MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

# COVERSHEET

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| **Minister** | Hon Carmel Sepuloni | **Portfolio** | Workplace Relations and Safety |
| **Title of Cabinet paper** | *Proactive release of Cabinet paper: Modern Slavery and Worker Exploitation: Supply Chain Legislation* | **Date to be published** | 27 September 2023 |

| **List of documents that have been proactively released** | | |
|---|---|---|
| **Date** | **Title** | **Author** |
| June 2023 | Modern Slavery and Worker Exploitation: Supply Chain Legislation | Office of the Minister for Workplace Relations and Safety |
| 06 June 2023 | Modern Slavery and Worker Exploitation: Supply Chain Legislation: CAB-23-MIN-0221 Minute | Cabinet Office |
| 26 January 2023 | Modern Slavery and Worker Exploitation Reform: Regulatory Impact Statement | MBIE |

**Information redacted** **YES / NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of confidential advice to Government.

# Coversheet

| Purpose of Document | |
|---|---|
| Decision sought: | Analysis for the purpose of informing Cabinet decisions on legislative reform to address modern slavery and worker exploitation. |
| Advising agencies: | Ministry of Business, Innovation and Employment |
| Proposing Ministers: | Minister for Workplace Relations and Safety |
| Date finalised: | 26 January 2023 |

**Problem Definition**

Without a significant change in approach, we expect that modern slavery will continue to increase in New Zealand's international supply chains and operations, and domestic exploitation will likely remain at similar levels. New Zealand is increasingly falling behind some of our key trading partners who are taking legislative action to address labour exploitation in their supply chains and operations. A lack of action from New Zealand could harm our reputation for upholding human rights and the ability of our exporters to meet market expectations.

**Executive Summary**

This RIS analyses options to address modern slavery and worker exploitation in New Zealand's supply chains and operations. MBIE's preferred option is mandatory disclosure with prescribed reporting criteria and a public register.

This RIS focus on two related types of serious labour exploitation:

- Modern slavery (domestic and international) is labour exploitation that a person cannot leave due to threats, violence, coercion, deception and/or abuse of power. It is an umbrella term that includes forced labour, debt bondage, forced marriage, slavery, and human trafficking. These terms have broad international acceptance and are defined by organisations such as the International Labour Organization.

- Worker exploitation (domestic) is defined as serious breaches of New Zealand's employment standards. This includes serious failures to provide workers their minimum wage and holiday entitlements, as well as unlawful wage deductions. It would not include breaches that are not 'serious', such as failures to keep proper records.

Current estimates from the International Labour Organization and Walk Free Foundation suggest there are 50 million victims of modern slavery around the world (comprising 28 million victims of forced labour, including sexual exploitation, and 22 million victims of forced marriage). In New Zealand, high profile cases of both serious employment

standards breaches,[1] and practices that would constitute modern slavery by international definitions,[2] reinforce the fact that we are not immune from these challenges – despite a suite of regulatory tools and interventions targeting the direct perpetrators of any exploitation (eg in the Crimes Act, and via the immigration and employment regulatory systems).

There is a growing international consensus, reflected in UN and OECD guidance, that reducing the incidence of serious exploitation will require effort and responsibility by entities other than those who are directly responsible for it. Procurers seeking the lowest price or through their ordering practices can contribute to the conditions that drive exploitation. In one sense, this is because most modern slavery offending related to goods and services sold in New Zealand occurs outside of New Zealand's jurisdiction. Placing responsibilities on New Zealand entities, who may be indirectly contributing to international exploitation, enables New Zealand actions to have international impact.

This reasoning is also relevant in a domestic context, where some instances of serious exploitation have been linked to operations and supply chain practices, rather than just the actions of direct employers (which our regulatory systems focus upon). Independent research conducted in 2019 as part of the Government's review into temporary migrant worker exploitation identified sub-contracting and franchise arrangements, where "peak" entities have little oversight of labour practices further down the chain, as key risk factors. Under current settings, those third parties are not liable (or subject to sanctions arising from) for any harm they have caused or contributed to unless they were directly involved in the exploitation.

Direct regulatory approaches (ie targeting the direct perpetrators of exploitation) are not available to address international exploitation, and in the domestic context direct regulatory options were addressed in the recent policy review on reducing temporary migrant exploitation (so are therefore out of scope for the current work). These factors have meant that the scope of this RIS focusses on options to address the gap that exists for incentivising greater ownership and responsibility by New Zealand entities for labour exploitation risks in their wider operations and supply chains.

A range of options exist within this scope (both regulatory and non-regulatory). Based on emerging practices in other jurisdictions, and early evidence of effectiveness, the most promising options were outlined in a public discussion document that was released in 2022, *A legislative response to modern slavery and worker exploitation.* This proposed a graduated suite of responsibilities that would apply to entities of all types in relation to worker exploitation and modern slavery risks. These options spanned compulsory supply chain due diligence, disclosure, and a duty for certain entities to take action if they become aware of modern slavery or worker exploitation within their supply chains.

Although the overall proposal received widespread support through the public consultation (including from businesses), mandatory due diligence and take action options are not included in this RIS. This is because the responsible Minister has directed officials to proceed with implementing the disclosure responsibility without the significant delay that

[1] In 2018 The Labour Inspectorate found that 73 subcontractors hired by Chorus to build an ultra-fast broadband network in New Zealand had breached minimum employment standards. A later review by Chorus found a further 33 subcontractors had breached standards. Breaches included failing to keep employment records, pay the minimum wage and provide employment agreements. In some cases contractors deliberately used practices such as 'volunteering' or extended trial and training periods without pay.

[2] In March 2022, New Zealand man Joseph Matamata, was convicted of 13 charges of slavery and 10 of human trafficking for offences carried out between 1994 and 2019.

would be needed to carry out the detailed policy analysis required for the more stringent and complex due diligence and take action options. Accordingly, this RIS focusses on options for using public disclosure as a way of increasing the overall effectiveness of New Zealand's response to modern slavery and worker exploitation, both domestically and internationally.

The options assessed in this RIS are:

- The status quo (under which some New Zealand entities already undertake voluntary due diligence and disclosure, with some government support in the form of guidance)
- An enhanced voluntary disclosure regime, supported by a public register.
- A legislative disclosure regime, requiring entities with more than $20m annual revenue to disclose the risks of modern slavery and domestic worker exploitation in their supply chains and operations, and the steps they are taking to manage those risks. The design of the legislative proposal is based on international best practice guidance from the UN and OECD. It also builds on the independent reviews of similar regimes in Australia and the UK.

The compulsory (legislative) disclosure regime is MBIE's preferred option. Notably, the status quo has not prevented an increase in labour exploitation in New Zealand's supply chains, and there is also evidence of ongoing domestic issues. While a voluntary disclosure regime would have smaller regulatory burden for some entities, it would be less effective because it will only provide public information on entities that choose to disclose, and international experience shows that most entities will not disclose significant and obvious risks where there is no legal requirement or enforcement.

The preferred option will increase the transparency of entities' procurement and operational practices so that consumers, business partners and investors can make informed choices about labour exploitation when deciding whether to purchase goods and services or to work with an organisation. Enabling increased public scrutiny in this way, coupled with the increasing demand for better practices, will incentivise entities to improve their management of labour exploitation risks. This will complement existing regulatory functions, such as the labour inspectorate, by increasing the incentives for organisations to use their purchasing power and business relationships to influence the behaviour of their suppliers and business partners in mitigating exploitation within their supply chains.

This legislative action would bring New Zealand into greater alignment with our international trading partners, which have increasing expectations of New Zealand to take stronger action to protect workers. This includes through commitments set out in recent Free Trade Agreements (FTAs) with the United Kingdom (UK) and European Union (EU). Australia, the UK, United States, France and Germany have established legislative regimes that address exploitation in supply chains. The EU and Canada are currently progressing draft Directives and legislation. In contrast New Zealand was downgraded to 'Tier 2' on the United States' Trafficking in Persons Report in 2021, putting us increasingly out of step internationally, and presenting reputational risks to New Zealand and the ethical brand of its products - potentially jeopardising access to key markets.

We do not expect the preferred option to completely resolve the problem. Labour exploitation is usually difficult to identify as perpetrators hide their behaviour. New Zealand's international supply chains are often complex, and even when procurers identify risks or incidents of exploitation, it can be difficult to put in place effective mitigation measures and to ascertain whether those measures are effective. This is reflected in the

UN Guiding Principles on Business and Human Rights which focus on continual improvement and risk-based prioritisation.

The cost for entities will vary depending on how important they consider the disclosure will be to their reputation, and therefore how comprehensive it should be. This is because there will be no minimum standard for the risk assessment and risk management that is required of entities, so long as the statement is not false or misleading, and there will be a very low cost for entities that only provide the minimum information required. We estimate that the total cost to all entities in the first year will be in the range of $20m to $60m, depending on how many of the 4,000 entities in scope make a comprehensive statement. The average cost for preparing a comprehensive statement will be around $15,000 for entities that do not already undertake labour exploitation due diligence and would be much lower for entities making a bare-minimum disclosure. The cost will be lower for smaller entities with simpler supply chains and operations. We expect the costs of subsequent disclosures to reduce over time as entities develop their information base on which to make subsequent disclosures. The cost of identifying and managing labour exploitation risks is often significantly higher than the cost of preparing a disclosure statement, but these steps are not directly required under this proposal.

