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Te Kāhui Ture o Aotearoa

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7 June 2022

International Labour Policy
Workplace Relations and Safety Policy
Ministry of Business, Innovation & Employment
Wellington

By email: modernslavery@mbie.govt.nz

Re: *A legislative response to modern slavery and worker exploitation* discussion document

1 Introduction

1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on MBIE's discussion document *A legislative response to modern slavery and worker exploitation* (**Discussion Document**).

1.2 This submission has been prepared with the assistance of the Law Society's Employment Law Committee, Human Rights & Privacy Committee, and Immigration & Refugee Law Committee.[1]

2 General observations

2.1 The Law Society supports the Discussion Document's proposal to introduce legislation to reduce modern slavery and work exploitation in New Zealand and overseas. We consider the proposed legislation to be necessary because:

(a) Evidence suggests modern slavery and worker exploitation currently occurs in New Zealand and targeted legislation represents the most effective manner to bring about meaningful change in a short timeframe.

(b) The current legislative framework deals with the different concepts which comprise "modern slavery" as a criminal issue. It does not facilitate a focus on supply chains, including across national boundaries, nor on the exploitation of, for example, temporary and undocumented migrants domestically.

(c) It affords an opportunity to draw on the United Nations Guiding Principles on Business and Human Rights (**UNGPs**), and develop legislation informed by the legislative responses to this issue adopted by a number of New Zealand's leading trading partners.

2.2 The Law Society therefore supports:

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1 More information regarding these committees is available on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/.

(a) The Discussion Document's position that a due diligence approach best meets the policy objectives that the proposed legislation is intended to meet, including because it provides a more direct means of achieving the primary objective of reducing modern slavery and worker exploitation than a disclosure-based approach.[2]

(b) The proposed focus on modern slavery only in an international context and the broader focus on both modern slavery and worker exploitation domestically. This distinction recognises that New Zealand should not seek to apply New Zealand employment standards to overseas jurisdictions, and that where conduct rises to the level of modern slavery, it is in breach of international law, including international human rights law.[3]

(c) The proposed graduated set of responsibilities with greater responsibilities for larger entities, as determined by each entity's annual revenue.[4]

(d) The proposed scope of the legislation, which would apply to all entities, including companies, sole traders, partnerships, state sector organisations, local government, charitable entities, trusts, incorporated societies, Māori trusts and incorporations.[5]

2.3 However, the Discussion Document's proposals would benefit from more detailed consideration of the relationship between:

(a) the criminal law and modern slavery;

(b) current employment standards and the proposed legislation; and

(c) current immigration policies and the potential for worker exploitation, particularly within small and medium sized entities.

2.4 These three issues are discussed in more detail below.

The relationship between modern slavery and the criminal law

2.5 The Discussion Document defines modern slavery as: *"including the legal concepts of forced labour, debt bondage, forced marriage, slavery and slavery like practices, and human trafficking".*[6]

2.6 Each of these legal concepts is a subject of both New Zealand and international law, and is an offence under the Crimes Act 1961.[7] Officials therefore should consider:

(a) the interrelationship between those offences and the manner in which those legal concepts are dealt with in the proposed legislation to ensure that the different statutory regimes are aligned;

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2 Discussion Document at page 38. For the primary and secondary policy objectives, see Discussion Document at page 26.

3 Discussion Document at page 13.

4 Discussion Document at page 13.

5 Discussion Document at page 14.

6 Discussion Document at page 13.

7 We note that New Zealand is also a signatory to the Forced Labour Convention (1930) and the Forced Labour Protocol (2014) which provides guidance on eliminating all forms of forced labour.

(b) how the proposed legislation aligns with the Contracts and Commercial Law Act 2017 (and its provisions relating to illegal contracts in particular); and

(c) the relationship between those legal concepts and the Employment Relations Act 2000.

2.7 There is a further dimension to ensuring alignment of the proposed legislation with the criminal law. Many of the activities that fall within the scope of these offences take place across borders and have effects in more than one country. Officials should therefore also consider this transnational dimension of the legal concepts said to comprise "modern slavery". This will be particularly relevant to the powers granted to a regulator and any enforcement mechanisms included in the proposed legislation.

2.8 Each of these legal concepts is also the subject of international law. The proposed legislation represents an opportunity to ensure that the manner in which those legal concepts are treated under New Zealand's domestic law aligns with the position in respect of those same concepts as a matter of international law. This will be particularly important when considering the appropriate definitions to be adopted for each of the different legal concepts said to comprise "modern slavery", as well as providing the clarity that entities subject to the proposed legislation will need when seeking to undertake human rights due diligence.

The relationship between current employment standards and the proposed legislative framework

2.9 The Discussion Document notes that "worker exploitation" includes "*non-minor breaches of employment standards in New Zealand"* (as contained in the Employment Relations Act).[8] However, the Discussion Document does not clearly explain why existing legislative mechanisms are insufficient for addressing worker exploitation in New Zealand or why additional responsibilities and penalties should be included in the proposed legislation.

2.10 Against this background, it is difficult to determine what (if any) legislative amendments are required to meet the proposed policy objectives. A comprehensive assessment of the following legislation is required to ensure the proposed legislative response does not result in duplicating penalties for entities:

(a) Employment Relations Act 2000;

(b) Holidays Act 2003;

(c) Minimum Wages Act 1983; and

(d) Equal Pay Act 1972.

