address worker exploitation comprehensively.

‘Modern Slavery’ and ‘Trafficking in Persons’

Within the bill itself, the terms ‘modern slavery’ and ‘trafficking in persons’ are used contextually, based on the specific provision. For entities assessing whether exploitative practices exist within their operations and supply chains, the umbrella term of ‘modern slavery’ is helpful to capture conduct that causes similar forms of harm. However, in the context of criminal charges or victim support entitlements, the use of precise legal terminology is more appropriate. The terminology aligns with New Zealand’s existing domestic landscape. While ‘modern slavery’ is frequently used colloquially and by stakeholders, New Zealand has certain pathways⁵ specifically for victims of trafficking within its domestic framework.⁶ This bill is titled the ‘Combating Trafficking in Persons and Modern Day Forms of Slavery Act’, reflecting the integration of both terms across the provisions.

The terminology used also reflects states obligations under international law, which prescribes specific duties in areas such as prosecution and the provision of protections for victims and survivors. Moreover, technical terminology facilitates international state cooperation, as transnational criminal activity often requires states to rely on harmonised legal language developed through international treaties. Other jurisdictions that employ the term ‘modern slavery’ in their domestic policies have similarly adopted interchangeable language in their own domestic policy.⁷

5. Police-certified victims of people trafficking are eligible to receive publicly funded healthcare under Section B12 of the Ministry of Health’s Eligibility Direction, and may be eligible for welfare support, administered by the Ministry of Social Development, under Clause 15E of the Special Needs Grants Programme. A number of trafficking victim visa options are also available (special work visa for victims of people trafficking - see INZ Operational Manual: Temporary Entry, V3.135, W116, U10.5, residence category visa for victims of human trafficking - see INZ Operational Manual: Residence S4.15, child trafficking visas - see NZ Operational Manual V3.135, U10.5)
6. It can be helpful to remember that trafficking in persons is an offence about the intent to exploit an individual, the forms of exploitation within the offence being the forms of exploitation generally captured under the ‘modern slavery’ umbrella (for example, someone is trafficked for the purpose of sexual exploitation, forced labour, servitude etc).
7. For instance, while the UK’s legislation is titled the ‘Modern Slavery Act’, its provisions use technical legal terms for clarity and compliance with international standards.

‘Victim’

The term ‘victim’ has been used in this report and bill. This is to reflect and provide for compatibility with existing terminology in relevant domestic and international law and policy. The authors acknowledge the terms ‘victim - survivor’/‘survivor’ and/or ‘person with lived experience’ are often preferred and appropriate. These terms have been incorporated in certain provisions of the bill. The authors recommend that should the bill progress, Parliament should consider this terminology, incorporating any advice and insight from survivors/persons with lived experience.

Scope of obligations for reporting entities

Due Diligence

While this bill does not explicitly mandate due diligence, it incorporates mandatory reporting criteria that closely align with core modern slavery due diligence principles. These criteria include:

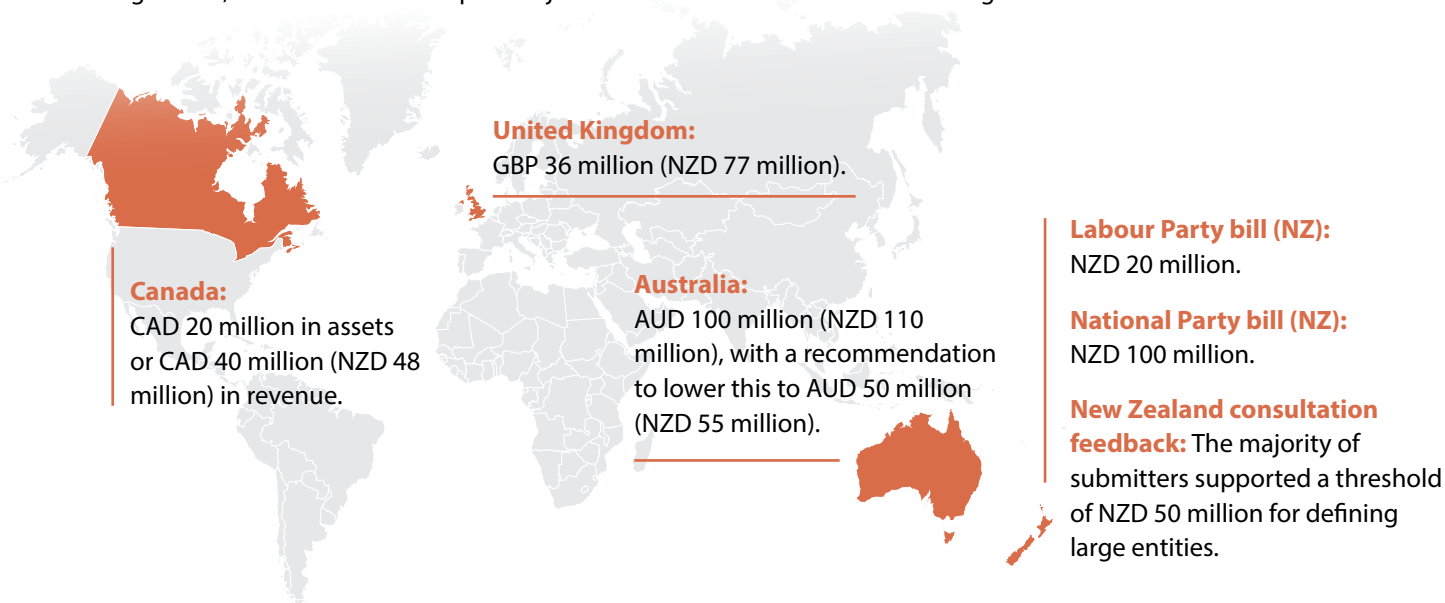
- Identifying and assessing modern slavery risks within operations and supply chains;
- Taking actions to mitigate those risks;
- Tracking the entity’s performance in risk mitigation efforts; and
- Publicly reporting on the effectiveness of these processes.

By fulfilling these reporting requirements, New Zealand entities would effectively align with due diligence laws through their modern slavery reporting. Over time, this framework is likely to promote the integration of due diligence practices into company policies, which aligns with mandatory requirements under EU law⁸ and recommendations from Australia’s recent legislative review.⁹ If the recommendation from Australia’s review results in Australian legislation requiring mandatory due diligence for reporting entities, there is a strong case for New Zealand including mandatory due diligence provisions in this bill to ensure alignment and strengthen this practice across Asia-Pacific.¹⁰

Additionally, the bill includes a provision under Section 37(2) for a three-year review, requiring the Minister to consider whether mandatory due diligence requirements should be introduced beyond the existing obligations. This phased approach is consistent with modern slavery legislation jurisprudence, which often begins with transparency and reporting provisions before transitioning to mandatory due diligence in subsequent stages.

Financial Threshold

Bearing in mind, the objective is a consensus law, in determining the financial threshold for reporting entities under this legislation, thresholds from comparable jurisdictions were reviewed to ensure alignment with international standards:



8. For example the EU Directive on Corporate Sustainability Due Diligence (Directive 2024/1760)

9. John McMillan, *Report of the statutory review of the Modern Slavery Act 2018 (Cth) - The first three years* (2023) <https://www.ag.gov.au/statutoryreviewofthemodernslaveryact>

10. Ibid.

Based on this analysis, a threshold of NZD 50 million was proposed, which would capture approximately 1,450 entities in New Zealand.¹¹ For comparison, a threshold of NZD 20 million would include approximately 3,600 entities.¹² To address entities operating in high-risk sectors, the bill includes provisions under section (2)(c) to ensure these entities are covered regardless of their financial threshold.

Appointment of an Independent Anti-Slavery Commissioner

The Bill provides for the appointment of an Independent Anti-Slavery Commissioner (IASC or Commissioner). However, recognising the need to consider fiscal implications, the appointment is discretionary within the first three year period. The IASC will monitor compliance, offer guidance, and advocate for efforts to combat and address modern slavery and trafficking in persons.

Bringing together prevention, protection, and prosecution (enforcement)

Efforts to combat modern slavery in operations and supply chains cannot be isolated from policies related to victim protection and prosecution; together, these elements form part of a cohesive modern slavery response. The bill incorporates both protection and enforcement provisions alongside the requirements for actions for entities accordingly. Coherence across policy definitions is essential, and entities need to consider and engage with the relevant state systems and frameworks when addressing risks or instances of modern slavery. Whilst the bills' requirements on entities extend beyond those of the UK's Modern Slavery Act 2015, its structure is similar. Like the UK Act, the bill reforms criminal provisions, establishing consistent definitions, and includes victim support provisions, recognising the need for an integrated approach to modern slavery.

New Zealand's current legislative and policy landscape demonstrates efforts to align with international obligations, particularly the Palermo Protocol, which mandates the prevention, suppression and punishment of trafficking in persons.¹³ These measures include criminalising trafficking under 98B and 98D of the Crimes Act 1961; a victim certification process;¹⁴ regulations in relation to access to health and social services;¹⁵ and specific visas for trafficking victims.¹⁶

Despite existing efforts, New Zealand has faced international criticism for its response to trafficking in persons and modern slavery. For several consecutive years, the United States State Department has ranked New Zealand at Tier 2 in its annual Trafficking in Persons (TIP) Report¹⁷ for "not meeting the minimum standards required to combat trafficking in persons."¹⁸ Similarly, as part of this year's Universal Periodic Review, New Zealand received 13 recommendations from states to enhance its efforts to address trafficking in persons, and six recommendations related to business and human rights, including increasing action on modern slavery in supply chains.¹⁹

11. Selwyn Coles, *Modern Slavery Law comes to New Zealand: exploring the motivations of local actors*. A thesis submitted for the degree of Masters of Philosophy in Socio-legal research. Trinity 2022.

12. Ibid.

13. UN General Assembly. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. 2000. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

14. Police instructions. People trafficking and smuggling. Available at: <https://policepolicy.nz/policies/people-trafficking-and-migrant-smuggling/u-nucqw/people-trafficking-and-migrant-smuggling-redacted-150922.pdf>

15. Police-certified victims of people trafficking are eligible to receive publicly funded healthcare under Section B12 of the Ministry of Health's Eligibility Direction and may be eligible for welfare support, administered by the Ministry of Social Development, under Clause 15E of the Special Needs Grants Programme.

16. As set out by Immigration New Zealand, here: <https://www.immigration.govt.nz/about-us/policy-and-law/integrity-of-the-immigration-system/people-trafficking/help-for-victims-of-people-trafficking>

17. United States Department of State. Office to monitor and combat trafficking in persons. Trafficking in Persons Report: New Zealand. 2021, 2022, 2023, 2024

18. United States Department of State. Office to monitor and combat trafficking in persons. Trafficking in Persons Report: New Zealand. 2022 Available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report-new-zealand/>

19. Commentary from the Human Rights Commission on the UNPR recommendations available here: <https://tikatangata.org.nz/news/government-to-respond-to-259-human-rights-recommendations>

Since the introduction of section 98D into the Crimes Act 1961 in 2002, only four prosecutions for trafficking offences have been brought. All four have relied on a single, narrow framing of trafficking (arranging entry of a person into New Zealand by deception). Significant parts of the trafficking provision, like the use of means other than deception, and forced labour, have never been charged.

The bill reforms these provisions to strengthen New Zealand's ability to prosecute offenders and identify victims, and to better align with the Palermo Protocol. Specifically, the bill resolves a particular issue for child trafficking cases, with 98D reformed to no longer require the 'means' element for child matters, aligning with the Palermo Protocol and reflecting the vulnerability of children. Further issues, such as restrictive definitions of 'means' and 'exploitation', have been resolved, and forms of exploitation have been defined to provide clarity and more usable provisions for law enforcement and prosecutors.

The bill also seeks to improve and clarify the certification process for victims of trafficking, providing provisions, including the requirement for statutory guidance, to inform victim referral, support and identification. Currently, victims are at risk of falling through the cracks, and being unable to access their support entitlements. Emergency accommodation is not available beyond any individual arrangements made. The provisions within the bill provide clarity for officials and stakeholders, ensuring there are appropriate pathways to access victim identification and support processes that do not compromise enforcement activity. Further practical elements have been introduced, such as the provision of legal aid for trafficking visa applications, eliminating barriers for victims who need legal representation to apply for the existing immigration pathways.