Establishing a disclosure responsibility would encourage entities to start putting risk-management processes in place, which would also help prepare them for any further complementary options that may be developed in the future.

## Limitations and Constraints on Analysis

*Constrained scope of options considered*

- This RIS considers options (both legislative and non-legislative) for using public disclosure by New Zealand entities as a way of increasing the overall effectiveness of New Zealand's response to modern slavery and worker exploitation, both domestically and internationally. The options examined in this RIS have been constrained in a number of ways. The scope has been narrowed to exclude the mandatory due diligence and the take action options that were publicly consulted upon because the Minister has directed officials to proceed with the disclosure responsibility, without the significant delay that would be needed to finalise the detailed policy analysis required for the more stringent and complex obligations.
- Separating disclosure-related options from the other options creates some risks in relation to using public consultation responses as the basis for gauging public support for the proposals considered in this RIS. The 2022 public consultation document, *A legislative response to modern slavery and worker exploitation,* proposed a graduated suite of responsibilities that would apply to entities of all types in relation to worker exploitation and modern slavery risks – spanning supply chain due diligence, disclosure, and a duty for some entities to take action if they become aware of modern slavery or worker exploitation.
- It is possible that some stakeholders who supported disclosure requirements, in the understanding that this would be combined with other regulatory duties, would not support disclosure as a standalone measure. We do not consider this a significant risk, as the disclosure component was strongly supported in itself during consultation. Some submitters, particularly from the business sector, explicitly supported disclosure but did not support other measures. Introducing disclosure now will likely have a positive impact, allowing the regulator and regulated entities

to build the understanding and capabilities, and support any stronger complementary options (such as due diligence and take action duties) that are developed in the future.

- Ministers ruled out banning imports of goods produced with modern slavery as an option on initial advice that such bans would be less likely to effectively address modern slavery (compared to due diligence-based approaches). While there is currently limited evidence on the relative effectiveness of different approaches, early evidence suggests that disclosure and due diligence obligations are more likely to:
    - lead to wider culture and behaviour changes by businesses and consumers
    - reach deeper into supply chains, including into service supply chains, and
    - target the source of the problem.

*Challenges in quantifying the scale of the problem(s)*

- There are significant challenges in explicitly quantifying the scale of modern slavery (internationally and domestically) or worker exploitation (domestically) – the harms that the proposals in this RIS ultimately aim to reduce. The hidden nature of these harms means that reliable fine-scale data does not exist, although there is clear evidence of a problem of considerable scale. MBIE has relied on international estimates by NGOs and research institutions (in respect of modern slavery), and limited administrative data and independent research (in respect of worker exploitation in New Zealand). We do not consider that these information limitations significantly affect the reliability of the overall analysis, noting that part of the rationale for the proposed options would be to generate more information about the potential scale of exploitative practices in relevant supply chains.

*Challenges in quantifying the monetised benefits*

- The nature of some benefits are difficult to monetise. Similar to the challenge in quantifying the scale of the problem due to the hidden nature of the harms, it is not possible to accurately monetise the benefits of eliminating these harms. For example, the UK Home Office estimated the cost to society for each case of modern slavery in the UK,[3]. We consider that estimate to be based on too many assumptions to be meaningful, and that it does not adequately reflect or capture the experience of victims. The estimated UK cost per case of labour exploitation that amounts to modern slavery was £318,810 in 2016/17, with a total cost of modern slavery to the UK estimated as being between £3.3 billion and £4.3 billion. 84 per cent of this cost is the physical and emotional harm to victims, and 12 per cent is lost output and time. We do not consider this approach to be a meaningful representation, given the wide range of experiences of victims, and we consider the monetisation of the physical and emotional harm overly reductive.
- There could also be benefits to organisations whose competitors are not currently addressing labour exploitation risks in their supply chains and operations. Some of the benefit will be a reduced ability for their competitors to undercut their prices

[3] The economic and social costs of modern slavery. UK Home Office, 2018. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729836/economic-and-social-costs-of-modern-slavery-horr100.pdf

through the use of labour exploitation. Consumers and other stakeholders will benefit from the disclosure information that will improve their ability to choose goods and services that are produced in a manner aligned with ethical values. While there is qualitative evidence about these benefits, there are limitations in our ability to quantify the monetary value of this benefit.

*Underpinning assumptions*

- Disclosure-based interventions rely on using public information to motivate voluntary behaviour change and action. Assumptions have been made about the extent to which stated consumer and other stakeholder (such as investor) preferences are applied in practice. In the 2020 New Zealand Consumer Survey, 50 per cent of consumers report their purchasing decisions are affected by knowing whether a business treats its works fairly either, always or most of the time. This is an increase from 48 per cent in 2018 and 43 per cent in 2016. We assume that this both reflects a shift in public sentiment in favour of socially sustainable practices and translates into changes in consumer behaviour in practice.
- We further assume that changes in sentiment by consumers and other stakeholders will drive changes in commercial practices, and that these will in turn improve outcomes for workers who are subject to or vulnerable to labour exploitation. There is qualitative and case study evidence to support this assumption, but it is difficult to measure quantitatively at a macro level (noting, for example, that estimates of modern slavery occurring at a global level continue to increase despite countries increasingly introducing legislation to address modern slavery in global supply chains).

| **Responsible Manager** |
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| *Nita Zodgekar*<br>*Manager*<br>*International Labour Policy Team*<br>*Ministry of Business, Innovation and Employment*<br><br>*26 January 2023* |

| **Quality Assurance** | |
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| Reviewing Agency: | Ministry of Business, Innovation and Employment |
| Panel Assessment & Comment: | MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposal in the paper. Although the scale of the problem and the monetised benefits are not quantified, the Impact Statement clearly identifies the reasons for this, and draws on international experience from similar regimes, feedback from relevant stakeholders and qualitative evidence. |

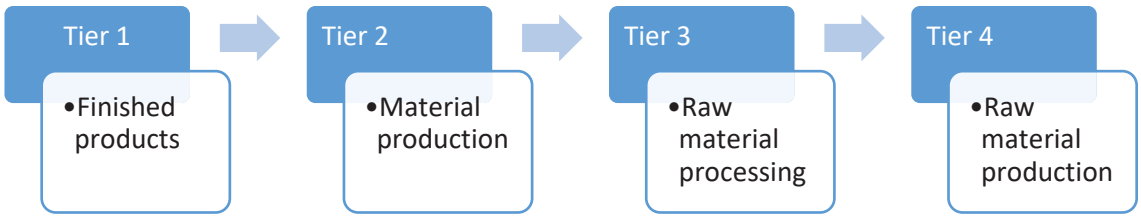
# Section 1: Diagnosing the policy problem

## What is the context behind the policy problem and how is the status quo expected to develop?

### Key terms used in this RIS

1. **Modern slavery** is an umbrella term that covers the legal concepts of forced labour, debt bondage, forced marriage, slavery and slavery-like practices, and human trafficking.
2. **Worker exploitation** means serious breaches of New Zealand employment standards, for workers in New Zealand.
3. **Supply chains** are the network of organisations that work together to transform raw materials into finished goods and services for consumers. They include all activities, organisations, technology, information, resources and services involved in developing, providing, or commercialising a good or service into the final product for end consumers.
4. The diagram below provides a simplified view of a supply chain relating to a manufactured good:

Figure 1. Example of a supply chain for a manufactured good




5. A finished good could be composed of components that are sourced and manufactured from thousands of suppliers located across the world. This means that many more steps and processes than suggested in the diagram above can be involved in practice, such as the transport of goods, warehousing, wholesale and retail.
6. **Operations** means all activity undertaken by an entity to pursue its objectives and strategy. We are interpreting 'operations' broadly as including all material relationships an entity has which are linked to its activities, including for example: investment and lending activity; material shareholdings; and direct and indirect contractual relationships (such as subcontracting and franchising relationships).

### Modern slavery and worker exploitation are serious global problems

7. Modern slavery and worker exploitation, whether it occurs here or overseas, has direct and indirect implications for all New Zealanders. It includes the denial of personal and economic agency, and a victim of slavery can face severe physical and emotional harm that can last for the rest of their life. The direct impact on victims cannot be adequately quantified but it is significant and can undermine a person's essential rights.
8. While there are significant methodological challenges in attempting to estimate the scale of the problem, current estimates from the International Labour Organization and Walk Free Foundation suggest there are 50 million victims of modern slavery around the world (comprising 28 million victims of forced labour, including sexual exploitation, and 22 million victims of forced marriage). Women and girls accounted for 54 per cent of modern slavery victims, including 43 per cent of victims of forced labour. An

estimated one in four victims of modern slavery are children, who account for 12 per cent of victims of forced labour.