2.11 As noted above, it will also be important to consider the relationship between the legal concepts in the proposed legislation and the Contracts and Commercial Law Act, including its provisions which relate to illegal contracts.

[8] Discussion Document, at page 79.

The implications of current immigration policy settings for worker exploitation

2.12 The proposed legislative response does not, in our view, focus on protecting temporary migrants and undocumented migrants who are particularly vulnerable to exploitation, and are at risk of deportation when they report exploitation. We have set out some real, anonymised case examples of migrant worker exploitation which illustrate the need for urgent reform in Appendix 1 of this submission.[9]

2.13 The Discussion Document also fails to consider current immigration policies that present barriers to reporting incidents of worker exploitation, or, conversely, incentivise misreporting of exploitation. These include:

(a) **Accredited Employer Work Visa:** this new visa requires employers to be accredited in order to hire migrant workers, and to bear the accreditation and other costs of bringing migrant workers into New Zealand. As a result, there is a risk that some employers may seek to recoup these costs from migrant workers in a manner that is inconsistent with the policy objectives of the proposed legislation.

(b) **Migrant Exploitation Protection Work Visa:** this new visa is available to workers who are on an employer-supported work visa and have reported exploitation. This may create an incentive for some applicants to report exploitation even where exploitation has not actually occurred,[10] in order to secure a visa and lawfully remain in New Zealand. We note that this visa is also only available to those who hold an employer-supported work visa (and does not therefore protect migrants who are on other types of visas, or are undocumented, but are nonetheless at risk of being exploited).

(c) **Consideration of Productivity Commission recommendations**: in November 2021, the Productivity Commission published the preliminary findings and recommendations from its immigration inquiry.[11] The Productivity Commission found that some *"current visa conditions – such as tying people to specific employers – significantly weaken the bargaining power of temporary migrant workers and raise the risk of their exploitation"* and recommended removing visa conditions that tie workers to a specific employer.[12]

2.14 We urge officials to give further thought to these issues and to consider whether the proposed legislative response should include a bespoke response to better protect vulnerable temporary migrants and undocumented migrants who are most at risk of exploitation.

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9 These examples have been provided to us by members of the profession.

10 Those who apply for this visa are required to provide a 'Report of Exploitation Assessment letter' from Employment New Zealand. These reports may find that exploitation has not actually occurred, but this will not prevent applicants from making allegations regarding exploitation in the first instance, in an attempt to secure a visa.

11 New Zealand Productivity Commission "Immigration – Fit for the future" (November 2021).

12 Above n 11, at page 30.

3 Matters to consider when designing New Zealand's legislative framework

International efforts to address modern slavery and worker exploitation

3.1 As noted above, the Law Society supports the Discussion Document's position that a due diligence approach best meets the policy objectives of the proposed legislation. This is said to align in broad terms with the approach endorsed by the UNGPs, as well as recent legislative initiatives in France, Germany, and Norway.

3.2 The Law Society supports the application of the UNGPs. In addition, the Law Society invites officials to consider other relevant international initiatives including the EU's *Decent Work Worldwide* initiative which seeks to ban products made by forced labour from entering the EU market.[13]

3.3 The Discussion Document's endorsement of a human rights due diligence approach is further support by recent developments in the UK, which has taken steps to adopt a more robust legislative regime than the current 'transparency in supply chains' approach in the Modern Slavery Act 2015 (UK). There is increasing consensus that the 'transparency in supply chains' approach is not an effective means to reduce modern slavery, and the UK now appears to be moving towards a human rights due diligence approach.[14]

3.4 We also agree it is appropriate, where possible, to align New Zealand's legislative framework with other jurisdictions. This requires a thorough analysis of, for example, the various reporting thresholds, any penalties and consequences of failing to report on due diligence and address modern slavery risks, as well as gaps in the international legislation. Appendix 2 of this submission contains a comparative analysis of these features,[15] which may be of use to officials.

The New Zealand context

3.5 As also noted above, the Law Society agrees with the proposed graduated set of responsibilities outlined in the Discussion Document, which are triggered by the size of an entity's annual revenue.[16]

3.6 We note that New Zealand has limited experience with import controls,[17] and invite officials to consider if additional import controls would be required to support the proposed legislative framework.

Protection against self-incrimination

3.7 Care should also be taken to ensure that obligatory reporting requirements are aligned with common law protections and the rights affirmed under the New Zealand Bill of Rights Act

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13 See here for more information: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1187.

14 See Modern Slavery Bill 2021 (UK).

15 This analysis has been prepared with the assistance of volunteers from the Equal Justice Project (see here for more information: https://www.equaljusticeproject.co.nz/).

16 Discussion Document at page 48.

17 At present, there is, for example, a ban on importing goods made by prison labour (see Cabinet minute "Continuing the Prohibition on Import of Goods Produced by Prison Labour" dated 26 June 2019, available here: https://www.mfat.govt.nz/assets/OIA/PR-2020-179-Continuing-prohibition-Full-release-to-publish.pdf).

1990, including the protection against self-incrimination. This will also require consideration of section 60 of the Evidence Act 2006.