Appendix One sets out a summary of the provisions in the bill for ease of reference.

Compliance with the rules for members bills

The bill, including the provisions referred to above, has been drafted to comply with the rules for members bills, namely that it relates to one subject matter, and that the proposal would not have more than a minor impact on the Government's fiscal aggregates if it became law.²⁰

Enhancing New Zealand's Global Standing and Market Competitiveness

Modern slavery legislation is not only a moral imperative but also a strategic measure that enhances New Zealand's economic stability and international reputation:

- This legislation strengthens global supply chains, reduces exploitation, and reinforces New Zealand's position in trade agreements. By promoting ethical business practices and supply chain transparency, it supports sustainable economic growth.
- Adhering to international trade agreements is vital for New Zealand businesses, especially as the government seeks to increase trade by 50% over the next decade.
- Non-compliance could result in trade sanctions, tariffs, and harm to diplomatic relationships.

20. Establishment of a register is not a significant cost. An online notification form for data collection is not a significant cost. Provisions related to initial appointment of an independent anti-slavery commissioner are discretionary to allow consideration of cost of office. Support provisions reflect existing support frameworks. Provision of legal aid would be subject to existing eligibility criteria.

- There are specific clauses in the NZ-UK and NZ-EU FTA's that underscore that modern slavery legislation is needed:
 - The NZ-UK Free Trade Agreement underscores the need for measures addressing modern slavery in supply chains.²¹
 - The NZ-EU Free Trade Agreement prioritises labour rights in the supply chain and supports corporate social responsibility.²²
- Implementing modern slavery laws would align New Zealand with business standards practised by key partners such as Australia, Canada, the UK, and European nations.
- It would help address New Zealand's "Tier 2" ranking in the US State Department Trafficking in Persons Report for 4 years for not meeting minimum standards.²³
- It would also assist in the government meeting its commitments under international law. The government recently accepted recommendations that address strengthening trafficking in persons legislation in New Zealand.²⁴ Furthermore, in its recent review the Committee on the Elimination of All Forms of Discrimination Against Women highlighted the lack of progress with modern slavery regulation.²⁵

Doing What is Right for Victim-Survivors of Modern Slavery

Most importantly, modern slavery legislation will protect and support victim-survivors of modern slavery. Enacting this law will:

- Provide a structured framework for identifying and addressing modern slavery, ensuring that victims are recognised and supported through comprehensive measures.
- Establish clear responsibilities for businesses to detect, mitigate, and report instances of modern slavery within their supply chains, contributing to earlier intervention and prevention.
- Enhance victim protection by laying the groundwork for improved access to support services, which is currently limited under existing legal frameworks.
- Address gaps in the current system, such as restrictive definitions and operational inconsistencies that hinder the effective prosecution of traffickers, particularly in child trafficking cases.
- Promote the development of a national referral mechanism to ensure that victims receive coordinated assistance, aligning with best practices observed in other jurisdictions.
- Demonstrate New Zealand's commitment to upholding human rights and ensuring that no one profits from exploitation or abuse. Addressing modern slavery is not only a legislative priority but a fundamental step in prioritising human dignity and justice for those affected.

21. Chapter 23, Article 23.3 and 23.9

22. Article 19.12

23. US Department of State, 2024 Trafficking in Persons Report: New Zealand (2024) <https://www.state.gov/reports/2024-trafficking-in-persons-report/new-zealand/>

24. UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review- New Zealand* (27 August 2024)

25. Committee on the Elimination of Discrimination against Women, *Concluding observations on the ninth periodic report of New Zealand* (29 October 2024) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FNZL%2FCO%2F9&Lang=en



Timing of this Bill

An announcement that this bill will progress is required before the end of 2024 to ensure there is time for the bill to pass during this term of government.

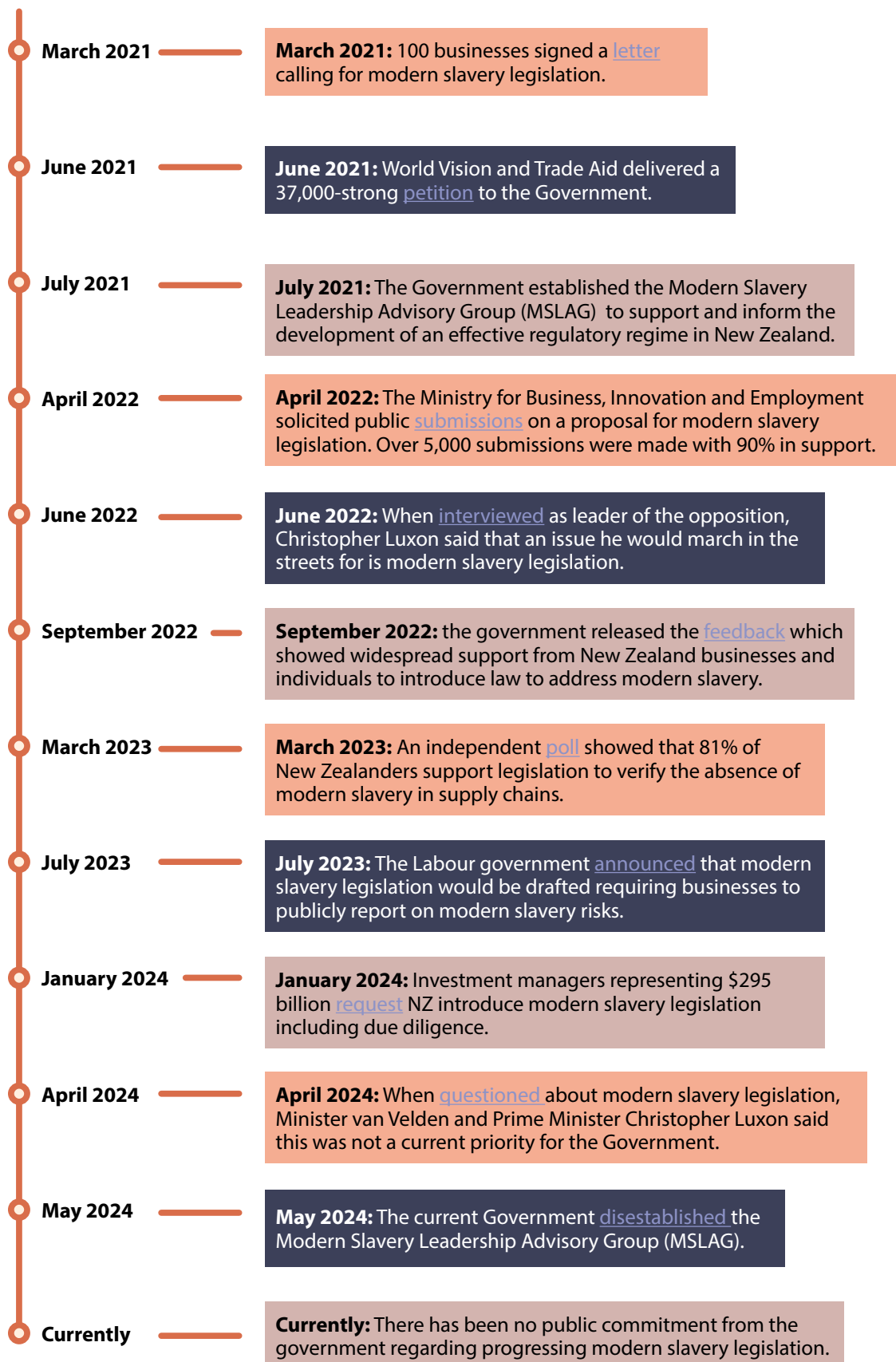
Enacting this law within the current term is important to sustain the momentum built for modern slavery legislation in New Zealand over the last three years, and to prevent New Zealand from falling significantly behind its global counterparts. It is becoming increasingly imperative to have measures in place to identify and mitigate modern slavery in order for New Zealand businesses to remain competitive in global markets.

In recent years, the New Zealand government and political representatives have taken steps to advance modern slavery legislation. In 2022, the Labour government launched a public consultation on proposed legislation to address modern slavery and worker exploitation in operations and supply chains and established the Modern Slavery Leadership Advisory Group of experts to advise on the policy proposals. Evidence of political consensus around the core aspects of the proposed policy emerged, with members of the National opposition party voicing support for legislative efforts, including the submission of a national party private member's bill that outlined modern slavery disclosure obligations for entities. However, neither the member's bill nor the government's proposed legislation progressed sufficiently to be introduced before the end of the previous term of government.

Proposals for legislation to address modern slavery in the operations and supply chains of entities have consistently received significant stakeholder support. Civil society organisations have also made repeated recommendations to strengthen existing provisions, including improving New Zealand's criminal law to better address the trafficking of children.²⁶ The experts involved in drafting this bill have aimed to build on past efforts, ensuring continued legislative progress.

26. Open letter to the Minister of Justice (18 March 2022) https://www.htrc.nz/_files/ugd/2ffdf5_e98d138a9d9b4f0291f3a8871d2876f2.pdf

Timeline of progress towards modern slavery legislation



This section outlines the full modern slavery bill with annotations that provide explanations for why policy decisions or amendments to existing law have been made.

Modern slavery bill – Annotated

Combatting Trafficking in Persons and Modern Day Forms of Slavery Bill (Modern Slavery Bill)

Explanatory note

This Bill requires reporting entities to report on how they identify, address, mitigate and remediate the risks of trafficking in persons and broader forms of modern slavery within their operations and supply chains. It also establishes an Independent Anti-Slavery Commissioner as an independent statutory officer.

Additionally, this Bill strengthens the legal framework for trafficking in persons offences and the protection of victims. These updates align definitions with international standards, and enhance the enforcement of criminal provisions and compliance, ensuring that operations and supply chain reporting obligations on entities are supported by a robust legal framework.

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Combatting Trafficking in Persons and Modern Day Forms of Slavery Act 2024

2 Short title

Modern Slavery Act

3 Commencement

This Act shall come into force on [date]

4 Interpretation

In this Act, unless the context otherwise requires,—

The definition of terms and inclusion of terms within this section is explained within commentary relating to the relevant sections and the introductory comments to the bill.

anti-slavery commissioner means the Independent Anti-Slavery Commissioner referred to in Part 3

competent authority means the government authority delegated by the Minister to perform the designated functions described in this Act

joint modern slavery statement means a report prepared and submitted by two or more reporting entities, outlining the collective actions taken during the previous financial year to address and mitigate modern slavery risks across their combined operations and supply chains in compliance with section 6 of this Act

modern slavery includes conduct that would constitute:

This is an inclusive, non exhaustive definition, allowing flexibility of any forms of modern slavery not captured by the below terms to still fall within the definition.

- (a) Slavery, servitude, or forced or exploitative labour according to Section 98B of the Crimes Act 1961
- (b) Exploitation of the prostitution of others, or sexual exploitation according to Section 98B of the Crimes Act 1961
- (c) Forced services according to Section 98B of the Crimes Act 1961
- (d) Trafficking in persons according to Section 98D of the Crimes Act 1961
- (e) The worst forms of child labour according to Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and Section 98AA of the Crimes Act 1961 (forced or compulsory labour of children)
- (f) Debt bondage or serfdom according to Section 98 of the Crimes Act 1961

The definitions in (a) to (d) reflect the provisions within this bill at Part 10 (sections 34 and 35), not the existing provisions of the Crimes Act 1961. These terms have been defined in our bill through our proposed amendments to sections 98B and 98D of the Crimes Act 1961 to introduce a definition of a term where there currently is not one available in New Zealand legislation, and to provide clarity to the existing provisions. It is important that there is consistent understanding and application of relevant terminology in contexts broader than criminal enforcement (for example victim identification) so the authors have sort to provide for this through including these definitions in the definition of modern slavery in this bill.

modern slavery incident means an event, practice, or occurrence involving modern slavery within an entity's operations or supply chains

modern slavery statement means a report prepared by a reporting entity to outline the actions taken during the previous financial year to address modern slavery risks in its operations and supply chains in compliance with section 6 of this Act

operations mean all activity undertaken by an entity to pursue its objectives and strategy, including all material relationships an entity has which are linked to its activities, for example: investment and lending activity; material shareholdings; and direct and indirect contractual relationships (such as subcontracting and franchising relationships) reporting entity see section 5

supply chain means 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

trafficking in persons as set out in Section 98D of the Crimes Act 1961

victim of trafficking means a victim of trafficking in persons

Part 1

Reporting Entities

5 Meaning of Reporting Entity

(1) A reporting entity, for the purposes of this Act, is any entity that meets the following criteria:

- (a) The entity is either:
 - (i) A New Zealand entity; or
 - (ii) An entity that conducts business in New Zealand.