9. Modern slavery has increased partially due to recent compounding crises, including the Covid-19 pandemic, armed conflicts, and climate change. These crises have disrupted employment and education, increased extreme poverty and forced and unsafe migration, and there has been an upsurge in reports of gender-based violence. The actions of consumers in New Zealand are likely contributing to slavery happening elsewhere in the world. A recent study by World Vision estimates that an average New Zealand household spends approximately $34 each week on industries whose products are implicated in modern slavery.[4]

10. Victims of modern slavery are denied basic human rights and can face severe physical and emotional harm. Victims are often among the most vulnerable members of society. International research[5] identifies children, women, individuals in poverty or experiencing social and cultural exclusion as being the most vulnerable to modern slavery.

### There is modern slavery and worker exploitation in New Zealand

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

12. Most of the 51 human trafficking victims identified in New Zealand up to 2021 have been migrant men who were trafficked for the purpose of labour exploitation. This is unlikely to reflect the full spectrum of people who are subject to modern slavery in New Zealand, as the hidden nature of these crimes means that vulnerable people are less likely, or able, to seek help or report their experience. Walk Free estimated that in 2016 around 3,000 people in New Zealand were in conditions of modern slavery.[6] The review into temporary migrant worker exploitation undertaken in 2019 found that the number of complaints of migrant worker exploitation had been increasing, and a large proportion of complaints that were investigated had been substantiated.[7]

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

14. Recent research conducted by Kantar Public, and funded by MBIE, suggests that serious worker exploitation remains a concern in some pockets of the labour market – particularly for temporary migrant workers. Nearly three in ten migrant workers surveyed had experienced at least one of the workplace issues measured, with evidence of potential overwork and underpayment, particularly in some sectors (retail

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[4] Risky Goods: New Zealand Imports, World Vision, 2021. https://www.worldvision.org.nz/getmedia/6904e490-14b7-4fbf-b11e-308ddf99c44a/WVNZ-research-risky-goods-nz-imports/

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

[7] See https://www.mbie.govt.nz/immigration-and-tourism/immigration/temporary-migrant-worker-exploitation-review/.

and hospitality). Around 2% of migrant workers reported being paid less than the relevant minimum wage rate, and smaller (though significant) numbers reported other treatment that may qualify as “serious exploitation” as we have defined the term, including having to pay a fee to get a job, or being required to pay back part of their wages to their boss. Issues were also reported by the benchmark cohort of workers (non-migrants): for example, around 1% of this cohort reported being paid less than the relevant minimum wage rate

15. During the consultation process on these proposals, qualitative feedback from victim support groups and representatives supports the analysis that worker exploitation continues to be a significant issue. Some examples of the types of harm are detailed below.

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

17. Significant exploitation was also identified from the third tier of subcontracting associated with New Zealand's ultrafast broadband rollout. This led to Chorus commissioning an independent review of their contracting model. The Labour Inspectorate investigation of the Ultra-Fast Broadband (UFB) rollout supply chain found potential employment standards breaches in 73 out of 75 employers the Labour Inspectorate initially investigated.

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

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

20. Feedback from public consultation, and focussed engagement with Māori advisors such as the New Zealand Council of Trade Unions Runanga, highlighted the importance of preserving and enabling kaitiakitanga and manaakitanga in relation to these issues.

### New Zealand’s current response focuses on exploitative practices by domestic employers

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

organised criminal group, which can include participation in a group that obtains material benefits from modern slavery practices.

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

23. Employment New Zealand has developed and published a range of resources to support fair workplaces by placing a focus on employment standards, labour and human rights.[8] The purpose of the resources is to help users to understand and apply ethical and sustainable work practices, in relation to how workers are treated, within their organisations and supply chains. The suite includes targeted resources for employers, procurers, franchisors, recruiters and employment brokers, directors, and investors. A case study of these resources is included in the Bali Process Working Group on Trafficking in Persons' recently released Compendium of Good Practice Examples to Combat Exploitation in Supply Chains.

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

    a. increasing compliance and enforcement activity by Employment New Zealand and Immigration New Zealand

    b. a new visa to support migrants to leave exploitative situations quickly and remain lawfully in New Zealand

    c. a new dedicated phone line and online reporting system that connect to a specialised migrant exploitation reporting and triaging function to support the joint work of the two main regulators in this area

    d. implementing an information and education action plan.

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

    a. implementing the UN Guiding Principles on Business and Human Rights through government contracts

    b. including labour chapters in Free Trade Agreements placing obligations on parties in relation to the ILO's Fundamental Principles and Rights at Work

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

26. New Zealand supports the OECD Guidelines for Multinational Enterprises, including through the resourcing of a National Contact Point to (among other activities) assess and investigate complaints made against multinationals operating or headquartered in New Zealand. However, the OECD Guidelines are voluntary and the National Contact

[8] See https://www.employment.govt.nz/workplace-policies/ethical-sustainable-work-practices/

Point's role (in the case of a failure to meet the standards) is to provide resolution assistance, such as through mediation.

### International jurisdictions and trading partners are increasingly establishing legislation requiring businesses to proactively address the risk of exploitation in their operations and supply chains

27. International expectations and actions to address slavery and exploitation in third party supply chains are increasing. A table summarising the international approaches that have been implemented to date – or are currently under consideration – is included as Annex One. Some of the most prominent examples are briefly described below. These international approaches are all relatively new, and none has been subject to a comprehensive evaluation.

28. Germany and Norway have implemented laws requiring due diligence and transparency on human rights violations in supply chains. In Germany, these requirements will apply to about 2,500 of Germany's largest enterprises (enterprises with 1,000 employees) and come into effect in January 2023. In Norway, the regulatory requirements came into force in July 2022, and apply to about 9,000 enterprises (those with NOK $70 million (~$12m NZD) in revenue or NOK $35 million (~$6m NZD) in assets.

29. Under the French duty of vigilance law, businesses with at least 5,000 employees in France, or 10,000 employees throughout the corporate group, must publish a vigilance plan detailing measures for risk identification and the prevention of severe violations of human rights resulting directly or indirectly from their operations, as well as the operations from companies they control, and certain subcontractors and suppliers. The Courts can require enterprises to update their plan if they have not carried out sufficient due diligence.

30. The UK and Australia have disclosure requirements and public registers (though not due diligence). The UK requires organisations with £36 million annual turnover to publish a statement on their website setting out the steps they take to prevent modern slavery in their business and their supply chains. There are no specifications about the information that needs to be disclosed. The UK introduced a voluntary registry in 2021 based around a survey about businesses' practices. The responses can be downloaded by the public as a spreadsheet. This allows an easy comparison between businesses.

31. Australia requires businesses with AU$100m annual revenue (about 4,000 organisations) to disclose the risks of modern slavery in their operations and supply chains, the steps they are taking to manage these risks, and an assessment of the effectiveness of these measures. Disclosure statements are displayed on a registry as PDF files and are searchable by name, sector and revenue.

32. In North America, Canada's transparency legislation is going through the legislative process and may come into effect by 2024. The US and Canada have both put in place legislation enabling import bans for products produced with forced labour.

33. The EU is currently considering a legal framework imposing a duty on business entities to exercise due diligence for human rights and environmental harms. It intends to base this framework on the UN Guiding Principles' concept of due diligence. They are also considering mandatory disclosure requirements and import bans for certain products associated with high risks of human rights breaches, such as minerals sourced from conflict zones.

### A broad range of stakeholders has called on the New Zealand Government to enact similar legislation

34. In March 2021, more than 100 New Zealand companies signed an open letter to the New Zealand Government in support of legislation to address modern slavery in supply chains. The expectations they outlined are increasingly being implemented in legislation passed overseas, as described above, and in international trade agreements[9].

35. In July 2021, a petition recommending that the House of Representatives enacts Modern Slavery legislation that requires public and private entities to report on the risks of modern slavery in their operations and supply chains, and on the actions they are taking to address those risks, was presented to the New Zealand House of Representatives. 20,541 people signed the online petition which was put forward by Trade Aid and World Vision New Zealand.

36. International trading partners have directly requested that New Zealand take stronger action to combat modern slavery. The most direct example of this was in negotiations for a Free Trade Agreement with the UK, which was signed in February 2022. Article 23.9 of the FTA obliges each party to encourage private and public sector entities operating in its territory to take appropriate steps to prevent Modern Slavery in their supply chains. The parties committed to adopt or maintain measures to facilitate entities to identify and address Modern Slavery in their supply chains, including through guidance, the proposal of laws, facilitating capability and encouraging responsible recruitment policies and practices.

### The Government has previously decided to place new duties on New Zealand businesses in relation to worker exploitation (domestically)

37. As part of its review into migrant exploitation 2020, the Government decided that a new approach to regulation is needed to ensure firms with significant control or influence over other employers take responsibility for employment outcomes associated with their own commercial practices.

38. Key findings of migrant exploitation research found exploitation risks associated with downward costs pressures in certain contracting and franchising relationships and favoured downstream/upstream duties on entities with significant influence and control over other New Zealand employers.