4 Policy objectives and definitions (questions 1 to 3A)

4.1 The Law Society supports the proposed policy objectives in the Discussion Document. The identification of reducing modern slavery and worker exploitation in New Zealand and elsewhere as the "primary objective" is appropriate. Of the "secondary objectives", enhancing New Zealand's international reputation, supporting consumers to make informed choices and driving culture and behaviour changes in entities are key. These primary and secondary objectives should inform the formulation of the purpose provision of the proposed legislation.

4.2 It is also critical for these policy objectives to relate to clearly defined terms. This includes the definition of "worker exploitation" which demarcates the domestic and international responsibilities of entities, as well as the definition of "modern slavery" that is central to the proposed legislation and will impose both domestic and international responsibilities on entities.

4.3 In addition, as noted above, the Discussion Document recognises that "modern slavery" includes a number of separate but related legal concepts that are the subject of both domestic law and international law. The proposed legislation should ensure each of those concepts is properly defined, and the definitions align with the treatment of these legal concepts in other domestic legal contexts and international law.

4.4 It may also be useful to provide some guidance and/or examples, including potentially in the proposed legislation, as to what constitutes "exploitative situations" (in the definition of "modern slavery"), and "material harm" (in the definition of "exploitation") to ensure the policy objectives are met. It would also be helpful for the proposed legislation to clarify how "non-minor breaches of New Zealand employment standards" are to be established (in relation to the definition of "worker exploitation").

5 Proposed responsibilities of entities (questions 4-6)

5.1 The Law Society agrees, at a general level, that all entities should be required to take reasonable and proportionate action if they become aware of:

(a) modern slavery in their international operations and supply chains; and/or

(b) modern slavery or worker exploitation in their domestic operations and supply chains.

5.2 In determining what may be reasonable or proportionate in a particular context, care should be taken to ensure that entities that collect, use and store information that is commercially sensitive, or contains personal information, are able to do so in a manner in which the commercial sensitivity of the information and the privacy of individuals is not compromised.

6 Entities to be covered by proposed legislation (questions 11-13)

6.1 The Law Society supports the use of annual revenue as a means of determining the extent of an entity's obligations under the proposed legislation. However, if revenue thresholds are to

be used, they should be periodically reviewed on an inflation-adjusted basis to avoid a progressive reduction of each threshold. We also invite officials to consider how the proposed responsibilities would apply where an entity's annual revenue fluctuates over time (which would result in the entity moving across different revenue threshold categories and having to meet different responsibilities over time).

6.2 The size, type and operators of the entity will also require further consideration. Some organisations may have limited resources, and different compliance capabilities, yet some of them also operate internationally. Small businesses will also generally have limited resources available to focus on compliance and due diligence obligations. For example, a small business may not have a dedicated human resources manager who is responsible for compliance with workforce/health and safety requirements, until the number of employees reaches the range of 75 to 100 staff. The proposed framework suggests that a business which employs, for example, seventy-five staff (including a human resources manager) on minimum wage would require a yearly revenue of approximately $4.5 million-$5 million (excluding GST) per annum to cover ACC wages, ACC levies, premises, energy, communications and material and other inputs. In reality a business of this size would need a significantly higher revenue turnover to operate effectively and comply with any additional regulatory requirements.

6.3 For these reasons, a $20 million per annum revenue threshold for "medium entities" may not be high enough, if it is to be used as a measure for assessing the resources available to an entity for undertaking due diligence on New Zealand entities where there is significant contractual control, or for taking "reasonable and proportionate action". In Australia, the revenue level for entities that must provide disclosure to a central register is AUD$100 million per annum[18] (noting also that this is a disclosure regime only).

6.4 The Law Society invites officials to consider whether the thresholds should be adjusted to ensure entities are able to meet their responsibilities in practice. Alternatively, we suggest some flexibility is introduced in the legislative scheme to enable some form of waiver to be obtained from an appropriate authority, and/or to enable periodic review of the new legislation to consider any appropriate adjustments for administering and complying with the new obligations.

6.5 We also invite officials to give further thought to:

(a) how the charitable/not-for-profit sector fits within this framework (and whether the proposed revenue thresholds accurately reflect the resources available to entities within this sector to comply with the proposed responsibilities); and

(b) whether Government departments which also form a part of domestic and global supply chains are captured by the proposed legislative framework (and if so, how they fit within the proposed revenue threshold categories).

7 Enforcement action (questions 17-22)

7.1 The Law Society considers that the penalties regime should complement, and not duplicate, existing offences and penalties under the criminal and employment law. However, we

[18] Modern Slavery Act 2018 (Australia), section 5.

consider that the Health and Safety at Work Act 2015 (**HSWA**) should not be included as an enforcement mechanism for failure to comply with the obligations under the new legislation, given the magnitude of the potential penalties under that Act.

7.2 Any additional offences, penalties and tools to deal with non-compliance will need to be carefully graduated and vary substantially to reflect the cost sensitivities for employers in the 'below $20 million' turnover category.

Responsibilities and liability of members of the governing body of the entity (question 20)

7.3 If personal liability (as provided for in the HSWA, in relation to duties of officers)[19] is contemplated, it should be for only the most serious breaches (such as breaches involving large entities whose governing body members have actual knowledge of modern slavery or worker exploitation and have wilfully failed to prevent, mitigate, or remedy the situation).