See s5(3) for the meaning of a New Zealand entity and an entity that conducts business in New Zealand.

- (b) The entity had a consolidated annual revenue of at least \$50 million during its most recent financial year.

When determining the financial threshold for modern slavery legislation, we reviewed thresholds used in other jurisdictions and sought alignment with international standards:

Canada: CAD 20 million in assets or CAD 40 million (NZD 48 million) in revenue.

Australia: AUD 100 million (NZD 110 million), with a recommendation to lower this to AUD 50 million (NZD 55 million).

United Kingdom: GBP 36 million (NZD 77 million).

National Party bill (NZ): NZD 100 million.

Labour Party bill (NZ): NZD 20 million.

New Zealand consultation feedback: The majority of submitters supported a threshold of NZD 50 million for defining large entities.

Based on this analysis, we propose setting the threshold at NZD 50 million, which would cover approximately 1,450 entities in New Zealand. For context, a threshold of NZD 20 million would capture approximately 3,600 entities. The Australian Modern Slavery Register shows that 238 companies headquartered in New Zealand uploaded modern slavery statements to the register in 2023-2024.

Importantly, the legislation includes provisions under section (2)(c) to ensure that entities operating in high-risk sectors could be captured as reporting entities regardless of their financial threshold.

(2) The following entities are also considered reporting entities:

- (a) Any entity that controls, directly or indirectly, an entity that meets the criteria outlined in subsection (1);

This is consistent wording with comparable modern slavery legislation.

- (b) An entity that voluntarily opts to comply with the requirements of this Act, regardless of meeting the revenue threshold;

This gives organisations the ability to voluntarily submit a modern slavery statement if they don't reach the financial threshold.

- (c) An entity that is directed to comply with the requirements of this Act by the Registrar due to the operation of the entity in a geography or sector at high risk of modern slavery or due to other relevant factors as identified by the Registrar.

See s 7(1) that outlines that The Minister shall establish and maintain a central, publicly accessible register (the "Register") for Modern Slavery Statements and appoint a Registrar to administer that register.

This provision allows the Registrar to request that entities operating in geographies, sectors or products at high-risk of modern slavery can submit modern slavery statements as reporting entities regardless of financial threshold.

In practice, for example, this could mean that the Registrar could issue an instruction that NZ companies importing polysilicone from Xing Jiang, China may have to publish a modern slavery statement regardless of financial threshold due to polysilicone/solar panels being at high-risk of modern slavery.

This follows emerging jurisprudence that prioritises a high-risk prioritisation to due diligence and modern slavery reporting in the EU, Germany, France.

(3) For the purposes of this section:

(a) A "New Zealand entity" is an entity incorporated, registered, or constituted under New Zealand law;

This broadly covers all New Zealand entities that are registered or incorporated or constituted according to New Zealand law including, private, public, governmental and non-governmental entities.

(b) An entity "conducts business in New Zealand" if it has a place of business in New Zealand, and commercial activities in New Zealand that meet the threshold outlined in section (1)(a), whether directly or through subsidiaries or other arrangements;

This section aligns with s32(a) of the Companies Act 1993 including the definition of "carrying on business" in New Zealand. It means that any entity that has a registered place of business/ office and meets the 50 million threshold is considered a reporting entity.

(c) An entity "controls" another entity if it:

- (i) Directly or indirectly holds more than 50% of the voting shares or ownership interests; or
- (ii) Has the ability to govern the financial or operating policies of the entity.

This is consistent wording with comparable modern slavery legislation.

(4) The threshold for consolidated annual revenue may be decreased by regulations made under this Act, considering high-risk modern slavery sectors, economic changes and commercial developments within New Zealand and globally.

This section allows the consolidated annual revenue to be decreased according to economic and commercial developments within New Zealand and globally - a clause in comparable modern slavery legislation. It also allows threshold to be decreased for companies operating in sectors at high-risk of modern slavery, in alignment with s 5(2)(c) above.

Part 2

Reporting Obligations

6 Mandatory Criteria for Modern Slavery Statements

Mandatory criteria aligns with the Modern Slavery Act 2018 (Cth) (AUS MSA), the Report of the statutory review of the Modern Slavery Act 2018, OECD guidelines and UN Guiding Principles on Business and Human Rights.

See note on due diligence in scope and terminology. This criteria follows what is expected in due diligence reporting: identifying and assessing modern slavery risks within operations and supply chains, taking actions to mitigate those risks, tracking the entity's performance in risk mitigation efforts, and publicly reporting on the effectiveness of these processes.

(1) A Modern Slavery Statement must:

(a) Identify the reporting entity.

Description of structure, operations and supply chains

(b) Describe the structure, operations and supply chains of the reporting entity, including any entities owned or controlled by the reporting entity.

(c) Include details of both domestic and international operations and supply chains.

Risk identification and assessment

(d) Describe the incidents and risks of actual or potential modern slavery practices within the operations and supply chains of the reporting entity and any entities the reporting entity owns or controls.

Modern slavery incidents is an addition recommended in the Statutory Review report that we have adopted (Recommendation 8). A modern slavery incident is defined in the definitions section. This outlines that actual and potential incidents and risks of modern slavery practices should be described.

Actions taken to address incidents and risks

(e) Describe any actions taken by the reporting entity, and any entity that the reporting entity owns or controls, to assess, prevent, address, mitigate and remediate incidents and risks identified in (d).

Remediation and accountability

(f) Detail:

(i) the number of complaints relating to modern slavery made to the entity and;

Outlining number of complaints aligns with the EU Directive Sustainability Due Diligence regarding creating a complaints mechanism and recommendations from the Australian Statutory review to give transparency regarding whether complaints are being filed against an entity.

(ii) the measures taken to provide remediation for any modern slavery incidents identified within the operations or supply chains of the reporting entity

The UNGP's and OECD guidelines outline that when businesses have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes (Guiding Principle 25).

Assessment of effectiveness

- (g) Describe how the reporting entity assesses the effectiveness of the actions taken under (e) and (f) to ensure modern slavery is not being used in its operations and supply chains and describe the continual improvement of remediation practices.

This aligns with the Australian Act urging companies to go beyond minimum compliance and demonstrate continuous improvement in their response to modern slavery and reporting.

Consultation and training

Adding in training is a recommendation from the Australian statutory review.

- (h) Describe the process of training and consultation undertaken by the reporting entity with:
 - (i) Internal staff members
 - (ii) Any entities owned or controlled by the reporting entity; and
 - (iii) Any other external entities, where applicable, that are party to the disclosure or affected by modern slavery risks in the supply chain.

Approval of the Statement

- (i) For single reporting entities:
 - (i) Be approved by the board of directors or equivalent governing body of the reporting entity, and
 - (ii) Be signed by a director, or a person in a similar position of authority within the reporting entity.

This is consistent with UK and Australian legislation. It is important that modern slavery legislation is integrated into organisations and board sign off is a way of ensuring senior leadership oversight as well as whole-organisation buy in.

- (j) For joint reporting entities:
 - (i) Be approved by the board of directors or equivalent governing body of:
 - (A) each reporting entity covered by the statement; or
 - (B) an entity that controls, either directly or indirectly, any reporting entity subject to the statement, regardless of whether it is itself covered by the statement, and
 - (ii) Be signed by a director, or a person in a similar position of authority within:
 - (A) each reporting entity covered by the statement, or
 - (B) an entity that controls, either directly or indirectly, any reporting entity subject to the statement.

7 Modern Slavery Statements Register

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

- (1) The Minister shall establish and maintain a central, publicly accessible register (the "Register") for Modern Slavery Statements and appoint a Registrar to administer that register.

This is a cost-effective way of administering this regulatory function without having to set up a regulatory body or branch.

- (2) The Register must:
 - (a) Be easily searchable by the public, enabling users to efficiently locate specific statements;
 - (b) Provide the option to download Modern Slavery Statements in full, supporting transparency and accountability; and
 - (c) Allow for the submission of Modern Slavery Statements through an online portal.
- (3) The Registrar shall:
 - (a) develop:
 - (i) a standardised coversheet to be used by all reporting entities; and
 - (ii) an optional template to assist reporting entities in preparing and submitting their Modern Slavery Statements; and

A cover-sheet is a recommendation from the Australian review to highlight specified matters and where to find matters in the statement. It assists with searchability and transparency and provides uniformity and comparability.

An optional template is also a recommendation in Australian review - with the purpose of making it as easy as possible to report, able to be done in-house and ensure that mandatory criteria is covered.

- (b) facilitate the submission process via an online portal linked to the Register.

8 Requirements for reporting entities to publish Modern Slavery Statements

- (1) All reporting entities are required to submit a Modern Slavery Statement that complies with section 6 of this Act and in doing so must:
 - (a) Upload their Modern Slavery Statement to the Register; and
 - (b) If the reporting entity maintains a website, publish the same Modern Slavery Statement in a prominent and easily accessible location on their website.

This ensures that modern slavery statements are listed prominently on entities websites and easily found.

- (2) The version of the Modern Slavery Statement published on the entity's website must be identical to the version submitted to the Register.

9 Frequency of Reporting

- (1) Reporting entities required to submit a Modern Slavery Statement under this Act must do so annually, within six months following the end of their financial year.

This is consistent wording with comparable modern slavery legislation.

10 Public Access, engagement and guidance

- (1) The Register must be freely accessible to the public, without any fees or barriers to access.

- (2) The Registrar is responsible for regularly updating the Register with all submitted Modern Slavery Statements and ensuring it operates effectively, offering easy search and download capabilities.
- (3) The Register must be designed to be user-friendly and accessible to all, including individuals with disabilities.
- (4) The Registrar may issue guidelines to facilitate compliance with reporting obligations including guidelines outlining sectors, geographies and products at high risk of modern slavery.

11 Offences

Research and reviews have shown that for legislation addressing modern slavery to have impact, it must be upheld. Penalties for noncompliance and enforcement frameworks must be in place to make sure that entities are incentivised to adhere to their obligations.²⁷

- (1) Every reporting entity is liable on conviction to a fine not exceeding \$200,000 for committing any of the following offences:
 - (a) Failing to prepare, submit and publish a Modern Slavery Statement to the Register; or
 - (b) If the reporting entity maintains a website, failing to publish the Modern Slavery Statement on their website; or
 - (c) Submitting or publishing an incomplete Modern Slavery Statement that fails to address the mandatory criteria in section 6.
- (2) Every person that knowingly makes any false or misleading statement or knowingly provides false or misleading information in a Modern Slavery Statement commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year, a fine not exceeding \$200,000, or both.

See comparative analysis. This figure reflects the threshold being higher than in the labour consultation. Some jurisdictions are now suggesting a percentage of annual revenue should be a financial penalty ie (EU: 10%, Germany: 2%) This would be a good question to consider through consultation on this bill.

- (3) This section does not apply to a reporting entity that is a government agency.

12 Liability of directors or other persons involved in the management of reporting entities

The wording of this provision mirrors director liability sections in other regulatory frameworks in New Zealand and requires either actual knowledge or constructive knowledge coupled with a failure to act.

This section ensures robust oversight and accountability and ensures that a duty to prevent and mitigate modern slavery be taken seriously.