39. In March 2020, as part of a set of changes to address migrant exploitation, Cabinet agreed to amend the Employment Relations Act 2000 (ERA) to introduce a new duty on third parties to take reasonable steps to prevent employment standards breaches by entities they have significant influence or control over (a ‘duty to prevent’).

40. The intention was to make a person who had breached this duty jointly liable for the payment of arrears to employees relating to each breach of employment standards associated with the breach of the duty, if both the employer and any person involved in the breach are unable to pay [DEV-20-MIN-0034 refers]. This would have also introduced a positive duty to take reasonable steps to ensure the employer is compliant, rather than providing for a reasonable steps defence in the event of a confirmed case of exploitation.

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[9] See for example the NZ-UK Free Trade Agreement, Article 23.9, signed February 2022. https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/NZ-UK-Free-Trade-Agreement.pdf

41. This third-party duty to prevent breaches of employment standards by employers controlled by the third-party has now been combined with the policy work programme to address modern slavery, as both are about improving labour conditions through new obligations on entities to identify and disclose risks in their operations. Entities with modern slavery-related obligations would be expected to cover the domestic context (overlapping with the proposed duty to prevent employment standards breaches), so there were efficiency-related reasons for these interventions to be combined.

### The Government has also committed to exploring the implementation of modern slavery legislation, with international reach

42. In December 2020, Cabinet agreed to a new all-of-government Plan of Action against Forced Labour, People Trafficking and Slavery (the Plan of Action) [CAB-20-MIN-0524]. The Plan of Action provides a high-level framework for the actions that agencies will take to combat these practices up to 2025. The Plan of Action includes a commitment to explore supply chain legislation to help eliminate practices of modern slavery.

43. At New Zealand's Third Universal Periodic Review[10] by the United Nations Human Rights Council in 2019, the Government agreed to a recommendation from the UK to "consider introducing legislation requiring businesses to report publicly on transparency in supply chains, to eliminate practices of modern slavery in New Zealand and beyond its borders".

44. This policy also responds to the commitment in Labour's 2020 Manifesto to "[explore] the implementation of modern slavery legislation in New Zealand to eliminate exploitation in supply chains", and the commitment made by New Zealand in the UK-NZ Free Trade Agreement (described above).

### A public consultation in 2022 sought feedback on a legislative approach to address exploitation in supply chains and operations

45. The Government sought feedback on a graduated set of responsibilities, which included:

    a. All organisations being required to act if they become aware of modern slavery or worker exploitation.

    b. Medium and large organisations, with more than $20 million revenue, being required to disclose the steps they are taking.

    c. Large organisations, with more than $50 million revenue, and organisations with control over New Zealand employers, being required to undertake due diligence.

46. In developing the proposal for public consultation, MBIE officials worked closely with the Modern Slavery Leadership Advisory Group (MSLAG), which is chaired by Rob Fyfe and brings together a wide range of perspectives, including business, academia, unions and civil society organisations. The members were chosen based on their work in this field already, and their experiences addressing modern slavery and worker exploitation.

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[10] A periodic review of the human rights records of all 193 United Nations Member States, required by Resolution 60/251 of the General Assembly

http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/60/251&Lang=E

47. The proposed approach is based broadly on the *United Nations Guiding Principles on Business and Human Rights*[11], which intend for entities to take action to identify risks, address those risks, evaluate the effectiveness of their actions, and be transparent about implementation. It is also consistent with the OECD guidelines for Multinational Enterprises.

48. A graduated approach to modern slavery legislation was recommended by the MSLAG and provides a means to achieve significant reach, while rightsizing the obligations to the entities' ability to take effective action. The effects of obligations targeted at larger entities alone will likely flow through to smaller entities, but the extent to which this occurs will vary depending on the particular steps taken by those larger entities. Meanwhile, obligations placed on smaller and medium sized entities support a wider acceptance and promotion of measures to address modern slavery in supply chains. The requirement for entities to "take action" is novel and would go further than most international comparators; this aspect of the proposal was proposed by the MSLAG itself.

**There is a broad consensus that New Zealand's current approach to addressing modern slavery and worker exploitation will not significantly reduce these harms**

49. Maintaining the status quo means that the risk of slavery and exploitation in the supply chains of New Zealand entities remains poorly understood, undetected and unaddressed. The victims of such practices will remain unsupported and suffering from the associated physical and emotional harms. These risks will continue to increase, given the global trend of increasing slavery and exploitation.

50. There is also a reputational risk if New Zealand is not able to demonstrate through its laws and actions that it is a responsible contributor to international efforts to combat slavery and exploitation. New Zealand businesses may risk losing access to valuable export markets and miss the opportunity to bolster the responsible and ethical reputation of New Zealand products and services. Responsible New Zealand organisations taking action to prevent slavery and exploitation in their supply chains will continue to be disadvantaged in relation to those that do not take any action.

51. It is likely that some key trading partners will expect measures to be put in place to address modern slavery as part of negotiations for trade agreements. The UK-NZ FTA is one example of this already occurring. A further example of this type of action being required as part of an FTA is in the United States-Mexico-Canada Agreement (USMCA), which requires all parties to put import ban legislation in place to address forced labour.

52. The public consultation attracted strong public engagement, MBIE received 5,614 submissions through the consultation process consisting of 252 responses to an online survey, 178 email submissions, and 5,184 emailed submissions using a template prepared by World Vision, the Human Rights Commission, Trade Aid and Tearfund and promoted by World Vision, Trade Aid and Tearfund (the 'World Vision, Trade Aid and Tearfund Template'). Almost all submitters during public consultation, including businesses, supported legislation to put in place graduated responsibilities that reflect organisations' capabilities to address exploitation.

53. Submitters using the World Vision, Trade Aid and Tearfund Template were in strong support for due diligence and said that it is important that Aotearoa New Zealand take

[11] https://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/

action to address modern slavery and worker exploitation in supply chains. These submitters requested:

a. A law that applies to international and domestic supply chains operating in Aotearoa New Zealand, to all entities of all sizes (small, medium, and large businesses) and to private and public sectors.

b. Due diligence that requires entities to identify risks and cases of modern slavery and exploitation and take action to address what they find. From there, they should publicly report on those actions and the impacts they have had.

c. That there are penalties for non-compliance as this will set the law up from the onset to create positive change and help create a level playing field for businesses.

54. Most non-template submitters said that legislation is necessary to reduce exploitation, drive culture and behaviour change among New Zealand entities, enhance New Zealand's international reputation for supporting human rights, make it easier for New Zealand to continue to trade with the world, level the playing field for responsible entities, and support consumer choice. The proposed responsibility for disclosure by medium and large organisations received very strong support with almost 87 per cent of non-template submissions in favour.

## What is the policy problem or opportunity?

### Summary of the problem and opportunity

55. Modern slavery (forced labour and related crimes defined with reference to international law) and worker exploitation (defined in a domestic context as serious breaches of New Zealand's employment standards legislation), cause serious and lasting harm to those directly affected. While New Zealand has a comprehensive set of domestic laws that sanction direct involvement in these exploitative practices (for example employment law prohibits breaches of employment standards by employers), and contributes to multilateral initiatives to address modern slavery overseas, the effectiveness of existing interventions is limited because:

a. In an international context, direct enforcement of modern slavery and exploitation within New Zealand supply chains is largely left to regulators overseas that often face significant challenges in identifying modern slavery and convicting offenders.

b. The root causes of exploitation – both domestically and internationally – often lie in the actions or omissions of third parties, including New Zealand entities, when they participate in supply chains that contain exploitative labour practices. New Zealand's current regulatory framework does not place responsibilities on third parties seeking to target exploitation.

56. There is a growing consumer and business focus on addressing modern slavery, internationally and domestically, and more governments are focused on addressing modern slavery in global supply chains through their domestic legislation. International institutions and key trading partners have called on the New Zealand Government to take action as part of a collective global effort to address modern slavery. This includes New Zealand's Free Trade Agreement with the UK, signed in February 2022, which includes a specific commitment for the New Zealand Government to work to address modern slavery.

57. Demonstrating that New Zealand is taking steps to ensure that workers throughout New Zealand entities' supply chains (domestic and international) are treated fairly will enhance New Zealand's international standing, help exporters get their goods into markets overseas that increasingly expect provenance of ethical products and services, and help deliver New Zealand's trade commitments. Under the status quo, it is unlikely that businesses and consumers will be sufficiently incentivised to voluntarily change behaviour because:

    a. Information limitations mean that, although more consumers want to buy from responsible businesses, information is often not available to enable consumers to determine which businesses have put effective measures in place to ensure that goods are not produced using illegal labour practices, and

    b. Competition (to meet consumer demand for ethical provenance) may not adequately incentivise voluntary action for many entities. For some entities considering steps to address exploitation risks in their supply chains, there may be uncertainty about the overall benefits, particularly if their competitors are not taking responsible steps and appear to be undercutting them.