Ability of onshore and offshore victims to bring a civil claim against an entity (question 21)

7.4 Offshore claims are difficult and complex to bring and to defend. A New Zealand-based entity with limited resources might find it difficult to investigate and defend such a claim brought by (for example) an advocacy group in the public interest. Even an entity with substantial resources would need to expend significant resource to investigate and, if appropriate, defend such a claim. Such a trial, if it involves issues of any magnitude, is likely to involve complex facts and to require the commitment of substantial time and money.

7.5 We consider it is, at present, premature to provide a legislative basis for such offshore claims until experience in comparable overseas jurisdictions which have chosen to provide a statutory basis for such claims has demonstrated the fairness and workability of this type of claim. This position should therefore be kept under review.

7.6 Onshore victims' claims can be dealt with under the existing New Zealand statutes, including employment law and the Contracts and Commercial Law Act 2017, as well as tort law, which affords a wide range of remedies for workers who are exploited or placed in conditions of modern slavery. No additional ability to bring a civil claim for onshore victims is required.

7.7 However, support from an appropriate official body (such as the Labour Inspectorate) should be considered.

Should entities be required to remedy any harm they have caused or contributed to (question 22)?

7.8 If the matter is one of remedying harm to onshore victims, the Law Society considers that adequate remedies are already available under domestic law. This applies both to employers and employees, and also to others involved in breaches.[20] With regard to offshore victims, difficulties of proof and trial as discussed above will similarly apply to a requirement to "remedy any harm".

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19 Health and Safety at Work Act 2015, Part 2.

20 For example, Part 9A of the Employment Relations Act provides for proceedings against a person who has been involved in a serious breach of a minimum entitlement provision.

8 Independent monitoring, oversight and support (questions 23-23A)

8.1 The Law Society considers that an independent oversight mechanism is necessary. While Government and civil society can be expected to provide oversight, the advantage of an independent mechanism with a mandate to oversee compliance with the proposed legislation is the best fit with the primary objective of reducing modern slavery and worker exploitation. The independence of such an oversight mechanism would enable it to pursue its mandate in a focused-manner and insulate it from attempts to influence or pressure it, particularly in relation to cross-border issues.

8.2 However, such an oversight role could be allocated to an existing statutory body or bodies, provided they have a clear mandate and are sufficiently independent. The independent monitoring mechanism under the United Nations Convention on the Rights of Persons with Disabilities is a useful example of a mechanism where the New Zealand Government has allocated monitoring responsibilities to existing bodies that are independent of Government.[21]

8.3 The functions of the oversight mechanism could include:

(a) awareness and education work;

(b) investigations; and

(c) prosecutions and/or civil claims in relation to complaints.

8.4 Complementary awareness and education work by a body such as Employment New Zealand (MBIE) would also be appropriate.

9 Implementation of proposals (questions 26-27)

Support services (question 26)

9.1 The Law Society considers that support services, including checklists and education services, will be crucial given the additional costs involved in meeting the responsibilities under the proposed framework. The development of guidance and toolkits, checklists, education services, the creation of a central register, and phase-in time are all reasonable, practical initiatives to mitigate costs.

9.2 We encourage officials consult the public and key stakeholders when developing any guidance and toolkits to ensure they are fit for purpose and provide adequate support to entities.

Phase-in time (question 27)

9.3 The Law Society considers a phase-in period is needed, but this will depend upon the level of responsibilities imposed on entities with different revenue levels. The 'less than NZD$20 million' level proposed for "reasonable and proportionate action" where the entity is aware of modern slavery or worker exploitation may cause difficulties for businesses that have

[21] See "Notice of independent monitoring mechanism" (13 October 2011) *New Zealand Gazette* (available here: https://www.odi.govt.nz/united-nations-convention-on-the-rights-of-persons-with-disabilities/nzs-monitoring-framework/notice-of-independent-monitoring-mechanism/).

limited resources to take such action. Such entities will need an extended period to become familiar with their responsibilities and to implement them.

10 Next steps

10.1 The Law Society values the opportunity to provide feedback on the issues raised in the Discussion Document, and notes that further work is required before any policy decisions can be made in relation to the scope of the proposed framework, revenue thresholds, definitions and potential enforcement mechanisms. We encourage officials to undertake a further round of consultation on any preliminary decisions relating to these matters, to ensure interested parties can provide informed feedback and the legislation is ultimately fit for purpose.

10.2 We would be happy to discuss this feedback further, if that would be helpful. Please feel free to contact me via the Law Society's Law Reform & Advocacy Advisor, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz).

Nāku noa, nā

Frazer Barton
Vice-President

Appendix 1: anonymised case examples of domestic worker exploitation

Example 1

This case involved a migrant worker who was employed by an accredited employer under an employment agreement. The employment agreement required the employer to pay the worker the hourly rate required for the grant of their work visa. However, the employer took the worker to an ATM machine each payday and made the worker withdraw and hand over, in cash, an amount which brought down their wage below the agreed hourly rate.