- (1) If a reporting entity is convicted of an offence against this Act, a director of the reporting entity (if any), or a person involved in the management of the reporting entity, is guilty of the same offence and liable on conviction to the same penalty if it is proved—
 - (a) that the act or omission that constituted the offence took place with the director or person's authority, permission, or consent; or
 - (b) that the director or person knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

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

13 Publication of Non-Compliance Decisions

This clause fosters public accountability and transparency and also promotes stronger industry standards.

- (1) Upon any conviction being entered under section 11, the following information will be published in a dedicated section of the register:
 - (a) The name of the reporting entity.
 - (b) A description of the offence.
 - (c) The applicable penalty imposed.
- (2) The published information will remain accessible on the register for a period of three (3) years from the date the decision becomes final.
- (3) The publication of non-compliant decisions aims to enhance transparency, promote accountability, and inform the public about entities failing to meet their obligations under this Act.

14 Exclusion from public procurement processes

This is comparable with other jurisdictions that exclude entities from public procurement processes when implicated in modern slavery offences.

- (1) Where a reporting entity is found to have committed repeated offences under this Act, the entity may be excluded from being awarded public contracts for a period of up to (3) three years.
- (2) The decision to exclude a reporting entity from public procurement shall be made in accordance with New Zealand Government Procurement Rules.

Rule 44 of the New Zealand Government Procurement Rules states that an agency can exclude a supplier from a contract opportunity if there is a good reason to do so including that the supplier or their supply chain violated human rights.

Part 3

Establishment of Independent Anti-Slavery Commissioner

This section provides for the establishment and appointment of an Independent Anti-Slavery Commissioner (IASC). The government consultation included questions in relation to an independent oversight mechanism (which the Commissioner position functions as). Most submitted agreed that an independent oversight mechanism is necessary, with many recommending this for oversight, guidance and to drive best practice and continuous improvement.²⁸

15 Independent Anti-Slavery Commissioner

The role of an IASC can support New Zealand's efforts to combat trafficking in persons and modern slavery. There are comparable aspects to the role of a special rapporteur - an independent expert who monitors specific human rights. The functions of the Commissioner as set out in section 18 would provide assistance for New Zealand's efforts and continual improvement. Appointment of a Commissioner aligns with the approaches of other jurisdictions, including Australia, who announced the inaugural Australian Anti-Slavery Commissioner on 11 November 2024.²⁹

(1) The Governor General may appoint a person as the Independent Anti-Slavery Commissioner.

The appointment has been provided as a discretionary option within the initial three year period of the Act being in effect, to allow for any uncertainties around available budget. At time of the three year review, if appointment has not taken place, it must do.

(2) A person must not be appointed under subsection (1) as the Commissioner unless the Governor General is satisfied that the person has the appropriate knowledge, skills, and experience to assist the statutory entity to achieve its objectives and perform its functions, including in two or more of the following fields:

There are similar requirements for appropriate qualifications of an IASC under section 20L of the AUS MSA. Appropriate expertise is needed to ensure the Commissioner can be effective in and perform the functions of the role.

- (a) human rights issues relating to business practices, preferably including modern slavery issues;
- (b) knowledge or experience in public policy and operational frameworks and activities relating to combating forms of modern slavery, including combating trafficking in persons which may include experience engaging with victims of modern slavery or trafficking in persons;
- (c) skills in, or experience in;
 - (i) advocacy or public education;
 - (ii) community affairs;
 - (iii) regulation.

(3) The selection of the person for the appointment is the result of a process that:

- (a) was merit based; and
- (b) included public advertising of the position.

28. Reference. 2022 Consultation on Legislation to Address Modern Slavery and Worker Exploitation: Summary of Feedback at 18. Available at: <https://www.mbie.govt.nz/assets/consultation-on-legislation-to-address-modern-slavery-and-worker-exploitation-summary-of-feedback.pdf>

29. <https://ministers.ag.gov.au/media-centre/appointment-australias-first-anti-slavery-commissioner-11-11-2024#:~:text=I%20am%20pleased%20to%20announce,dignity%2C%20fundamental%20rights%20and%20freedoms.>

- (4) Subsection (2) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Commissioner under a previous appointment under subsection (1).
- (5) The Commissioner's appointment period must not exceed 5 years.

This aligns with the Australian and New South Wales terms of office for an IASC.³⁰

- (6) A person is not eligible for appointment more than twice.

16 Terms of office

Provisions to provide for a functioning office. Similar provisions in the UK Modern Slavery Act 2015 (UK MSA) (section 40) and NSW MSA (section 8) and AUS MSA (section 20F).

- (1) The Governor General may pay in respect of the Commissioner any expenses, remuneration or allowances that the Governor General may determine, including staffing expenses.
- (2) The Commissioner may, in accordance with expenses permitted in subsection (1):
 - (a) appoint staff, or engage such consultants or contactors as are necessary, to enable the Commissioner to exercise the Commissioner's functions
 - (b) arrange for the use of the services or facilities of a government agency.
- (3) The Governor-General may terminate the appointment of the Commissioner:
 - (a) for misconduct; or
 - (b) if the Commissioner is unable to perform the duties of the Commissioner's office because of incapacity or incompetence.
- (4) After a Commissioner has been appointed, as soon as practicable after the office of the Commissioner becomes or is vacant, a Commissioner or acting Commissioner must be appointed.
- (5) The Governor General may, by written instrument, appoint a person to act as the Commissioner:
 - (a) during a vacancy in the office of the Commissioner; or
 - (b) during any period, or during all periods, when the Commissioner is absent from duty or is, for any reason, unable to perform the duties of the office.

17 Independence

The independence of the IASC is a core to the effectiveness of the role. As stated by a submitter to the government consultation and included in the government's publication of the response, "The independence of the role from government would be integral to its success and provide for a stronger accountability mechanism for the State's efforts."³¹

- (1) The Commissioner is not subject to the control or direction of any Minister in respect of the exercise of the Commissioner's functions under this Act.

30. NSW Modern Slavery Act 2018 No 30 Section 6 (NSW MSA), AUS MSA Section 20N.

31. 2022 Consultation on Legislation to Address Modern Slavery and Worker Exploitation: Summary of Feedback at 18. Available at: <https://www.mbie.govt.nz/assets/consultation-on-legislation-to-address-modern-slavery-and-worker-exploitation-summary-of-feedback.pdf>. NSW MSA (section 7) and AUS MSA (section 20J) have express provisions related to independence.

18 Functions of the Commissioner

This section provides for mandatory functions. The mandatory function of encouraging action related to prevention, protection and prosecution reflect the three internationally recognised pillars to combat trafficking in persons.³² The fourth pillar ‘partnership’ reflected in subsection (2). As well as alignment with international frameworks, this aligns with New Zealand’s Plan of Action against forced labour, people trafficking and slavery, 2020 - 2025.³³ The UK MSA (section 41), NSW MSA (section 9) and AUS MSA (section 20C) have provisions related to the function of the IASC.

- (1) The Commissioner must encourage action related to prevention, protection and prosecution (enforcement) to combat trafficking in persons, forced labour, and broader forms of modern slavery.
- (2) The Commissioner must encourage this activity to be undertaken by the government and other actors in partnership, including with victims, survivors and persons with lived experience of modern slavery.
- (3) In performing the functions, the Commissioner must take into account New Zealand’s relevant international obligations.

This is to ensure the functions of the IASC progress and account for alignment with New Zealand’s relevant international obligations, for example the Protocol to the Forced Labour Convention and The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) supplementing the United Nations Convention Against Transnational Organized Crime.

- (4) To achieve subsections (1) and (2), the Commissioner may:
 - (a) advocate for and promote action to combat modern slavery,
 - (b) monitor the effectiveness of legislation and governmental policies and action in combating modern slavery, and make recommendations accordingly,
 - (c) provide guidance, information, advice, education and training about action to combat modern slavery, including in relation to the provisions of this Act,
 - (d) co-operate with or work jointly with persons and organisations to combat modern slavery,
 - (e) monitor reporting concerning risks of modern slavery occurring in operations and supply chains,
 - (f) raise community and stakeholder awareness of modern slavery,
 - (g) exercise such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.

19 Advisory Panel

An option to establish an advisory panel to provide a formal format for cooperation with persons and organisations. For example, the NSW Anti-slavery Commissioner has an advisory panel which provides advice and counsel to the Commissioner.³⁴

- (1) In exercising the Commissioner’s functions, the Commissioner may:
 - (a) establish an expert advisory panel (appointment of any member must not exceed the commissioner term, but may be renewed in subsequent terms); and

32. UNODC. International Framework for Action To Implement the Trafficking in Persons Protocol. 2009.

33. MBIE. COMBATTING MODERN FORMS OF SLAVERY Plan of Action against Forced Labour, People Trafficking and Slavery 2020-25. Available at: <https://www.mbie.govt.nz/dmsdocument/13568-combattling-modern-forms-of-slavery-plan-of-action-against-forced-labour-people-trafficking-slavery>

34. <https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner/learn-more-about-the-office-of-the-nsw-anti-slavery-commissioner/nsw-anti-slavery-commissioner-s-advisory-panel.html>

- (b) work with, consult with, and disseminate information to, the persons and organisations that the Commissioner thinks appropriate, including with victims, survivors and persons with lived experience of modern slavery.

20 Strategic Plan

This section provides for the Commissioner's plan to be publicly available to stakeholders and for the plan to demonstrate how the Commissioner proposes to exercise the Commissioner's functions. The UK MSA (section 42), NSW MSA (section 11) and AUS MSA (section 20X) have similar provisions.

- (1) The Commissioner must, as soon as reasonably practicable, prepare and publish on a publicly available website a strategic plan.
- (2) The Commissioner may revise the strategic plan at any point.
- (3) The strategic plan must:
 - (a) state the period (not being less than one year) to which it relates, and
 - (b) outline the Commissioner's key objectives and priorities for that period.
- (4) In particular, and without limiting subsection 3, the plan must address section 18 of this Act.

21 Annual Report

This section provides for the Commissioner to prepare an annual report, omitting any information that could impact the safety of a person or prejudice an investigation, for example, ensuring omission of revealing details about an individual or case of modern slavery. The UK MSA (section 42), NSW MSA (section 19) and AUS MSA (section 20Y) have similar provisions.

- (1) The Commissioner is required to prepare an annual report.
- (2) The Commissioner must omit from any report before publication any material where publication may be likely to:
 - (a) jeopardise the safety of any person; or
 - (b) prejudice the investigation or prosecution of an offence.

22 Individual cases

Whilst the function of the IASC includes encouraging action related to the protection of victims, it is outside the scope of the role to work on a modern slavery case or act as a representative for an individual person as this could impact the independence of the position, and the functions of the office are not set up to provide individual case advice, support and advocacy. Recognising a victim or survivor could contact the IASC for assistance, subsection (2) allows for the referral to an appropriate service. The NSW MSA has a similar provision (section 10) and the AUS MSA has a provision that the Commissioner may not investigate or resolve complaints relating to a modern slavery case (20C).

- (1) The Commissioner must generally not exercise any function in relation to an individual case. The Commissioner may consider individual cases and draw conclusions about them for the purpose of, or in the context of, considering a general issue.
- (2) The Commissioner may, despite subsection (1), provide individuals and their families, friends and advocates with information about and referral to relevant government and non-government programs and services.

23 Duties of Public Authorities to cooperate with the Commissioner

Similar to provisions in the UK MSA (section 43), NSW MSA (section 14) and AUS MSA (section 20W), this provision ensures government agencies will cooperate with the Commissioner, allowing the Commissioner to perform the functions of the Commissioner's office.

- (1) The Commissioner may request a specified public authority to cooperate with the Commissioner in any way that the Commissioner considers necessary for the purposes of the Commissioner's functions.
- (2) A specified public authority must so far as reasonably practicable comply with a request made to it under subsection (1). This does not apply in relation to the provision of private personal information.