58. Government intervention could help to address these issues, by incentivising and improving the effectiveness of business and consumer action to reduce slavery and exploitation in New Zealand supply chains.

### The presence of exploitation in New Zealand entities' wider operations and supply chains undermines fair competition

59. The use of modern slavery and worker exploitation in supply chains creates an environment based on unfair competition, in which exploitative practices can be used by entities to obtain competitive advantage. Firms that benefit from unpaid (exploitative) labour have lower cost structures than their competitors and can therefore sell their products for lower prices.

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

61. Walk Free estimated that in 2016 around 3,000 people in New Zealand were in conditions of modern slavery. World Vision also estimates that an average New Zealand household spends approximately $34 each week on industries whose products are implicated in modern slavery.[12]

62. Responsible organisations that do take action to prevent slavery and exploitation in their supply chains (which often comes with a cost-burden), can be undercut by businesses that gain competitive advantage from exploitative practices. For those firms who are able to reduce labour costs to lower than market rates through coercion, there is an incentive for the use of slave labour to achieve a higher profit margin[13].

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[12] See: https://www.worldvision.org.nz/causes/advocacy/modern-slavery-act/risky-goods/.

[13] Stringer, C., Whittaker, D. and Simmons, G. (2016a), "New Zealand's turbulent waters: the use of forced labour in the fishing industry",Global Networks, Vol. 16 No. 1, pp. 3-24.

**The root cause of exploitation – in both domestic and international contexts – can lie in the actions or omissions of entities who are not (legally) parties to it**

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

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

65. Similar problems can also be seen within New Zealand, including in domestically focused operations and supply chains. While New Zealand has more ability to control exploitation within our own borders, we are still seeing exploitation caused by operations and supply chain practices. Most notably in recent times, significant levels of migrant exploitation were found in subcontracting chains associated with New Zealand's ultrafast broadband rollout. These were linked by an independent review to a contracting model which did not adequately take into account the changing nature of exploitation risks as the proportion of its migrant workforce increased.

66. Under current settings, those third parties are not liable (or subject to sanctions arising from) any harm they have caused or contributed to unless they were directly involved in the exploitation. Independent research conducted in 2019 as part of the Government's review into temporary migrant worker exploitation identified that "Throughout this research, migrant worker exploitation has been associated with smaller businesses and, in particular, those operating under sub-contracting and franchise arrangements where the main contractor or franchisee has little oversight of labour practices".[14]

**An opportunity exists to better align our response to these issues with international approaches – and in doing so, create an environment that supports New Zealand entities to take ownership of exploitation risks**

67. New Zealand is increasingly becoming out of step with international best-practice with regard to third party responsibilities, as other countries and key trading partners strengthen their domestic frameworks. France, Germany, Australia, the UK, and the USA, have all implemented or are about to implement legislative measures to address slavery and exploitation within their entities' supply chains and operations. Trading partners and consumers (domestic and international) increasingly expect clear assurance that products and services are free from slavery and exploitation. Inability to clearly demonstrate the provenance of New Zealand entities' operations and supply chains creates risks to the ethical reputation of New Zealand's products and services, and potential access to important export markets.

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

68. New Zealand participates in a range of bilateral and multilateral forums on trade labour, which have a strong emphasis on combating serious exploitation worldwide, and there are increasing expectations that these issues will be addressed as part of our trade relationships. If New Zealand is not able to demonstrate its commitment to this work through its domestic frameworks and actions, there are reputational risks in relation to New Zealand's standing as a responsible contributor to global efforts.

### Stakeholders have generally endorsed the problem definition, and the need for Government intervention

69. A vast majority of the 5,614 submissions received through public consultation agreed with the problem definition and associated policy objectives advanced in the discussion document. While there was strong support for the general concepts, many submitters were concerned about the lack of clarity with the terms used in the consultation document. They sought clearer definitions for terms such as "worker exploitation", "modern slavery", and "operations". Some submitters also noted the need for careful consideration of the scope and breadth of obligations and how they apply to different entities and environments, advocating for a flexible approach.

70. A few submitters raised concern about including "worker exploitation" and "modern slavery" in the same problem definition (and responding to them using the same policy response). They said that they are distinct things and there needs to be clarity in the intention to address both and how these aims will diverge and converge.

71. In response to the consultation feedback, the definition of worker exploitation has been amended to a higher threshold. The previous definition in the proposal included non-minor breaches of New Zealand employment standards (excluding minor and insignificant breaches that are not constant and easily remedied). The definition for the option in this RIS is significant breaches of New Zealand's employment standards. We consider that this amended definition better reflects the risks that third parties are able to manage through their supply chains and operations. It is also closely linked to modern slavery, as the signs of serious breaches of employment standards are often similar to those of modern slavery. The term serious exploitation is an existing concept in the Employment Relations Act 2000 and Immigration Act 2009, which may make it easier for entities to understand.

## What objectives are sought in relation to the policy problem?

72. The primary objective of reform is to reduce modern slavery and worker exploitation in the supply chains and operations of New Zealand entities, helping to build practices based on fairness and respect. The secondary objectives that support this primary objective are to:

    a. enhance New Zealand's international reputation as a country that supports human rights and transparency

    b. strengthen New Zealand's international brand and make it easier for our businesses to continue to trade with the world

    c. support consumers to make more informed choices in relation to modern slavery and worker exploitation risks associated with good and services

    d. drive culture and behaviour changes in entities which lead to more responsible and sustainable practices

    e. level the playing field for entities which act responsibly across their operations and supply chains.

# Section 2: Deciding on an option to address the policy problem

## What criteria will be used to compare options to the status quo?

73. Options have been assessed against the following criteria, which are based on the policy objectives stated above alongside general principles of good regulatory practice:

    a. Effectiveness in mitigating the risk of modern slavery and worker exploitation occurring in New Zealand entities' domestic and international operations and supply chains.

    b. Efficiency of the proposal, in terms of achieving the objectives in proportion to the regulatory burden and fiscal costs, and coherence with existing approaches to address modern slavery and worker exploitation – both domestically and internationally.

    c. Supports exporters to maintain market access and New Zealand's reputation for supporting human rights.

## What scope will options be considered within?

### A broad range of potential legislative and non-legislative options are available to address different aspects of the problem

74. The problem definition centres on labour issues in supply chains both within New Zealand and internationally. Within New Zealand, the labour issues centre on worker exploitation, which has been a persistent problem despite ongoing efforts to improve regulatory settings (including by amending legislation and securing new resourcing for the relevant regulators). In an international context, the focus is more specifically on Modern Slavery, as defined through various international agreements and conventions. Modern slavery is an umbrella term that includes forced labour, debt bondage, forced marriage, slavery, and human trafficking. These terms are defined in international law by the United Nations and its agencies.

75. The full range of feasible options for Government action to address these issues is summarised in Table One, below. Comment on how the potential scope has been described – in both the domestic and international context – is provided below that table. This is followed by a discussion of factors that have led to the scope of available options being narrowed for the purpose of this RIS.

*Potential scope of options available to address worker exploitation (domestically)*

76. In a domestic context, options to address worker exploitation were considered by Cabinet in 2020 [DEV-20-MIN-0034 refers] (in the context of temporary migrant exploitation), leading to a package of legislative and non-legislative policy changes. Most of the options considered in the relevant RIS[15] have now been implemented[16], or are in the process of being implemented[17]. Most of these earlier proposals concerned improvements to existing current regulatory frameworks, which are based on holding

[15] Impact Statement: Temporary migrant worker exploitation review phase one proposals (mbie.govt.nz)

[16] Addressing temporary migrant worker exploitation | Ministry of Business, Innovation & Employment (mbie.govt.nz)

[17] Worker Protection (Migrant and Other Employees) Bill - New Zealand Parliament (www.parliament.nz)

direct employers liable for breaches of employment and/or immigration law. Options targeting worker exploitation directly, eg by providing additional tools and resources for regulators to target its perpetrators, are out of scope for the current RIS as those options were thoroughly explored and addressed as a consequence of the 2020 review.

77. The 2020 RIS also considered options to address exploitation in operations and supply chains more broadly, by extending the reach of employment regulation beyond the usual narrow focus on direct employment relationship to cover third parties that could influence employers' practices. The 2020 RIS concluded that a proactive duty on third parties with significant control or influence over an employer (ie a duty to prevent breaches of employment standards) was preferred over other options of this nature, such as extending the existing accessorial liability provisions in the *Employment Relations Act 2000*[18].

*Potential scope of options to address international issues*

78. The identification of potential options to address Modern Slavery in an international context has been guided by the experience of other jurisdictions. Direct regulatory levers are not available to address international issues within New Zealand supply chains (as the parties directly responsible for exploitation are not subject to New Zealand regulation). So far, international approaches have focused on:

    a. transparency obligations – to require entities to publicly report on what they are doing to address modern slavery (UK, Australia and California)

    b. due diligence obligations – to take active steps to identify and manage modern slavery risks (France, Germany and Norway), or

    c. banning the import of goods produced by modern slavery (USA and Canada).