We are also aware of other instances where allegations of this type have been levelled against employers in order to secure permanent residence for the 'complainant' (and where, on investigation, the claimed exploitation was found to be baseless).

Example 2

Another case involved migrants who were hired by a company as unpaid interns. They did not receive any training or have opportunities to undertake work to further their careers. Instead, they were asked to:

- Buy company products with their own money so their manager could meet his sale targets;
- Chauffeur the managers' partners to personal appointments;
- Collect the managers' personal dry cleaning; and
- Work well beyond 40 hours per week, and often into the night and over weekends.

Example 3

This case concerned two migrant women who came to New Zealand from the Philippines. They had open work visas, and accepted a job which involved cleaning Airbnb properties owned by a South Island couple. They were initially offered accommodation in the couple's family home, but shortly after arriving in the South Island, they were moved into a converted sea container on the property.

Over the course of the following year, the women would regularly be rushed out of the sea container and returned to the house prior to council inspections, and were constantly in a state of movement, or in anticipation of being moved. The sea container had a video camera at the entrance, which would trigger a motion sensor when the women left the container outside of work hours – this would in turn result in the employers questioning the women as to their whereabouts and their activities outside their work hours.

The women were expected to undertake a number of tasks in addition to their paid cleaning job – for example:

- Picking up Airbnb guests from the airport;
- Doing laundry, cleaning, washing cars, feeding animals and gardening on the employer's property;
- Providing accounting services for business activities undertaken by the employer and the employer's children;

- Serving drinks and performing (singing) at one of the Airbnbs which was used as an event centre; and
- Over time, managing an entire cleaning crew (which involved preparing cleaning schedules, finding replacement cleaners, and doing their cleaning tasks if they could not find a replacement).

Over the course of 18 months, the women were only given 10-20 days off work. They were effectively expected to be 'on call' 24 hours a day, and required to work in excess of 90 hours a week (despite being paid only for 40 hours each week). One of the women suffered from various mental health issues which were exacerbated by the lack of privacy and their working conditions. The employers would emotionally manipulate the women by telling them how lucky they were to be employed in New Zealand, and how they were treating the employer badly by complaining about their working conditions.

Appendix 2: analysis of international legislation

Country	Legislation	What are the requirements?	Stage of legislation	Reporting threshold	Consequences for failure to produce statements	Consequences of failure to address modern slavery risks	Penalties for failure to report	Gaps in legislation	Level of transparency: who is the obligation owed to?
Australia	Modern Slavery Act 2018.	Under the Act, companies must release a statement every 12 months on the risks of modern slavery occurring within their supply chains globally and the company's actions to assess those risks. The statement must be publicly available.	Modern Slavery Act was passed on 10th December and came into effect on 1st Jan 2019. In August 2020 the Government launched the online register that publishes companies' statements.	It applies to companies (and Federal Government) with annual revenue worldwide over 100 million AUD, thus impacting approx. 3000 companies.	It does not impose civil or criminal sanctions for failure to report, and is therefore soft law. Although there are no financial penalties for failing to comply with the Act, the government can "name and shame".	Public "naming and shaming".	It does not impose civil or criminal sanctions for failure to report, and is therefore soft law. Although there are no financial penalties for failing to comply with the Act, the government can "name and shame".	Some ambivalence, and caution or restraint, in placing obligations on companies and considerable reliance on the power of consumer sovereignty and civil society to identify and punish companies that either fail to report or report a poor state of affairs.	Government has launched an online register that publishes companies' statements.
	New South Wales Modern Slavery Act 2018 (Amendment Act 2021)	(**Repealed**) Reporting entities will be required to produce annual transparency in supply chain reports	The Amendment Act received royal assent on 29th November 2021 and has taken effect as of 1st January 2022.	Private entities will be obligated to report under the Federal regime, affecting corporations with	Dealt with under the Commonwealth Act. Not currently punishable under NSW Act.	The Amendment removed the ability of courts to make "risk orders" which would have prevented	Dealt with under the Commonwealth Act. Not currently punishable under the NSW Act.	Has taken away the stricter punishments and lower threshold for those private entities. Too much deference to consumer	Section 26 has also been altered to give the Commissioner greater discretion as to what information is appropriate to

		The reporting requirements will apply to companies with annual turnover exceeding 50 million AUD. These former provisions of the NSW Act included fines of up to $1,100,000 for failing to publish a statement or providing false or misleading information. Six new criminal offences were created, making it an offence to use children in the production of child abuse material. The Act created an office of anti-slavery commissioner - an	It **repealed** the modern slavery reporting obligations for NSW businesses. This means there will continue to be one supply chain transparency regime for Australian businesses as prescribed in the Commonwealth *Modern Slavery Act 2018* (Cth). However, the anti-slavery Commissioner remains and under section 9(1)(e) the Commissioner still has a function to monitor the reporting of modern slavery risks and the effectiveness of due diligence procedures against modern slavery in	over $100 million annual turnover. NSW government agencies will be required to submit modern slavery statements to the public register of the Commissioner. These include Government sector agencies, NSW government agencies, councils, state-owned corporations and any public/local authority that exercises public functions.		individuals convicted of offences under the NSW Act to engage in conduct which might result in further slavery.		sovereignty.	record on the public register (s26(1)(d)), as well as requiring the Commissioner to include other information required by the regulations (s26(1)(e)). The Amendment Act allows the Auditor-General to conduct audits of "any or all particular activities of a government agency" to ensure that goods and services it procures are not the product of modern slavery.