Part 4

Establishment of Ministerial Advisory Committee

This section provides for the establishment of a Ministerial Advisory Committee. In New Zealand, Ministers can set up committees to provide them with advice on particular issues. Such committees usually consist of suitably qualified people from outside the Public Service, although officials may also be involved. Given the complexity of modern slavery issues, it is appropriate for there to be an avenue for independent expert advice available for the relevant Minister, especially to assist the Minister with the review period (see section 36). Further, in the event an IASC is not appointed in the first three years the Act is in force, an advisory committee can assist with providing independent guidance and expert advice to the Minister. There have been existing Ministerial or Government advisory groups related to the implementation of New Zealand's modern slavery domestic frameworks, including the Modern Slavery Leadership Advisory Group. This Group was disbanded in 2024.³⁵

24 Advisory Committee

- (1) In exercising the Minister's functions in administering the Act, the Minister must establish a Ministerial Advisory Committee to provide the Minister independent expert advice.
- (2) Appointed members should hold appropriate expertise in trafficking in persons and modern slavery.
- (3) Committee membership should, as appropriate and where possible, include representation of victims, survivors or persons with lived experience, non-governmental organisations, other relevant organisations and other elements of civil society.

It is important for an advisory committee to reflect a broad range of relevant stakeholders. Without wanting to be over prescriptive as to the make up of the committee, the wording used in this section reflects the wording of Article 9 (3) of the Palermo Protocol.

- (4) The appointment of any member must not exceed a five-year term but may be renewed in subsequent terms.

An appointment term ensures opportunity for renewal and ongoing appropriate representation, both in terms of the expertise and stakeholders reflected on the Committee.

35. <https://newsroom.co.nz/2024/07/17/govt-shuts-down-modern-slavery-group/>

Part 5

Data

An ongoing recommendation for New Zealand to improve its efforts is to collect, track and manage relevant data to combat trafficking in persons.³⁶ This impacts the ability of the government to identify trafficking trends and develop effective responses. This section seeks to improve data collection and enable tracking of trends. The inclusion of this section is inspired by section 52 of the UK MSA, which has a similar provision.

25 Duty to notify

- (1) If a public authority to which this section applies suspects that a person may be a victim of trafficking or broader forms of modern slavery it must notify the Competent Authority.

See comments regarding section 26 in relation to the setting of the evidential threshold and language used to be compatible with New Zealand's existing framework.

Broader forms of modern slavery than trafficking in persons have been included so that the data can assist entities who are identifying risks of modern slavery (as defined in this Act)

In practice, the notification can be a simple online form that provides information relating to the geography, type of potential exploitation, and other helpful factors that assist with building a picture of potential trafficking and modern slavery. The data can:

- Assist police and enforcement agencies to understand how and where modern slavery is happening;
- Support potential investigations;
- Provide insight into trends of risk industries, regions, forms of exploitation that provides insights that may help entities map modern slavery risk in their operations and supply chains; and
- Provide for data collection even in the instance a suspected victim does not want to formally identified as part of the certification process (which requires victim consent).

- (2) A notification relating to a person aged 18 or over may not include information that—

The duty to notify is relevant for adult victims only as child victims must be referred to appropriate services and support regardless of consent for safeguarding purposes. The referral will serve as the notification.

- (a) identifies the person, or
- (b) enables the person to be identified (either by itself or in combination with other information).

This is to ensure the privacy of the person is protected, and that no data can be published that places a person at risk of harm.

- (3) If a public authority to which this section applies suspects that a person may be a victim of trafficking the public authority should act in accordance with Section 26 in relation to referral of the person for certification.

The duty to notify section is relevant to the referral section of this Act, in that if a public authority who is a first responder organisation as set out in section 26 suspects a person is a potential victim of trafficking, if the person consents to referral for certification the first responder public authority must refer them and this serves as the notification (as the data will be collected via this process). However, if the person does not consent to the referral, the duty to notify still provides a mechanism for data collection regardless of the victims involvement in the referral system.

- (4) The Competent Authority must publish annually the number of notifications received and associated relevant data on a publicly available site.

36. US Department of State 2024, 2023, 2022, 2021 Trafficking in Persons Report: New Zealand. Available at <https://www.state.gov/reports/2024-trafficking-in-persons-report/new-zealand/>

(5) This section applies to:

The listed public authorities are government agencies who are likely to come into contact with suspected victims as part of the operations of the relevant agency.

- (a) The New Zealand police
- (b) The Ministry of Business, Innovation and Employment, including Immigration New Zealand
- (c) The Ministry of Social Development
- (d) Oranga Tamariki
- (e) Regional Councils
- (f) Territorial Councils or Authorities
- (g) Any public authority nominated by the Minister or Competent Authority

This discretion allows for a further agency to be included in the event there is benefit for other agencies who are operationally involved in trafficking matters to submit data reports, for example, the New Zealand Customs Service.

Part 6

Victim Referral and Support

This Part sets out provisions to support victim access to existing support frameworks. It supports alignment with the Palermo Protocol, and international standards regarding recovery and reflection periods for victims of trafficking. The sections aim to give effect to the victim certification process³⁷, regulations in relation to access to health and social services³⁸, and specific visas for trafficking victims.³⁹ As such, the sections do not cover all victims of modern slavery, as they do not seek to introduce a new framework for New Zealand, rather provide a clearer referral pathway and process to the existing mechanisms. In any event, the definition of exploitation in this Act under 98B, for the purpose of section 98D (the definition of trafficking in persons), contains the forms of exploitation that are included in the definition of modern slavery in this act. In practice, it is likely that many modern slavery victims within New Zealand would fall within the definition of trafficking in persons, and be captured by these provisions.

26 Referral for identification and support

“The obligation for early, formal identification and recognition of victims of trafficking is fundamental... to prevent trafficking and protect victims and it is independent of States’ obligation for effective criminal investigation.”⁴⁰ As set out in this report, New Zealand currently has a certification process for victims of trafficking. However, there is no clear referral mechanism process for victims to access that certification consideration, other than information on the INZ website that “The certification process is done by Immigration New Zealand and NZ Police. You do not apply to be certified as a victim of people trafficking. If NZ Police certify you as a victim of people trafficking, you (or the person you reported on behalf of) can access support services in New Zealand that may not otherwise have been available.”⁴¹ As such, an inference is the way the majority of persons could be considered for certification is if INZ or the NZP are involved in a case due to a trafficking investigation. Though investigation is a way a person may be identified, it is important that protection and support mechanism for victims of trafficking are not dependant on and are independent from a criminal investigation. This protects the integrity of any criminal investigation (as a victim cannot be accused of only being a witness to access support from the state given they could have accessed the support regardless of being involved in any criminal process).

37. Ibid n13

38. Police-certified victims of people trafficking are eligible to receive publicly funded healthcare under Section B12 of the Ministry of Health’s Eligibility Direction and may be eligible for welfare support, administered by the Ministry of Social Development, under Clause 15E of the Special Needs Grants Programme.

39. special work visa for victims of people trafficking INZ Operational Manual: Residence S4.15, child trafficking visas - see NZ Operational Manual V3.135, U10.5

40. OSCE. National Referral Mechanisms. JOINING EFFORTS TO PROTECT THE RIGHTS OF TRAFFICKED PERSONS. A Practical Handbook - Second Edition. 2022. Available at: https://www.osce.org/files/f/documents/f/5/510551_3.pdf

41. Available at: <https://www.immigration.govt.nz/about-us/policy-and-law/integrity-of-the-immigration-system/people-trafficking/help-for-victims-of-people-trafficking>

- (1) Specified government and non-government agencies must be designated as having First Responder Status.

A referral process that providers for both designated government and non government agencies is similar to the UK system, where there are designated government and non government first responder agencies to refer potential victims into the UK identification and support system.⁴²

“In the context of human trafficking, designated first responders (FR) are individuals who are trained to identify human trafficking; to stabilize and control a situation of human trafficking; prepare victims and pass information on to investigators with the victims’ informed consent.”⁴³

- (2) First Responder Status is to be reviewed every five years at the latest.

This is to ensure the agencies selected remain suitable with appropriate expertise, policies and practices, and that any new potential FR agencies can be identified.

- (3) The list of agencies with First Responder Status is to be published on a publicly available website.

Many stakeholders beyond FR agencies may come across a potential case, and want to refer the case to a FR for initial support and consideration. The information needs to be in the public domain for them to do so. Examples include (but are not limited to), health professionals, legal service providers, employers and employees in high risk industries, members of trade unions, educational staff.

- (4) First Responder agencies must provide information to a suspected victim of trafficking of their option of referral to the Competent Authority for assistance and certification.

Informed consent is a fundamental principle to a formal identification process and for a person to be able to provide that consent, they need to have been informed of their potential entitlements and available options, and what these mean.

“The government-recognized competent authorities vary from country to country in terms of their composition. However, in all cases they have power to issue and enforce regulations and decisions relating to NRM procedures with the force of law and must be staffed by trained and qualified persons for the purpose of identification, protection and support for victims and survivors of trafficking.”⁴⁴ This language been used to allow an appropriate authority to be established and flexibility as to where it sits in government. Given the existing mandate to certify, it may be that the police are the designated Competent Authority agency, however it should be required that designated decision makers, separate from enforcement activity, with appropriate expertise, are set up to perform this function.

- (5) Non-government First Responder agencies can refer a suspected victim of trafficking to the Competent Authority for assistance and certification if the victim consents to the referral.

The language here provides for the authority of a non government first responder to refer, but not a mandatory requirement, recognising that the obligations relating to victim support and identification are state obligations and the potential limitations of capacity of certain NGO FR agencies.

The requirement and importance of victim consent is integral to the referral process: “The consequences of any action or task are often highly significant for victims’ lives and families and this must always be respected. If a person provides informed consent for an action to be taken, it means that they fully understand the known facts about that action and are aware of its potential consequences. Trauma informed methods of working in an appropriate and confidential environment are essential for obtaining informed consent. Survivors need to be given the necessary support to make decisions, and they will need time to absorb information and to ask any questions”.⁴⁵

- (6) Government First Responder agencies must refer a suspected victim of trafficking to the Competent Authority for assistance and certification if the victim consents to the referral.

42. <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales#Section-4>

43. OSCE. National Referral Mechanisms. JOINING EFFORTS TO PROTECT THE RIGHTS OF TRAFFICKED PERSONS. A Practical Handbook - Second Edition. 2022. Available at: https://www.osce.org/files/f/documents/f/5/510551_3.pdf

44. Ibid n42

45. Ibid n42

The mandatory requirement recognises the responsibilities of states in relation to the protection of victims of trafficking. It also ensure designated FR agencies will put in place the required protocols to ensure referrals. In practice, it is likely the same form could be used as the Duty to Notify form, but differentiating that this is a victim consented referral for identification and support and not a data notification (like the UK system).

27 Emergency accommodation and assistance

- (1) On receipt of a referral, which the Competent Authority considers is plausible, the Competent Authority shall provide or arrange immediate appropriate emergency accommodation and assistance to the referred person.

For the purposes of emergency accommodation and assistance, a threshold of belief ('plausibility') has been adopted that is lower than the threshold required for certification of a person as a victim of trafficking ('reasonable grounds to suspect' - see section 28 below).

A significant gap that has been identified in New Zealand's counter trafficking response is inadequate victim protection efforts including the lack of emergency accommodation/shelter for suspected victims of trafficking. The corresponding recommendation has been for New Zealand to "take steps to improve potential victims' access to services, especially shelter – including emergency shelter – for trafficking victims."⁴⁶ Article 6 of the Palermo Protocol refers to the need for the provision of appropriate housing. This is extremely important as part of support, especially given the common occurrence of victims relying on their trafficker for accommodation. Having no other option for accommodation, creates a barrier to leaving the situation of exploitation. As set out by the OSCE, "It is essential to avoid any situation in which a victim of trafficking is forced to return to their trafficking situation or other forms of exploitation or harm due to the lack of an immediate accommodation option... Safe and appropriate accommodation should be in place to align with the commencement of the recovery and reflection period."⁴⁷

- (2) If the Competent Authority does not consider the referral is plausible it must notify the person in writing within three working days.
- (3) The person or their representative may request a review of the Competent Authority's decision.

"Human trafficking cases are inherently complex and identification procedures should be understood as a process, through which more information can be obtained progressively over time. It is also a process that can be fallible. It is essential that (there are) systems of reconsideration... for negative... decisions."⁴⁸ This provision ensures that a review process is in place according to standard practice.