79. Further information about international regulatory approaches is contained in Annex One.

80. This range of options is reflected in Table One, as is an additional option that was suggested by New Zealand's Modern Slavery Leadership Advisory Group – a duty for all entities to "take action" if they become aware of modern slavery or worker exploitation in their supply chains. Only Germany has implemented a similar requirement and it only applies to enterprises with more than 1,000 employees.

[18] The other options considered were: third-parties with-control or influence would be liable for a breach unless they took reasonable steps; third-party franchisors or holding companies would be liable unless they took reasonable steps; making third-parties liable for a breach if they had knowledge and participated in it.

*Table One: summary of potential approaches to address modern slavery and worker exploitation across operations and supply chains*

| | Domestic (exploitation and Modern Slavery) | International (Modern Slavery) |
|---|---|---|
| Non-legislative options | • Developing information and guidance materials for entities to promote voluntary disclosure / due diligence<br>• Providing a central register (eg a searchable online database) to support voluntary disclosure by entities<br>• Providing services to facilitate the development of sustainable practices.<br>• Awareness-raising activity<br>• Providing aid or other support targeted at vulnerable workers | • Developing information and guidance materials for entities to promote voluntary disclosure / due diligence<br>• Providing a centralised register for voluntary disclosures<br>• Providing services to facilitate the development of sustainable practices<br>• Awareness-raising activity<br>• Providing aid or other support targeted at vulnerable workers |
| Legislative options | • Duty for some entities to undertake proactive due diligence to prevent exploitation in domestic operations and supply chains.<br>• Require some entities to disclose the steps they are taking to mitigate risk of exploitation in their operations and supply chains.<br>• Require entities to take action if they become aware of exploitation in their operations and supply chains. | • Import bans<br>• Duty for some entities to undertake proactive due diligence<br>• Require some entities to disclose the steps they are taking to mitigate the risk of Modern Slavery in their international supply chains<br>• Require entities to take action if they become aware of Modern Slavery in their international operations and supply chains. |

81. Due diligence approaches to address exploitation in supply chains are increasingly seen internationally as best practice, rather than relying solely on disclosure or transparency systems. However, reviews of disclosure regimes have found that they can be beneficial where they allow for statements to be easily compared and there are penalties for not disclosing mandatory information (our preferred option).

82. For example, the UK Home Office reviewed their modern slavery legislation in 2019 and provided a report to Parliament. The key recommendations include:

    a. There should be mandatory reporting criteria

b. There should be a central government-run repository to which companies are required to upload their statements and which should be easily accessible to the public, free of charge

c. Government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance, adopting a gradual approach: initial warnings, fines (as a percentage of turnover), court summons and directors' disqualification. Sanctions should be introduced gradually over the next few years so as to give companies time to adapt to changes in the legislative requirements.

d. Government entities should be required to make disclosures.

83. There have been two collaborative reviews of Australia's legislation carried out by four Australian universities, the Human Rights Law Centre, Uniting Church Australia, and Baptist World Aid that looked at the quality of 102 companies' modern slavery statements. They focused on supply chains with well-known modern slavery risks, including, Chinese cotton, Malaysian gloves, Australian horticulture and Thai seafood. The key findings of the first review were that:

a. 52% of companies did not identify obvious modern slavery risks

b. only 25% of companies reported undertaking due diligence

c. only 27% demonstrated that they are taking action against modern slavery risks that lifts working conditions or tackles root causes.

84. The second review has found *"some improvement in the quality of reporting, this is generally limited to 'paper-based' responses (such as establishing policies and supplier codes of conduct and conducting staff training). Meanwhile, there is glacial progress in the areas that are most likely to address risks to workers trapped in modern slavery."* The review recommends increased independent oversight and enforcement, with penalties and an independent Anti-Slavery Commissioner. It also recommends that mandatory due diligence requirements are put in place.

85. While the reviews of Australian and UK disclosure regimes identified weaknesses in the performance of disclosing entities, the existence of the regimes enabled such assessments to be made, which will act as a basis and incentive for improvements to be made.

86. The proposal set out in this RIS incorporates many of the key recommendations from the reviews of the Australian and the UK legislation. We consider that a disclosure regime with these elements will be a positive step towards managing labour exploitation risks and improve New Zealand's reputation for upholding human rights.

### Based on officials' analysis, the scope of the options was narrowed for the purpose of public consultation in 2022

87. The proposal for public consultation in April 2022 (outlined earlier in this document) largely reflected the option set described in Table One above, with two main exceptions. Firstly, Ministers ruled out banning imports of goods produced with modern slavery as an option as this would be less likely to effectively address modern slavery (compared to due-diligence based approaches). While there is currently limited information on the effectiveness of different approaches, early evidence suggests that disclosure and due diligence obligations are more likely to:

- lead to wider culture and behaviour changes by businesses and consumers
- reach deeper into supply chains, including into service supply chains, and

- target the source of the problem.

88. The proposal for consultation also reflected the Government's view that responses to domestic and international labour exploitation issues should be pursued in a coordinated way – by considering an integrated package of disclosure - and due diligence-based duties on New Zealand entities across domestic and international operations and supply chains. This is because the domestic and international duties would be fundamentally similar, and an integrated approach would enhance the cohesion and effectiveness of any interventions.

89. Any response to modern slavery would have domestic as well as international application (meaning that New Zealand entities would be required to assess domestic risks). This means there was a strong rationale for combining this work with work that had already been agreed to by Cabinet (the "duty to prevent employment standards breaches"), rather than proceeding with the latter as a standalone intervention.

### Based on Ministerial prioritisation decisions, this RIS considers a sub-set of the options available to address the problem definition (disclosure-based options only)

90. There are other more stringent options that would require organisations to manage risks of labour exploitation in their supply chains and operations, such as mandatory due diligence or a reactive responsibility to take action and work with a supplier where exploitation is identified. These options were included as part of the proposal for public consultation, were strongly supported, and Government is continuing to explore these for potential future decisions.

91. Progressing all options that were consulted upon at the same time would not allow enough time for analysis to be completed and legislation introduced within this parliamentary term, which would significantly delay implementation. The responsible Minister decided to restrict the scope of the options, rather than extending the timeframes. Accordingly, this RIS considers only disclosure-related options. If other regulatory options are to be considered at a later point, then further regulatory impact analysis will be required.

92. There was also support in consultation for sequencing the introduction of the due diligence and take action options to allow entities time to build understanding and capability to address exploitation within supply chains, acknowledging that there is currently a significant gap for both the entities and government. Establishing a disclosure responsibility now would support this approach by encouraging entities to start putting processes in place, which would prepare them for any further complimentary options that are developed in the future.

93. We consider that proceeding with disclosure now does not pose a risk to the overall effectiveness of more stringent responsibilities, should they be considered and potentially brought in later, and is consistent with the staged approach supported in public consultation. This approach will mean that the benefits are realised sooner compared to waiting to establish a more comprehensive proposal.

### Some choices about the design of a potential legislative disclosure regime are not subject to options analysis in this RIS

94. Some foundational features of any potential legislative disclosure regime in New Zealand have been narrowed down by referring to international experiences and evidence of effective practice, and through stakeholder engagement. Most significantly,

this RIS proceeds on the basis that any legislative disclosure regime introduced in New Zealand would:

a. apply to all types of entities (subject to a revenue threshold) including companies, sole traders, partnerships, state sector organisations, local government, charitable entities, trusts, incorporated societies and Māori trusts and incorporations

b. apply to entities with annual revenue of $20m per annum or more (the threshold for a "medium-sized entity" that was proposed in public consultation)

c. adopt a "prescribed disclosure" approach (requiring entities to report against mandatory criteria), rather than the "general disclosure" approach that was adopted in early international examples of supply chain legislation (providing full flexibility in the content of any reporting)

d. include penalties for failing to meet the disclosure requirements and providing a false or misleading statement

e. include enforcement powers that allow the regulator to encourage better practices in the first instance before imposing a penalty.

95. Importantly, the design features of the legislative disclosure regime considered in this RIS draw on lessons learned from independent reviews of the recently-enacted disclosure regimes in the UK and in Australia. Those reviews faulted those respective regimes' lack of prescription, relatively high income thresholds, and lack of enforcement – design flaws that the legislative option in this RIS seeks to rectify.

### Rationale for the types of entities covered

96. This section analyses the types and size of entities that should be required to make a disclosure. Including more entities that have the ability to make improvements to supply chain and third-party service providers' practices through their leverage will increase the effectiveness of the disclosure regime in reducing labour exploitation and better drive widespread culture change. However, if entities are included that do not have the ability to make such improvements to supply chain and operational practices, it will put a burden on those entities and the regulator with no additional benefit.

97. Requiring entities to make a disclosure also publicises that the entity has an income above the reporting threshold. This could have negative privacy implications for certain entities, for example, a sole trader or family trust could be identified as having a high income. Where possible, the option should avoid unnecessary impacts on privacy.