		independent office - not subject to the control of the Premier or any other Ministers in the exercise of its functions under section 9 of the Act.	**government procurement** (s 25).						
France	Devoir De Vigilance Des Enterprises Donneuses D'Ordre	A due diligence obligation to make a plan to eliminate risks to human rights, security, health and safety, or the environment within their supply chain. The plan must require; an assessment of the various risks that need to be analysed or prioritised, procedures for assessing subsidiary companies or contractors, the actions to be taken in order to stop risks of harm, a reporting	Passed into law, some provisions struck down as unconstitutional. Further legislation is highly likely.	Any company headquartered in France with over 5,000 employees, or any company with headquarters anyway operating in France with over 10,000 employees. Subsidiary companies are exempt if their parent company files a report.	An obligation to repair the damage caused by the breach. (Ruled unconstitutional).	An obligation to repair the damage caused by the breach. (Ruled unconstitutional).	An obligation to repair the damage caused by the breach. (Ruled unconstitutional).	A series of court cases have severely limited the amount of oversight on companies and the degree to which they are liable. More needs to be done to pass a new law which is in line with the French Constitution.	A case can be brought against any company by any person who can prove standing. If found liable, the company must pay costs and the court has discretion in determining how to publicise their decision in addition to the exact nature of penalties.

		process for risks in the supply chain made in collaboration with any relevant trade unions and an effectiveness assessment mechanism.							
Norway	Norway Transparency Act	Enterprises who are required to report must carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises. The duty to carry out their due diligence requires an account of their enterprises structure, area of operations and procedures for handling actual and potential adverse impacts on fundamental human rights and working conditions. This	Comes into effect July 1st 2022	The Act applies to companies in Norway and foreign companies operating in Norway who meet at least ⅔ of this criteria: At least 50 full time employees (or equivalent to in man hours), An annual turnover of at least NOK70 million, and a balance sheet sum of NOK 35 million.	The act does not address the penalty for failing to produce statements. Section 14 is the only part of the act which addresses the failure to account for due diligence. Section 14 of the act sets out infringement policies which is the only consequence for failure to comply with the act. In the case of repeated infringements, a penalty may be imposed which is to be paid by the party to whom the	Section 14 of the act sets out infringement policies which is the only consequence for failure to comply with the act. In the case of repeated infringements, a penalty may be imposed which is to be paid by the party to whom the decision is directed. The penalty will depend on the severity of the infringement and is to be paid within four weeks after the decision is made. The act does also	Section 14 addresses this again with penalties being imposed on the party depending on the severity of the breach.	There is no detail on how the penalties are decided or what they may be. This makes the consequence of non-compliance and infringement of the act a discretionary exercise.	The due diligence account has to be made public on the enterprises website, therefore the public is made aware of how that business deals with issues in their supply chain with modern day slavery. However, the low and ambiguous threshold for penalties may be to keep the business safer for breach of the legislation.

		must also include plans to mitigate any adverse impacts or risks associated with human rights. This account has to be made public and easily accessible on the enterprises website and must be published and updated no later than 30 June of each year.			decision is directed. The penalty will depend on the severity of the infringement and is to be paid within four weeks after the decision is made.	require the due diligence to be made public and easily accessible, therefore the companies have to expose themselves.			
Germany	The Act on Corporate Due Diligence Obligations in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten)	Enterprises are under an obligation to exercise due regard for the human rights and environmental due diligence obligations in their supply chains with the aim of preventing or minimizing any risks to human rights or environment related risks OR of ending the violation of human rights-related or	This act comes into force 1 January 2023.	This act applies to companies that employ at least 3,000 employees in Germany (including those posted abroad). As of 1 January 2024, this will change to companies with at least 1,000 employees.	Section 24 sets out that a person has committed a regulatory offence when they intentionally or negligently fail to meet reporting or other due diligence obligations. The maximum fine for violations of due diligence and reporting is up to 8 million euros. This will depend on the nature and gravity	Section 24 sets out that a person has committed a regulatory offence when they intentionally or negligently fail to meet a reporting or other due diligence obligation.	Section 24 sets out that a person has committed a regulatory offence when they intentionally or negligently fail to meet a reporting or other due diligence obligation.	This act does not cover the entire supply chain. The law also fails to provide for a specific civil liability regime for companies that cause or contribute to harm. The absence of such a regime means that the law could fail to exert necessary deterrent pressure on companies to prevent future violations.	The duty is owed to the employees and the public. This is because the Federal Office for Economic Affairs and Export Control (BAFA) has the responsibility to for reviewing compliance with obligations arising from the act within the report of due diligence. This report must also be made public within four months of the

		environment-related obligations.			of the violation. Section 22 furthermore sets out; enterprises that have had a fine imposed on them shall, as a rule, be excluded from participation in a procedure for the award of a supply, works or service contract by public and sector contracting entities as per the Act against Restraints of Competition (sections 99 and 100), for up to 3 years.				financial year it pertains to and made available for seven years.
UK	Modern Slavery Act 2015	Covered commercial organisations must prepare a signed slavery and human trafficking statement for each financial year. The organisation must state the steps towards	Enacted 26 March 2015	Body corporates or partnerships which carry on a business, or a part of a business, in any part of the UK, with a total annual turnover exceeding £36m (as prescribed by regulations made	The Secretary of State can bring civil proceedings in the High Court for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act	No legal consequences. Relies on the power of consumer sovereignty.	The Secretary of State can bring civil proceedings in the High Court for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act	Non-prescriptive reporting obligations (combination of mandatory reporting obligations with optional criteria), lack of compliance measures, does not target the level of 'due diligence'.	Consumers (website otherwise written record on request within 30 days).