- (4) Emergency accommodation and assistance may only cease;
 - (a) If the person's case has been assessed for certification and the person has not been certified as a victim of trafficking; or
 - (b) Once a person has been certified as a victim of trafficking and:
 - (i) The person has had a minimum of 90 days accommodation and assistance to allow for recovery and reflection; and

There is authority that 90 days is the appropriate period to provide for immediate recovery and reflection.⁴⁹

- (ii) Follow up accommodation and support arrangements are in place to ensure the person

46. Ibid n16

47. Ibid n42

48. Ibid n42

49. As cited in the OSCE handbook: Zimmerman, C., Hossain, M., Yun, K., Roche, B., Morison, L., & Watts, C. (2006.) *Stolen Smiles: The physical and psychological health consequences of women and adolescents trafficked in Europe*. London School of Hygiene & Tropical Medicine, London. Recommendations to States to "Implement a recovery and reflection period of a minimum of 90 days to ensure that women's cognitive functioning has improved to a level at which they are able to make informed and thoughtful decisions about their safety and wellbeing, and provide more reliable information about trafficking-related events." As for empirical evidence, it suggests that a minimum period of 90 days is required for the cognitive functioning and emotional strength of a trafficked person to increase to a level at which they are able to make well-considered decisions about their safety and co-operation with the authorities against the traffickers, as well as to offer detailed evidence about past events. Experts Group on Trafficking in Human Beings of the European Commission (2004), Opinion of 18 May 2004 on reflection period and residence permit for victims of trafficking in human beings, paras. 3, 5. For instance, the Netherlands and Spain provide a 90 days Recovery and Reflection period. See for the Netherlands EU Commission, Netherlands – 2. Institutional and legal framework; and Council of Europe GRETA (2015), Fourth General Report on GRETA's activities, covering the period from 1 August 2013 to 30 September 2014, p. 47; and for Spain Article 59 BIS, Amendment of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration (OL 2/2009, of 11 December and OL 10/2011, of 17 July), subsequently amended by Organic Law 10/2011, of 17 July. See also European Commission, *Together Against Trafficking in Human Beings: Spain*

will not be or will not likely find themselves in a situation of homelessness or at risk of re-exploitation; or

(c) The person consents and requests to exit the accommodation and/or end the assistance.

(5) In the case of (4)(a):

(a) a minimum period of 21 days notice must be given to end the accommodation and assistance; and

This figure was proposed in alignment with the ending of accommodation arrangements within certain domestic contexts (proposed notice period for periodic tenancies under the proposed changes to the Residential Tenancies Act 1986). If these changes do not go ahead suggest this number adjusted to 28 days for alignment with current period.

(b) the person must receive support to make ongoing arrangements; and.

This recognises if a person has been referred, but is not a victim of trafficking, it is likely there are indicators present and other factors that render them vulnerable and support must be given to mitigate risk of harm and homelessness to that person.

(c) if adequate support has not been given, the notice period must be extended to 90 days.

(6) Assistance includes but is not limited to:

(a) A weekly stipend to allow for purchases of essential goods and services

(b) Vouchers for essential goods and services

(c) Referrals for appropriate support services, including legal services

(d) Support worker services

These provisions seek to provide for implementation of Article 6 of the Palermo Protocol, which speaks of measures for ‘physical, psychological and social recovery’ including medical, psychological and material assistance. It also factors that referrals may need to be made to specialist support services, such as for legal representation, medical assistance, employment assistance, and a support worker should be able to assist with these referrals to appropriate persons.

(7) A person eligible under subsection (1) may elect to receive either assistance or accommodation, or both.

28 Certification of victims of trafficking

The provisions in section 28 and surrounding sections provide for a more effective certification process, and data collection relating to the number of confirmed victims in New Zealand accordingly. Alongside section 25 of this act, this serves to address critique of the government’s ability to identify trafficking trends and develop and implement effective response due to poor identification and certification processes and practices.

(1) Certification of a person as a victim of trafficking shall be granted if the Competent Authority has reasonable grounds to suspect the person is a victim of trafficking (as defined in section 98D of the Crimes Act 1961).

This is the second stage of the decision making process is the conclusive decision that someone is a victim of trafficking. A certified victim becomes entitled to the existing support provisions (regulations in relation to access to health and social services,⁵⁰ and specific visas for trafficking victims.⁵¹

50. Police-certified victims of people trafficking are eligible to receive publicly funded healthcare under Section B12 of the Ministry of Health’s Eligibility Direction and may be eligible for welfare support, administered by the Ministry of Social Development, under Clause 15E of the Special Needs Grants Programme

51. Special work visa for victims of people trafficking - see INZ Operational Manual: Temporary Entry, V3.135, WI16, U10.5 , residence category visa for victims of human trafficking - see INZ Operational Manual: Residence S4.15, child trafficking visas - see NZ Operational Manual V3.135, U10.5

The threshold of belief adopted in the bill mirrors the current wording used currently for certification of victims of trafficking.⁵² ‘Reasonable suspicion’ or ‘reasonable grounds to suspect’ are terms which are used frequently in the context of criminal law (most frequently as a threshold for the exercise of search powers). The Courts have variously defined this threshold as meaning “a reasonable ground of suspicion upon which a reasonable [person] may act”; that something is “possible or likely”, or “inherently likely”; and “thinking that it is likely that a situation exists”. It is a lower standard than ‘reasonable grounds to believe’.

- (2) The Competent Authority may request information from the suspected victim and/or other relevant parties in order to make the decision.
- (3) A written certification decision must be provided to the person, including reasons for the decision.
- (4) A certification decision must be made within 90 days of referral to the Competent Authority, unless an extension is required to enable the consideration of relevant evidence to be able to make a positive decision, including requests made to the victim and/or other relevant parties.

Section 27 (4) (b) (ii) provides for ongoing accommodation and assistance for a full 90 day recovery and reflection period even if a positive conclusive grounds decision is made within that period. Section 28 (4) is included to ensure that there are not substantive delays to making a certification decision, causing a suspected victim to be stuck in a drawn out procedural process that impacts their recovery and reflection and ability to make decisions about the next stages of their life. The UK decision making process has come under critique for the length of time taken to make conclusive ground decisions, preventing access to long term support, work and even creating risk of re-exploitation.⁵³

- (5) The person may seek a review of the decision of the Competent Authority or engage a representative to seek a review of the decision on their behalf.

As set out above, there needs to be pathways for review given the complexity of trafficking decisions. This also addresses the critique that the New Zealand government did not make publicly available the criteria for victim certification nor any appeals process for rejected applications (in combination with section 33).⁵⁴

- (6) Any requests for information from other relevant parties must be made with the suspected victim’s consent.

29 Non-Conditionality

Refer to comment in relation to section 26

- (1) A person eligible for entitlements under this part must be awarded the entitlements as set out in this part regardless of the existence of a state investigation, enforcement action or prosecution of a trafficking in persons or related matter.
- (2) A decision not to commence an investigation, enforcement action or prosecution does not pre-empt or determine the outcome of the identification and certification decision of a person as a victim of trafficking.
- (3) A decision by the person to not participate in the enforcement process, as a witness or otherwise, does not:
 - (a) Preclude the person from accessing the entitlements as set out in this section
 - (b) Constitute obstruction of an investigation

The Residence Category for victims of people trafficking (INZ Operational Manual S4.15) includes an eligibility requirement that a victim have certification from the Police that they have not obstructed the police investigation of their trafficking case during the validity of their special temporary visa. This section clarifies that non involvement in an enforcement process does not constitute an obstruction of justice. There may be many reasons why a victim does not wish to participate, including fear and risk of repercussion from the trafficker.

52. Police certificates will be issued when there is a reasonable suspicion the person in question has been trafficked to New Zealand” Ibid n13

53. Works Rights Centre. Why the NRM for modern slavery urgently needs resourcing. 2023. Available at: <https://www.workrightscentre.org/news/why-the-nrm-for-modern-slavery-urgently-needs-resourcing>

54. Ibid n17

Part 7

Principle of non-punishment

30 Defence for trafficking victims who commit an offence

Section 30 is modelled of section 45 of the UK MSA, and provides for a defence for victims for offending connected to their trafficking that they should not be rendered culpable for. This is caveated by excluded offences in an accompanying schedule (subsection 3). It seeks to implement the principle “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”⁵⁵

- (1) A person is not guilty of an offence if the offence is connected to their circumstances of trafficking in persons.
- (2) Connected circumstances are when:
 - (a) The act that constitutes the offence was committed as a direct consequence of the person’s situation of trafficking;
 - (b) The act that constitutes the offence was committed within the circumstances of and in connection to the person being, or having been, trafficked.
- (3) An offence under subsection (1) excludes offences listed in Schedule A.

Schedule A is not provided with this Bill and will need to be developed in consultation, but this provision is based on the format of the UK MSA statutory defence.

31 Clean slate provision

This allows for implementation of the principle in circumstances where the above defence was not available, for example due to the conviction of the person prior to recognition they were a victim of trafficking and the offending was connected to their trafficking circumstances.

- (1) A person who was:
 - (a) found guilty of an offence attributable to their circumstances of trafficking in persons; and
 - (b) was not able to raise the defence in section 30.
- (2) May apply to have the offence concealed under the Clean Slate Scheme prior to the completion of seven consecutive years after the date on which the individual was last sentenced, or a specified order was last made, in which the individual has not been convicted of an offence.

55. Recommended Principles and Guidelines on Human Trafficking and Human Trafficking developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) E/2002/68/Add.1, principle 7 Available at: <https://documents.un.org/doc/undoc/gen/n02/401/68/pdf/n0240168.pdf>.

Part 8

Legal assistance

“Access to legal advice and representation is an important safeguard for victims and survivors of trafficking. It should be offered at the earliest opportunity and free of charge”.⁵⁶ Article 6 of the Palermo Protocol includes a mandatory requirement for states to ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered. In order to implement this requirement, the State parties at the State Party Working Group on Trafficking in Persons in Vienna on 29 and 30 June 2022 made the following recommendation:

Bearing in mind article 6 of the Trafficking in Persons Protocol, should:

- (a) Consider implementing measures to provide access to free legal assistance to trafficking victims, where appropriate, in connection with both criminal and non-criminal justice proceedings;
- (b) Ensure, in accordance with their domestic law, that processes are established for victims to seek access to relevant documents and information in connection with such proceedings;
- (c) Ensure that their domestic legal systems contain measures that offer victims the possibility of obtaining compensation for damages suffered.

32 Legal Aid

Amend section (7) of the Legal Services Act 2011 to insert:

7 Proceedings for which legal aid may be granted: civil matters

(1) Legal aid may be granted in respect of the following civil matters:

...

(ka) the processing of an application for any trafficking victim visa

Currently no legal aid is available for trafficking visa applications. This creates a barrier to accessing legal representation to access these visa pathways. Ensuring legal aid is available for this purpose would promote alignment with Article 7 of the Palermo Protocol, which encourages measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

(kb) proceedings in the District Court, High Court, Employment Relations Authority, Employment Court and any proceedings arising on appeal from those bodies where:

- (i) the claimant is a victim of trafficking; and
- (ii) the proceedings seek relief in relation to the circumstances which led to the person being a victim of trafficking.

In the UK, subject to statutory means and merits tests, victims of trafficking and modern slavery are entitled under the relevant provisions of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (‘LASPO’) to access legal advice and assistance (Legal Help) in relation to TMSCCs including consideration of whether to bring a trafficking compensation claim (section 32).

56. Ibid n42

Part 9

Statutory guidance

33 Identification, Certification and Support Guidance

This ensures clarity and consistency regarding decision making and data collection. An ongoing recommendation for New Zealand to improve its efforts to combat trafficking in persons is to “draft and finalize appropriate written victim identification guidelines for government officials,” as well as “continue to increase coordination with NGOs, social service providers, and other civil society stakeholders on anti-trafficking efforts, including victim identification and assistance.” New Zealand has been critiqued for lacking formal written operational procedures for proactive victim identification and for failing to make publicly available the criteria for victim certification or any appeals process for rejected applications.⁵⁷ Section 33 provides for operational clarity, and clarity for victims and NGOs in relation to identification processes and procedures, providing for accurate decision making and data data collection. The UK MSA has a similar provision under section 49, which prescribes a mandatory obligation to issue guidance about identifying and supporting victims.