98. We have not been able to identify a class of entities for which the cost of preparing a disclosure would outweigh the benefits connected with achieving the policy objectives. Conversely, excluding some entities would take away from the objective of driving broad culture change and reduce the opportunities to improve conditions for workers across domestic and international supply chains.

99. Most medium and large entities contract third parties to provide goods or services, regardless of whether they have commercial or non-commercial objectives. We have not undertaken a detailed review of the types of supply chains and operations that different types of entity are likely to have and how they compare against each other. However, an initial analysis indicates that many larger charitable entities and trusts, as well as government entities, provide and/or procure goods and services on a comparable level with commercial businesses. Therefore, including larger charities and trusts would incentivise them to improve the management of labour exploitation risks in

their supply chains and operations, and is likely to have a comparable impact on workers (in comparison to businesses of similar size and operations).

100. The Government can also play a significant role in improving supply chain practices, modelling good practice and setting expectation for contractors. Government procurement accounts for an estimated $51.5b in spending (approximately 20 per cent of New Zealand's gross domestic product) and is a significant lever for driving change.

101. Internationally, modern slavery legislation has typically targeted commercial activity but can extend further. UK legislation applies to organisations with charitable or educational aims that engage in commercial activities. They have also announced proposed amendments to include government procurement. Australian legislation applies to a wide range of entity types, including individuals, partnerships, associations and legal entities such as companies, trusts, superannuation funds and other types of investment organisations. It also includes the Australian Federal Government but does not apply to state and territory governments.

102. We do not consider that any type of entity should be excluded from the disclosure requirements. Consultation feedback also supported the broadest possible application of legislative duties to all types of New Zealand entities.[19] Creating a case-by-case exemptions procedure would be administratively costly, and would require an application process for entities that could be of similar cost to making a basic disclosure statement.

103. The broad scope of coverage means there is a risk that some entities will be required to make disclosures even though they do not have the ability to directly address labour exploitation by third-parties. This could apply where, for example, an entity generates $20m in revenue but does not engage in substantive procurement activity, or trades with suppliers of significantly larger size. This is likely to apply to a very small group, as long as only medium and large entities are included, and the cost and privacy impacts on this small number of entities is likely to be very low. Overall, we consider that revenue provides the most appropriate proxy for the size and resources of an entity, and is a proxy that is widely used in other legislation domestically and internationally (this is discussed further below).

### The size of entities that should be included

104. Generally, larger entities have a greater ability to influence the practices of their suppliers and third-party service providers because they have greater leverage through their purchasing power. We considered revenue, assets and employee numbers as potential proximate indicators for the size of entities, which are all options used internationally. Revenue is the best proximate indicator because it best reflects both the size of an entity and the amount of goods and services they are likely to procure (compared to assets or employee numbers), which means that entities with higher revenue are more likely to be able to influence third parties in their supply chains.

105. This was supported in the public consultation, with most submitters supporting defining the size of entities by revenue as a practical and appropriate characterisation for the purposes of any legislative duties. These submitters said that revenue was an

[19] Only six submitters thought some entities should be excluded. Submitters also responded to this question by discussing the related issue of revenue threshold and distinctions when defining entities and their required actions.

appropriate basis as it indicates an entity's ability to allocate resource to their work in meeting any obligations.

106. In determining the appropriate revenue threshold amount, we have taken into account the full set of policy objectives, balanced against the need to ensure that the costs of making a disclosure are not disproportionate to the expected benefits. There is no clear line based on the evidence available, and international examples show a range of thresholds. We have considered the international examples as a guide:

*Table 2. Thresholds used in disclosure-based legislation by international jurisdiction (approximate NZD value)*

| Jurisdiction | Income | Assets | Employees |
|---|---|---|---|
| ***Canada**** *(any two of the three criteria)* | *CA $40m ($45m)* | *CA $20m ($22m)* | *250* |
| **Switzerland** (transparency with due diligence on conflict minerals and child labour) (any two of the three criteria) | CHF 40m ($62m) | CHF 20m ($31m) | 500 |
| **European Union** (transparency directive) (any two of the three criteria) | €40m ($68m) | €20m ($34m) | 500 |
| **Norway** | NOK $70m ($12m NZD) | NOK $70m ($12m NZD) | |
| **United Kingdom** | £36m turnover ($70m) | | |
| **Australia** | AU $100m ($106m) | | |
| **California** | US $100m ($144m) | | |

107. The revenue threshold range internationally is $12m to $144m. New Zealand is a small but integrated trading nation and our firms are smaller and are more likely to engage in international trade sooner than similarly sized firms in foreign markets. As such, we consider that New Zealand entities are more likely to have leverage over suppliers when they are smaller in comparison to other countries because they are purchasing a greater number of goods and services from overseas.

108. Entities with higher revenue (exceeding $100m) are likely to be carrying out business in Australia, and subject to the Australian reporting legislation. A higher threshold would therefore subject fewer entities to a disclosure regime, limiting the additional benefit to consumers and to more general business culture in New Zealand.

109. As such, we consider New Zealand should aim for the lower end of the spectrum internationally as long as it would not be too costly for those entities. We have opted for $20m which was the most commonly supported threshold by stakeholders in consultation. This would include about 4,000 of New Zealand's largest entities and is likely a significant enough proportion of New Zealand's trade to have an impact on practices.

### Rationale for a prescriptive approach to disclosure, and penalties for non-compliance (if a legislative regime is adopted)

110. There are two broad approaches to disclosure legislation: an un-prescribed approach that provides full flexibility to reporting entities on the content of their disclosure statements (e.g. UK model); and a prescribed approach that requires reporting entities to provide information on specified categories (e.g. Australia). Evidence suggests that un-prescribed disclosure approaches to addressing modern slavery in supply chains have not had a substantial effect in incentivising companies to make detailed and accurate disclosures about their supply chains, much less act on improving them.[20] It further suggests that an un-prescribed transparency legislation has not led to a critical mass of behaviour change across businesses, investors and consumers – though there are some indications that good social responsibility performance can provide a competitive advantage to firms seeking investment.

111. We have not included an un-prescribed disclosure option, where there are no mandatory reporting criteria, because the available evidence suggests this has not been effective in other jurisdictions. This option provides flexibility in reporting content and could permit the submission of a statement indicating the entity is doing nothing.

112. To better achieve the desired outcome of reducing modern slavery, researchers and non-governmental organisations internationally have suggested that disclosure-based approaches must also provide: a public repository for accessing statements; lower reporting thresholds (to capture more entities); mandatory due diligence measures (out of scope for the current proposal); institutional oversight and enforcement functions; and legal inducements and/or penalties.[21]

113. International developments show that some jurisdictions are shifting towards increasing levels of prescription within their legislative frameworks. While remaining within a disclosure-based framework, the UK has introduced a central repository for statements and announced its intention to adopt a more prescriptive disclosure model that includes penalties for non-compliance. This is in response to the findings of an independent review of the UK legislation, which found that "a lack of enforcement and penalties, as well as confusion surrounding reporting obligations, are core reasons for poor-quality statements and the estimated lack of compliance from over a third of eligible firms." This more prescriptive disclosure-based framework has already been adopted in

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[20] *Impact and effectiveness of modern slavery legislation*. MartinJenkins (analysis commissioned by MBIE). See for example: Aronowitz, A. A. (2019). Regulating business involvement in labor exploitation and human trafficking. *Journal of Labor and Society*, *22*(1), 145–164. https://doi.org/10.1111/wusa.12372; Birkey, R. N., Guidry, R. P., Islam, M. A., & Patten, D. M. (2018). Mandated social disclosure: An analysis of the response to the California Transparency in Supply Chains Act of 2010. *Journal of Business Ethics*, *152*(3), 827–841. https://doi.org/10.1007/s10551-016-3364-7; Dean, O., & Marshall, S. (2020). A race to the middle of the pack: an analysis of slavery and human trafficking statements submitted by Australian banks under the UK Modern Slavery Act. *Australian Journal of Human Rights*, *26*(1), 46–73. https://doi.org/10.1080/1323238X.2020.1712515.

[21] *Impact and effectiveness of modern slavery legislation*. MartinJenkins (analysis commissioned by MBIE). See for example: Chambers, R., & Vastardis, A. Y. (2021). Human rights disclosure and due diligence laws: The role of regulatory oversight in ensuring corporate accountability. *Chicago Journal of International Law*, *21*(2), 323–366. https://chicagounbound.uchicago.edu/cjil/vol21/iss2/4/.; Fellows, J., & Chong, M. D. (2020). Australia's Modern Slavery Act: Challenges for a post-COVID world? *Alternative Law Journal*, *45*(3), 209–214. https://doi.org/10.1177/1037969X20956410; Ford, J., & Nolan, J. (2020). Regulating transparency on human rights and modern slavery in corporate supply chains: the discrepancy between human rights due diligence and the social audit. *Australian Journal of Human Rights*, *26*(1), 27–45. https://doi.org/10.1080/1323238X.2020.1761633.

Australia. Similar legislation is currently under consideration by the Parliament of Canada, which will also include significant monetary penalties.