		transparency taken in the areas of supply chains and in any other part of the business, or that no such steps have been taken. If the organisation has a website, the statement must be published and linked in a prominent place on that website's homepage.		by the Secretary of State).	1988.		1988.		
California	The California Transparency in Supply Chain Act 2010	The Act requires that covered companies must post disclosures on their websites regarding five areas in which they are taking action on modern slavery practices within their supply chains and practices. The five areas are verification, auditing, certification, internal	The Act went into effect on January 1st, 2012.	The Act applies to any company that does business in California, has annual gross receipts of more than $100 million, and identifies itself as a retail seller or manufacturer on its California tax return. Each year, the California Franchise Tax board evaluates information from state tax returns to determine which	The Attorney General has exclusive authority to enforce the Act and may file a civil action for injunctive relief if a company fails to produce a statement.	The Act does not in any way mandate that business implement new measure to ensure that their product supply chains are free from modern slavery practices. There are no criminal or other penalties for a company's failure to address modem slavery risks. As long as they have stated that they are not	The Attorney General has exclusive authority to enforce the Act and may file a civil action for injunctive relief if a company fails to produce a statement.	The Act has been criticised for its lax requirements and lack of enforceability. Companies have sufficient wiggle room in this Act to mislead consumers and skirt around the issue of modern slavery as the reporting guidelines are weak. Furthermore, the Act relies upon public scrutiny as its	The commitment of "transparency' in the title of the Act is considered to be primarily for the benefit of consumers. Given the lack of enforcement measures, the Act is solely focussed on providing consumers with critical information about the conduct of companies' actions against modern

		accountability, and training. The link or page on their website must be conspicuous and easy to find. If the company does not have a website, they are still required to respond with written disclosures to requests for information from customers within 30 days.		companies must comply with the Act, and provides a list of those businesses to the Attorney General.		taking action in their statements, injunctive relief will not be needed either.		primary mechanism of enforcement, which motivates companies to obfuscate wherever possible.	slavery.
US	H.R. 6279 "Business Supply Chain Transparency on Trafficking and Slavery Act of 2020"	An annual disclosure on whether action has been taken against forced labour, slavery, human trafficking and other forms of child labour. The report must include: whether the company has a policy to combat these risks, the efforts of them to evaluate and address the risks,	Stalled in House of Representatives.	Companies under US jurisdiction with global receipts in excess of $100,000,000 annually.	Nothing explicit in the act. Presumably the same as violations of equivalent securities and exchange commission regulations.	Publication in the report.	Nothing explicit in the act. Presumably the same as violations of equivalent securities and exchange commission regulations.	There is no clear indication of what the penalty for failure to comply is.	The report must be made available on the company website and a US Government website.

		audit of supply chain, efforts taken to supply remedy to those affected, whether the company consults with any relevant labour groups to avoid these risks.							
Belgium	Instaurant un devoir de vigilance et un devoir de responsabilité à charge des entreprises tout au long de leurs chaînes de valeur.	A due diligence obligation is placed on them to avoid human rights breaches. The obligation is proportional to the company's size and capabilities. A plan must be created including; a description of the supply chain, a description of the risk factors, a plan for how to monitor and coordinate with subsidiary companies, a plan for appropriate risk mitigation, a whistleblower/comp	Working its way through the legislature but seemingly on track to be passed into law.	Applies to all companies not covered by the 2003 EU paper on small and medium businesses and business operating in high risk geographic areas of economic sectors.	The penalty for any failure is a claim for an injunction brought by the established inspection body to demand fulfilment of obligations. Alternatively, if a crime is breached, criminal prosecution is allowed under the law and serious breaches can result in exclusion from public markets.	The penalty for any failure is a claim for an injunction brought by the established inspection body to demand fulfilment of obligations. Alternatively, if a crime is breached, criminal prosecution is allowed under the law and serious breaches can result in exclusion from public markets.	The penalty for any failure is a claim for an injunction brought by the established inspection body to demand fulfilment of obligations. Alternatively, if a crime is breached, criminal prosecution is allowed under the law and serious breaches can result in exclusion from public markets.	Appears to be one of the most detailed plans for a legislative response to modern slavery seen so far. It is unclear how it will look when passed, however, and the final results will have to be compared to the draft.	A new inspection body is created by law to whom the companies must report to and coordinate with. It also creates an exemption in normal civil law procedures allowing companies to be prosecuted by individuals for a failure to comply.