- (1) The Competent Authority shall publish publicly available guidance on the:
 - (a) Eligibility for First Responder Status
 - (b) Process related to the referral for, and provision of, assistance, accommodation and certification for suspected victims of trafficking, at all stages
 - (c) Certification status and subsequent entitlements
 - (d) Process for review and appeal of support and identification decisions including certification
 - (e) Definition of Trafficking in Persons
 - (f) Indicators of Trafficking in Persons, including;
 - (i) Situational and environmental
 - (ii) Physical and Physiological
 - (g) The certification decision making process, including
 - (i) Identification criteria
 - (ii) Evidence considered
 - (iii) Evidential standards applied
 - (h) Roles and Responsibilities of different stakeholders
 - (i) Information Sharing
 - (j) Information related to children
 - (k) Trauma informed support
 - (l) Information for the private sector

57. United States Department of State. Office to monitor and combat trafficking in persons. Trafficking in Persons Report: New Zealand. 2022, 2023, 2024

- (2) The Competent Authority must consult with relevant agencies and non-government stakeholders when developing the guidance.

Consultation with relevant stakeholders will ensure that indicators and other aspects relevant to the trafficking context in New Zealand are reflected in the guidance.

- (3) The Guidance may be updated by the Competent Authority as appropriate.

Part 10 Amendments to the Crimes Act 1961

34 Section 98B (Terms used in sections 98C to 98F) of the Crimes Act 1961 amended

- (1) Replace section 98B of the Crimes Act 1961 with:

98B Terms used in sections 98C to 98F

In sections 98C to 98F, unless the context otherwise requires, -

act of trafficking means any one or more of the following and may be either discrete conduct or a course of conduct—

- (a) arranging or facilitating the entry of a person into, or the exit of a person out of, New Zealand or any other State:
- (b) receiving, recruiting, employing, transporting, transferring, concealing, harbouring or housing a person in New Zealand or any other State

To better reflect the definition of trafficking set out in the Palermo protocol, the necessary acts of a trafficking offence have been consolidated into one definition provision. Previously, section 98D had two alternative limbs for these different acts but was drafted in a way that did not require a 'purpose' of exploitation for the entry or exit of New Zealand or any other State limb. This amendment corrects that inconsistency. It also adds the acts of 'employing' and 'housing' which the authors consider provides further clarity to conduct which could fall within 'receiving', 'recruiting' or 'harbouring', by introducing further stand alone terms.

arranges for an unauthorised migrant to be brought to a State includes—

- (a) organises or procures the bringing to a State:
- (b) recruits for bringing to a State:
- (c) carries to a State

arranges for an unauthorised migrant to enter a State includes—

- (a) organises or procures the entry into a State:
- (b) recruits for entry into a State:
- (c) carries into a State

document includes a thing that is or is intended to be—

- (a) attached to a document; or
- (b) stamped or otherwise signified on a document

exploitation includes —

Amended the definition of exploitation to exclude the inclusion of coercion and deception ('means' is still required as part of the overall offence under amendments to 98D (1) - except the inclusion of child trafficking cases).

- (a) the exploitation of the prostitution of a person:
- (b) sexual exploitation:

Sexual exploitation is newly defined, see below.

- (c) slavery, practices similar to slavery, servitude, forced or exploitative labour, or other forced services:
- (d) the removal of organs

forced or exploitative labour means:

- (a) work or service which:
 - (i) is exacted from any person under the threat of harm (including to another person); or
 - (ii) is provided in circumstances that could reasonably be expected to cause the person to believe that he or she or some other person would be likely to suffer harm if the person failed to provide or offer to provide the work or service; or
 - (iii) involves serious violation of legislation relating to minimum wage, working hours, rest periods, mandatory leave, holidays or rules on health and safety in the workplace; or

Harm is subsequently defined

- (b) if the person is under 18 years of age or is mentally or physically ill or disabled:
 - (i) work or service which a person would be likely to refuse to perform if the person was aged 18 years or over or did not have the illness or disability; or
 - (ii) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the person.

Forced labour was not previously defined in the section and this omission meant there was a lack of clarity as to what could be investigated or prosecuted. The definition adopted here is based on the ILO definition of forced labour and contains a modified definition in the cases of children or other vulnerable persons. The definition is also drafted to ensure exploitative labour is captured, including harmful child labour practices.

forced services includes forced criminality, forced marriage, and the use, procuring or offering of the person for illicit activities

The inclusion of the definition for forced services provides clarity as to the types of conduct that is captured by this term.

harm or harming means harm of any kind to the person and, in particular, includes—

- (a) causing physical, psychological, or financial harm to the person:
- (b) sexually mistreating the person:
- (c) causing harm to the person's reputation, status, or prospects

means of trafficking means any one or more of the following and may be either discrete conduct or a course of conduct—

- (a) an act of coercion against a person, including:
 - (i) abducting the person:
 - (ii) using force in respect of the person:
 - (iii) harming the person:
 - (iv) threatening (expressly or by implication) to do any of the above to the person or some other person
- (b) an act of deception against a person, including a fraudulent action:
- (c) the abuse of a position of power, vulnerability or trust:
- (d) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person

As with the ‘acts of trafficking’ set out above, the means of trafficking were previously contained within section 98D itself and also within the definition of exploitation. This amendment separates the means of trafficking out more cleanly and updates the scope of means of trafficking to reflect obligations under the Palermo Protocol. Previously, (c) and (d) of this definition were not part of section 98D but were part of the definition of trafficking under the Palermo Protocol.

servitude means the condition of a person who provides work or service where a reasonable person in that position would not consider himself or herself free—

- (a) to cease providing the work or service; or
- (b) to leave the place where he or she provides the work or service and the person is significantly deprived of personal freedom in aspects of his or her life other than the provision of work or service

Servitude was not previously defined in this legislation. The definition adopted here reflects ECHR guidance that servitude is an obligation to provide ones services that is imposed by the use of coercion and, while it is linked to the concept of slavery, it is a condition which falls short of ‘ownership’. It has also been described as a specific or aggravated form of forced labour.

Sexual exploitation includes any actual or attempted abuse of a position of power, vulnerability or trust for sexual purposes

This is a new definition, which effectively replaces, for clarification, the part of the exploitation definition which referred to causing a person to be involved in ‘other sexual services’ and to make it clear that reference to sexual exploitation in trafficking is not considered to only apply to commercial sexual services.

This definition is from the UNODC definition of ‘sexual exploitation’ in the Model Legislative Provisions Against Trafficking in Persons, 2022.⁵⁸

slavery means the status or condition of a person who is used as the property of another person and thereby controlled as if owned by that other person

Slavery was previously undefined in this legislation, though it was addressed by the Court of Appeal in *R v Matamata* [2021] NZCA 372. This definition is consistent with that decision.

unauthorised migrant, in relation to a State, means a person who is neither a citizen of the State nor in possession of all the documents required by or under the law of the State for the person’s lawful entry into the State.

58. Available at: https://www.unodc.org/documents/human-trafficking/2020/TIP_ModelLegislativeProvisions_Final.pdf

35 Section 98D (Trafficking in Persons) of the Crimes Act 1961 amended

(1) Replace section 98D with:

98D Trafficking in persons

(1) Every person is liable to the penalty stated in subsection (3) who does an act of trafficking in respect of a person for the purpose of the exploitation of the person, knowing that the act of trafficking or the exploitation involves or will involve a means of trafficking in respect of the person.

This framing of trafficking reflects the ‘act’ ‘means’ ‘purpose’ framework set out in the Palermo Protocol and, in addition to simplifying the section, resolves the previous inconsistency (noted above) where no means of trafficking was required for offences involving entry or exit from New Zealand or any other state.

With amendments that provide clarity and define ‘acts’, ‘means’ and ‘exploitation’ (purpose) it is anticipated the changes will increase the ability of prosecutors to lay trafficking charges, and reduce potential ambiguity surrounding interpretation, including for members of the jury.

(2) Notwithstanding subsection (1), every person is liable to the penalty stated in subsection (3) who does an act of trafficking in respect of a person under the age of 18 years for the purpose of the exploitation of the person.

This is a new feature, providing that it is not necessary to show a means of trafficking where there is a child victim. This is a requirement of the Palermo Protocol but had not been adopted in the legislation previously.

Article 3 of the Protocol is clear that the ‘means’ element is not required for cases of child trafficking. This is to reflect the vulnerability of children to abuse and exploitation especially if they are in situations of dependence. It also reflects the vulnerability of unaccompanied migrant children who are particularly vulnerable to human rights violations and abuses. The amendments to this section ensure that New Zealand’s trafficking provisions adequately provide for prosecution of child trafficking matters, and align with the recommendations of New Zealand’s Human Trafficking Research Coalition⁵⁹ and the US State Department in the Trafficking in Persons Report.

(3) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.

(4) An act of trafficking and a means of trafficking may take place at the same or different times and may take place at any time before or during any exploitation of the person.

This is a new feature of the legislation, inserted to reflect the reality of trafficking offences where the offence may take place over a period of time and in different locations. It is intended to ensure an overly narrow interpretation is not adopted.

(5) It is not a defence to a charge under this section that —

(a) the person against whom the offence is alleged to have been committed consented to, or acquiesced in, conduct constituting any element of the offence:

Irrelevancy of consent was a part of the obligations under the Palermo Protocol but not previously adopted into the legislation. The ‘consent’ aspect is to ensure that the consent of a victim is not determinative as to whether a person had or had not been trafficked, i.e., it should not be an issue in determining whether or not the crime of trafficking had been established. Trafficking does not require the lack of consent of the victim to be made out, when by contrast, crimes such as assault or sexual assault require proof of non consent. The provisions exist to ensure that the consent of a victim does not become the first line of defence for perpetrators, especially in cases when victims may have consented to certain aspects. It is also important to note, consent of the victim at one stage of the process cannot be taken as consent at all stages of the process—and without consent at every stage of the process, trafficking has taken place.

(b) parts of the process by which the person was exploited were accomplished without an act of trafficking or a means of trafficking:

(c) the person was not in fact exploited.

59. https://www.htrc.nz/files/ugd/2ffdf5_7db80c80e6fc47469b2c5e7cb35876d7.pdf

This is for clarity that only the purpose of exploitation need be established.

36 Section 98F (Attorney-General's consent to prosecutions required) of the Crimes Act 1961 amended

- (1) Replace section 98F with:

98F Attorney-General's consent to prosecutions required

- (1) Proceedings for an offence against [section 98C](#) cannot be brought in a New Zealand court without the Attorney-General's consent.

This section has been amended to remove the provisions for AG consent for all trafficking matters, recognising that a number of trafficking cases may not involve transnational elements or transnational organised crime. Trafficking matters with transnational aspects will still require AG consent under sections 7B and 7A of the Crimes Act 1961. This removes a barrier to prosecution, and aligns with recommendations in the US TIP report.⁶⁰

- (2) A person alleged to have committed an offence against [section 98C](#) may be arrested, or a warrant for the person's arrest may be issued and executed, and the person be remanded in custody or on bail, even though the Attorney-General's consent to the bringing of proceedings against the person, if required, has not been obtained.

Part 11

Three-year review

37 Three-year review

A review period provides the opportunity to consider progress under the Act during the time in effect, and improve provisions where necessary. It will assist to ensure New Zealand's legislative framework remains combatable with international practice and frameworks which are continually evolving.

- (1) The Minister must undertake a review of the Act and any rules or regulations.
- (2) The Minister must consider in the review whether mandatory due diligence requirements should be introduced beyond the existing requirements of the Act.

This provides opportunity for further development of mandatory due diligence provisions, ensuring alignment with global standards.

- (3) The Minister must recommend for the Governor General's appointment an Independent Anti-Slavery Commissioner under section 15 if a Commissioner has not yet been appointed.