		laint mechanism.							
Netherlands	The Dutch Child Labour Due Diligence Law	The law requires companies to investigate whether their goods or services have been produced using child labour and devise a plan to prevent child labour in their supply chains if they find it. They must lodge statements within six months from the date the act enters into force, which will then be made publicly available by the national competent authority. If a company identifies a reasonable suspicion of child labour, it is required to develop an action plan in line with international guidelines in order to prevent and mitigate the risks of child labour. What	The legislation is due to come into effect in mid-2022.	The law applies to all companies legally domiciled in the Netherlands. The law will also apply to any international company that delivers products or services to the Netherlands twice or more per year, meaning that global manufacturers conducting significant business within the Netherlands will also be accountable under the new law.	Businesses covered by the statute that do not submit a due diligence statement will be subject to a nominal fine of €4,100.	The maximum penalty for failure to comply with the underlying provisions of the law will be set at a fine of €750,000, or 10% of the company's annual turnover. If a company is found to have committed the same violation within a time span of five years, and the company is managed by the same director, the responsible director may face criminal prosecution and sanctions.	Companies whose reporting standards do not satisfy regulatory standards will be fined.	Gaps in the legislation will be better identified when the legislation is actually passed, and aspects of the law are further defined through a Dutch General Administrative Order.	The legislation requires affected companies to owe transparency to both the Dutch government (through the national regulating body) and the general public. Reporting is to the regulatory body and action plans are also made with the assistance of this body, and all information will be available in a public registry.

		the research and possible plan of action should look like will be further defined through a Dutch General Administrative Order.							
Europe	EU Directive on Mandatory Human Rights, Environmental and Good Governance Due Diligence (Proposal)	Covered companies must integrate due diligence into all corporate policies and have in place a due diligence policy that is updated annually and which mandatorily contains a description of the company's approach, code of conduct, and the processes put in place to implement due diligence. Covered companies are required to carry out periodic assessments at least every 12 months on their own	Adopted 10 March 2021. Expected to come into effect late 2022 or early 2023.	Mandatory due diligence of human rights and environmental harms in supply chains to all companies formed in the EU with either 500 + employees on average and a net worldwide annual financial turnover of EUR 150 million, or companies with more than 250 employees on average and a net worldwide annual financial turnover of EUR 40 million, provided at least 50% of net turnover is generated in one	Potential liability for sanctions based on rules laid down by Member States (effective, proportionate and dissuasive). Imposition and extent of sanctions must take account of the company's efforts to comply, and if pecuniary sanctions are imposed, must be based on the company's turnover. Member States must finally ensure that any decision of the supervisory authority containing sanctions related to	Liable for damages if, as a result of the failure to comply with the obligations (to prevent potential adverse impacts & bring actual adverse impacts to an end), an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage. Member States lay down rules governing the	Potential liability for sanctions based on rules laid down by Member States (effective, proportionate and dissuasive). Imposition and extent of sanctions must take account of the company's efforts to comply, and if pecuniary sanctions are imposed, must be based on the company's turnover. Member States must finally ensure that any decision of the supervisory authority containing sanctions related to	Discretion for Member States to determine sanctions and civil liability upon implementation into national law.	Customers. Also requirement for Member States to ensure than any natural or legal person that had reasons to believe, on the basis of objective circumstances, that a company does not appropriately comply with the provisions of the Directive, is entitled to submit substantiated concerns. Requirement for Member States to ensure that companies applying for public support

		operations and measures, those of their subsidiaries and, where related to the value chains of the company, those of their established business relationships, and to update their due diligence policy accordingly. Member States must also ensure that potential adverse impacts are prevented, and that actual adverse impacts are brought to an end.		or more specified sectors. The Directive also applies to companies formed in a non-EU country which generated a net annual turnover of more than EUR 150 million in the Union, or which generated more than EUR 40 million but no more than EUR 150 million in the Union, provided that at least 50% of its net worldwide turnover was generated in one or more of the specified sectors.	the breach of the provisions of this directive is published.	civil liability of the company in their State.	the breach of the provisions of this directive is published.		certify that no sanctions have been imposed on them for a failure to comply with the obligations of the Directive.
International Labour Organisation, in relation to New Zealand	Co029 - Forced Labour Convention, 1930 (No. 29), and Po029 - Protocol of 2014 to the Forced Labour Convention, 1930	New Zealand has ratified these international conventions and therefore have an obligation to uphold them domestically.	New Zealand ratified the Convention in 1938 and the Protocol in 2019. New Zealand made a strong commitment against modern slavery by ratifying the ILO	Article 1 sets out that each signatory undertakes to suppress the use of forced or compulsory labour in all its forms in the shortest possible period.	Strong suggestion of state enforced penal measures.	Article 25 sets out that any forced or compulsory labour shall be punished as a penal offence, and it shall be an obligation on any member ratifying this Convention to		Does not spell out or give any guidelines to what a modern day slavery legislation ought to look like or the variables it ought to take into consideration.	This Protocol was created for the signatories to have an obligation to combat modern day slavery. The use of international law treaties may likely have been a tactic to

			Protocol on Forced Labour. It became forty third in the world to ratify it and the third from the Asia Pacific region.	Article 2 defines the term of “forced or compulsory labour”.		ensure that the penalties imposed by law are really adequate and are strictly enforced.			ensure a global change in attitude in how to deal with modern day slavery.