This provides for appointment of an IASC if a commissioner was not appointed.

- (4) The Minister must cause a report to be prepared reviewing:
- (a) subsection (2)

60. United States Department of State. Office to monitor and combat trafficking in persons. Trafficking in Persons Report: New Zealand. 2023. Available at: <https://www.state.gov/reports/2023-trafficking-in-persons-report/new-zealand/#:~:text=The%20Government%20of%20New%20Zealand,Zealand%20remained%20on%20Tier%202>

- (b) the operation of this Act or any rules or regulations over the period of (3) three years following the commencement of this section; and
 - (c) compliance with this Act and any rules or regulations over that period; and
 - (d) whether additional measures to improve compliance with this Act and any rules or regulations are necessary or desirable; and
 - (e) whether a further review of this Act and any rules should be undertaken, and if so, when; and
 - (f) whether it is necessary or desirable to do anything else to improve the operation of this Act and/or any rules or regulations; and
 - (g) whether the amendments to the Act or any rules are required to implement the recommendations of the review.
- (5) The review must be:
- (a) started as soon as practicable after the end of the period of three years after this section commences; and
 - (b) completed within 12 months after it starts.
- (6) The Minister will table a report setting out any further changes to the Act or any rules or regulations to the House of Parliament within 12 months of completion of the report.

Appendix One:

Key provisions of bill

1. **Mandatory Reporting for Entities:** All reporting entities with annual consolidated revenue of at least \$50 million, as well as those in high-risk industries or geographies regardless of revenue, are required to prepare an annual Modern Slavery Statement and report on how they identify, address, mitigate and remediate the risks of trafficking in persons and broader forms of modern slavery within their operations and supply chains.

Statements must be published on a central government-operated register and the entity's website, ensuring transparency and public access. Additionally, government agencies bear the responsibility to provide sector-specific guidance to support these entities in meeting their reporting obligations.

2. **Establishment of an Independent Anti-Slavery Commissioner:** The Bill provides for appointment of an Independent Anti-Slavery Commissioner to monitor compliance, offer guidance, and advocate for the prevention, protection, and prosecution of modern slavery and trafficking offences. The Commissioner's responsibilities include promoting public awareness, assessing legislative effectiveness, and advising on best practices in line with national and international standards.
3. **Strengthening the Legal Framework:** The Bill amends the Crimes Act 1961, aligning definitions of trafficking and modern slavery with international standards. This provides greater clarity for enforcement and strengthens New Zealand's ability to prosecute offenders and support victims.
4. **Comprehensive Victim Protection and Support:** Victim support provisions include access to emergency accommodation, financial aid, and referral pathways for certification as trafficking victims. Victims are eligible for support services without being required to participate in enforcement processes, ensuring that assistance is accessible regardless of investigative outcomes.
5. **Penalties for Non-Compliance:** Reporting entities that fail to submit or publish a compliant Modern Slavery Statement or who knowingly provide false or misleading information face penalties, including fines of up to \$200,000.

Additionally, non-compliant entities may be disqualified from participating in public procurement processes for up to three years and Directors may be liable, reinforcing compliance through financial and reputational consequences.

6. **Central Public Register for Transparency:** The Bill mandates the creation of a government-operated, publicly accessible register for Modern Slavery Statements, enhancing transparency and accountability. This register will allow the public to search and download statements and will include a section for non-compliance, informing the public of entities that fail to meet their obligations.

It also outlines that the regulator is obliged to provide guidance and templates to assist with the reporting process.

7. **Three-Year Legislative Review and Continuous Strategic Guidance:** The Bill requires a full review every three years to evaluate its effectiveness and ensure alignment with evolving international standards.
8. **Support existing intelligence initiatives:** the bill provides for improved data collection, supporting existing state intelligence initiatives with helpful intelligence that drives effective and targeted enforcement activity.

Appendix Two: Comparative analysis

In drafting the modern slavery reporting provisions of this bill, the team focused on areas where there is already strong political and stakeholder consensus. Rather than serving as a theoretical template, the bill has been designed as a practical legislative proposal tailored to New Zealand's unique regulatory and operational environment. This approach ensures the bill reflects the existing landscape and maximises the potential for cross-party support while also ensuring robust policy outcomes.

The following table outlines key parts of the bill where consensus is required, organised into four main sections:

- i. Definitions
- ii. Part 1: Reporting Entities
- iii. Part 2: Reporting Obligations
- iv. Part 3: Establishment of Anti-Slavery Commissioner.

Explanation of Political Parties' Positions

- **Labour Party:** Positions have been drawn from the Cabinet paper: 'Modern Slavery and Worker Exploitation: [Supply Chain Legislation](#)' (27 September 2023).
- **National Party:** Positions have been informed by discussions with National Party representatives who have expressed a preference for alignment with the Australian Commonwealth legislative framework, as well as Simon O'Connor's private member's [Modern Slavery Reporting Bill](#).

Element	Labour Position	National Position	Best Practice	Decision
Definition of Modern Slavery	Umbrella term encompassing forced labour, debt bondage, forced marriage, slavery and slavery-like practices, and human trafficking.	Specific forms under Crimes Act 1961, including worst forms of child labour, forced or compulsory labour, and certain sections (98, 98AA, 98D, 207A)	Includes worst forms of child labour and other modern slavery forms	Adopted a broad definition: slavery, servitude, or forced labour (s98B), forced services (including forced marriage and criminality) (s98B), trafficking in persons (s98D), worst forms of child labour, and debt bondage or serfdom (s98)
Definition of Operations and Supply Chain	Provided	Not defined	Generally not defined in law	Adopted Labour's definition
Worker Exploitation	Included	Not included	Typically not included in modern slavery legislation	Not included
Meaning of Reporting Entity	All NZ and overseas entities conducting business in NZ, including companies, sole traders, partnerships, state sector bodies, local government, charitable entities, trusts, incorporated societies, Māori trusts and incorporations	NZ entities formed and incorporated in NZ, with central management in NZ, e.g., companies, partnerships, limited partnerships, friendly societies, credit unions, trusts	Covers all entities, public and private, that meet threshold	Applies to all NZ entities and those conducting business in NZ, including entities incorporated, registered, or constituted under NZ law
Threshold for Reporting by Entities	\$20 million+	\$100 million+ consolidated revenue	Australia: considering threshold reduction to AUD 50 million; Canada: 20M assets, 40M revenue or 250+ employees; UK: GBP 36 million	Set threshold at \$50 million, capturing ~1,450 NZ entities (20M threshold would capture ~3,600 entities)
High-Risk Entities	Not mentioned	Not mentioned	EU, Germany, Finland outline high-risk provisions	Clause allows threshold adjustment for high-risk sectors, requiring those below 50M to report
Mandatory Reporting Criteria	Aligned with Commonwealth Modern Slavery Act	Aligned with Commonwealth Act, with added requirements to describe goods produced/imported and origins	Aligns with OECD guidelines, UNGP's and Australia's current law with some recommendations from review factored in	Adopted OECD guidelines and added: detailed descriptions of operations, including domestic/international activities, modern slavery "incidents," and complaint statistics. Follows a due diligence reporting structure
Central Register for Compliance Statements	Included	Included	Included	Included
Independent Anti-Slavery Commissioner	To be added in Phase Two	Not included	Commonly included	To be considered at three-year review
Penalties for Non-Compliance	\$10,000 - \$200,000	Max \$100,000	Often a percentage of revenue (EU: 10%, Germany: 2%)	Set max penalty at \$200,000
Liability of Directors	Not mentioned	Directors liable if entity is convicted of an offence	Common for serious offences	Directors held liable for serious offences

Appendix Three:

High-level comparative summary – Australian Government response to Modern Slavery Act review

1. Due Diligence Obligations:

- Recommendation: Introduce explicit modern slavery due diligence requirements for businesses.
- Government Response: Noted. The Attorney-General's Department will consult on how the Modern Slavery Act could be amended to enhance its due diligence requirements, considering global trends in human rights due diligence and multi-jurisdictional obligations.
- Application to NZ Modern Slavery Bill: The Australian Government has signalled that it does not intend to introduce mandatory due diligence provisions outright but will conduct further consultation to focus on "enhancing" due diligence within the existing reporting provisions in law. The current approach in the NZ Modern Slavery Bill requires mandatory reporting aligned with a due diligence framework, maintaining consistency with current Australian legislation. If amendments are made to the Australian Act following their consultation process, New Zealand could consider aligning further. However, waiting for the outcome of these consultations is unnecessary, as the proposed enhancements are unlikely to significantly diverge from the existing provisions in the New Zealand bill.

2. Penalties for Non-Compliance:

- Recommendation: Introduce penalties for failure to report, knowingly submitting incorrect reports, or lacking due diligence processes.
- Government Response: Agreed in part. Consultations will determine the specifics.
- Application to NZ Modern Slavery Bill: The bill introduces penalties for failure to report, failure to report the mandatory reporting criteria, knowingly submitting incorrect reports but not lacking due diligence process.

3. Lowering the Reporting Threshold:

- Recommendation: Introduce penalties for failure to report, knowingly submitting incorrect reports, or lacking due diligence processes.
- Government Response: Agreed in part. Consultations will determine the specifics.
- Application to NZ Modern Slavery Bill: The bill introduces penalties for failure to report, failure to report the mandatory reporting criteria, knowingly submitting incorrect reports but not lacking due diligence process.

4. Complaints Procedure:

- Recommendation: Establish a mechanism to address complaints related to entity reporting.
- Government Response: Agreed, with plans to explore implementation.
- Application to NZ Modern Slavery Bill: Clause s6(1)(f)(i) outlines that mandatory criteria should include outlining the number of complaints relating to modern slavery made to the entity. This is a half-step toward a mechanism to address complaints related to entity reporting. This clause is one to watch as the EU Directive is also creating a complaint mechanism and it may be good to align with this in NZ legislation. This would be ironed out through consultation process at first reading.

5. High-Risk Declarations:

- Recommendation: Empower the Minister or Anti-Slavery Commissioner to declare regions, industries, or products as high-risk for modern slavery.
- Government Response: Agreed in principle, with consultations to follow.

- Application to NZ Modern Slavery Bill: This aligns with section s 5(2)(c) and s(5)(4) that outlines that an entity could be required to comply with requirements of the Act by the registrar if they do not meet the 50m threshold because they are an entity at high risk of modern slavery in supply chains. Moreover s 10(4) outlines that the Registrar can issue guidelines to facilitate compliance with reporting obligations, including guidelines outlining sectors, geographies and products at high risk of modern slavery.

6. Compliance Transparency:

- Recommendation: Publicly share information on businesses' compliance with the Modern Slavery Act.
- Government Response: Agreed.
- Application to NZ Modern Slavery Bill: This aligns with s13 whereby the name, description of offence and penalty shall be shared on the Register upon any conviction being entered. This could potentially be amended to include publishing entities that are non-compliant with lesser offences such as basic compliance with the Act.

7. Enhanced Reporting Criteria:

- Recommendation: Amend criteria to include incidents/risks identified, grievance mechanisms, and consultation activities.
- Government Response: Agreed in principle, pending consultations.
- Application to NZ Modern Slavery Bill: The bill incorporated incidents and risks, grievance mechanisms and consultation activities into the NZ Modern Slavery Bill in anticipation these would be accepted, so this is in alignment.

8. Extended Reporting Timeframes:

- Recommendation: Extend reporting intervals from one year to three.
- Government Response: Noted but rejected, retaining annual reporting for now.
- Application to NZ Modern Slavery Bill: This aligns as the reporting period is one year.

9. SME Guidance (not relevant to bill, but one to note)

- Recommendation: Develop tailored guidance for small and medium enterprises.
- Government Response: Agreed, with the Attorney-General's Department and Commissioner taking the lead.
- Application to NZ Modern Slavery Bill: s10(4) outlines the registrar can facilitate compliance with reporting obligations by issuing guidelines. It has always been discussed that SME guidance would be necessary for NZ entities given the majority are SME's so interesting to note that this is needed in Australia and should likely be accompanied with any NZ law also.