114. Given the strength of the international consensus about "best practice" design for disclosure-based legislative responses to modern slavery and worker exploitation, this RIS presents a single legislative option (rather than contrasting different legislative models and concluding that less-prescriptive approaches are ineffective). Introducing a legal obligation without meaningful regulatory consequences for non-compliance (per the UK model) does not adhere to best practice regulatory design and we do not consider this is a viable option in the New Zealand context.

115. Feedback received in public consultation supported a prescribed disclosure approach. Most submitters agreed with the proposed compulsory disclosure reporting criteria, and many businesses supported the proposed alignment with Australia's Commonwealth Modern Slavery Act 2018.

## What options are being considered?

116. This RIS considers different options to leverage disclosure by New Zealand entities (of the steps these entities have taken to mitigate worker exploitation in their operations and supply chains) with the ultimate objective of reducing the incidence of labour-related harms in New Zealand and internationally. The options for comparison are:

    a. Status quo

    b. Non-regulatory approach: providing additional Government support to encourage voluntary disclosure and due diligence by New Zealand entities

    c. A legislative disclosure regime with prescriptive information requirements and legal consequences for non-compliance (drawing primarily on the Australian model).

117. The options are described in more detail below.

### Option One: Status Quo

118. As described in other sections of this RIS, New Zealand has a suite of existing laws that sanction direct worker exploitation (committed by employers) in a domestic context. However, with limited exceptions, our regulatory framework does not currently recognise any responsibility that New Zealand-based third parties may have for worker exploitation or modern slavery occurring in New Zealand or overseas.[22] This means that, where New Zealand entities are currently taking active steps to mitigate worker exploitation risks in their supply chains and wider operations (outside of direct employment relationships), this is generally done on a voluntary basis. Two exceptions to this rule are where the actions flow from Government procurement rules (for public sector entities) or from international regulatory requirements, such as Australian or UK modern slavery legislation.

119. Guidance and support are available from MBIE's Employment Services and OECD Multinational Enterprise National Contact Point.

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[22] One exception to this is the accessorial liability provisions that exist in the *Employment Relations Act 2000*, which allow liability to be extended to third parties "involved in a breach" of minimum employment standards

120. Some businesses are currently taking voluntary action and collaborating through organisations and networks focused on ethical issues in supply chains. These groups share best practice and advice based on their experiences addressing these issues. Some of the groups have certification schemes that indicate whether a business has ethical practices in place.

121. Overall, the current environment (regulatory and non-regulatory; international and domestic) is only incentivising or compelling supply chain due diligence and disclosure by New Zealand entities in very limited circumstances. Maintaining the status quo may also have downsides in terms of New Zealand's international reputation – noting that New Zealand is seen as a late-comer to this issue.

### Option Two: voluntary disclosure with a register

122. Establishing a registry (non-legislative) where New Zealand entities could publish statements outlining the steps they have taken to identify and mitigate supply chain risks. This approach would see Government provide the infrastructure for voluntary reporting, to make voluntary disclosures more accessible. There is some precedent for a centralised registry being established without a corresponding legal obligation to use it. For example, the UK's central register, established in 2021, is currently voluntary for entities to use, though the UK Government has announced that this will eventually be made compulsory.

*How will this option address the policy objectives?*

123. This option would provide Government support with the objective of amplifying the disclosure and due diligence activities that New Zealand entities are already undertaking. Publicity, guidance materials, and potentially a voluntary code of practice, would aim to provide greater awareness and Government endorsement of international best practice for supply chain due diligence. A centralised register of disclosure statements would seek to increase the visibility of voluntary actions by New Zealand entities that adhere to best practice. Voluntary disclosures vary in quality and scope, and they are difficult to compare because there is no standard form.

### Option Three – A legislative disclosure regime with prescriptive information requirements and legal consequences for non-compliance

124. The key design features of this option are as follows:

    a. All New Zealand entities with an annual revenue over $20 million over each of their previous two financial years will be required by law to disclose the steps they are taking to address modern slavery (internationally) and modern slavery and worker exploitation (domestically).

    b. The annual disclosure will follow prescribed disclosure requirements consistent with the Australian model, including information about:

        i. the entity's operations and supply chains

        ii. the relevant risks in those operations and supply chains

        iii. any actions the entity has taken to address those risks and cases of exploitation, including any remediation provided

        iv. an assessment of the effectiveness of any risk management actions taken.

c. Disclosure statements would need to be lodged on a public digital register, in a prescribed form (to ensure that statements can be readily compared and analysed).

d. The governing body of the entity will be required to sign off disclosure statements, to provide a clear line of accountability for the contents of the disclosure, and to focus the entity on the issue.

e. A range of penalties would be available for non-compliance (enforceable by a regulator), including financial penalties and publicising the names of non-compliant entities. The regulator's role would be to ensure that an entity has provided information on each of the mandatory requirements, rather than assessing the quality of the information provided against a minimum standard, and to ensure disclosures are not false or misleading.

*How will this option address the policy objectives?*

125. In general, disclosure-based legislative approaches aim to leverage consumer, investor and business behaviour to incentivise socially responsible actions by businesses and other entities. While voluntary action and disclosure by businesses is growing (to meet consumer demand), not all businesses will be motivated to appeal to this segment of the consumer market. Other businesses may simply choose to "turn a blind eye" to exploitation risks in their supply chains and are not required to disclose information about their supply chains that would highlight these risks to consumers.

126. International studies suggest that, even where there is awareness and understanding of supply chain risks, consumers can be either reluctant or constrained in their actions because of price. However, it is possible that this could differ in the New Zealand context. For example, the Government recently received a petition with 37,000 signatures calling for a Modern Slavery Act. In the 2020 New Zealand Consumer Survey, 50 per cent of consumers report their purchasing decisions are affected by knowing whether a business treats its workers fairly either always or most of the time. This is an increase from 48 per cent in 2018 and 43 per cent in 2016.

127. At present, even highly motivated consumers face barriers in identifying which businesses are doing the right thing, as few organisations publish information on practices across their operations and supply chains. Compulsory disclosure by all relevant New Zealand entities (coupled with genuine consequences for non-disclosure) would aim to address these information problems and create the conditions to enable genuine consumer choice – leading, in turn, to more voluntary due diligence and behaviour change by New Zealand entities.

128. This option would be dependent on Government funding to support effective implementation (including set-up of a centralised register, and the cost of new regulatory functions).

## How do the options compare to the status quo/counterfactual?

**Key:** **++** much better than doing nothing/the status quo **+** better than doing nothing/the status quo /the status quo **0** about the same as doing nothing/the status quo worse than doing nothing/the status quo **- -** much worse than doing nothing/the status quo

| | Option One – Status quo | Option Two – Voluntary disclosure with a register | Option Three – Mandatory disclosure with a register (preferred) |
|---|---|---|---|
| **Mitigate exploitation risk** | 0<br>Existing narrow government procurement actions and guidance for businesses will continue to have a small positive impact on a few domestic sectors. There have been recent changes to immigration laws that may reduce domestic exploitation of migrants.<br>A small proportion of businesses voluntarily manage risks and publicise their approaches.<br>Overall, without significant change, we expect that modern slavery will continue to increase in entities' international supply chains and operations, and domestic exploitation will remain at similar levels. | 0 to +<br>A consistent approach to disclosure supported by a central register will provide public information from entities that voluntarily disclose, thereby partially improving the ability of consumers, investors and business partners to make informed decisions. This will provide some incentive for entities to take action to maintain or improve their reputation.<br>It is likely that many entities that are not managing exploitation risks will also not make a voluntary disclosure and, therefore incentives will not significantly increase for entities that currently do nothing. While the disclosures will be more easily comparable, not including entities that are failing to manage risks will mean they are not incentivised to take steps to improve. | +<br>A consistent and mandatory approach to disclosure with a central register will provide public disclosure information on all captured entities, enabling consumers, investors and business partners to make more informed decisions on all such entities.<br>All entities having to disclose the steps that they are taking to manage exploitation risks will provide a stronger incentive for entities to take action to maintain or improve their reputation. The effects will be greater where the reputational concerns are more important drivers for entities. |
| **Regulatory efficiency and coherence** | 0<br>No additional burden on entities or fiscal costs. | -<br>No additional mandatory regulatory requirements on entities. The benefits will | 0<br>The cost for entities will vary depending on how valuable they consider the disclosure will be to their reputation and, as a result, the resources and effort they dedicate to the |

| | | | |
|---|---|---|---|
| | | depend on how much resources and effort entities voluntarily put towards disclosure.<br>Fiscal costs to establish and maintain a register will be disproportionately higher than the benefit if an incomplete register is ineffective at incentivising improvements in practices. | disclosure. There will be a very low cost for entities that only provide the minimum information required, however, there will be few benefits if entities only do the minimum.<br>The cost will be lower for smaller entities with simpler supply chains and operations. Costs will reduce over time as entities put processes in place and become more experienced with the process. |
| **Supports NZ's reputation and exporters** | 0<br>New Zealand is increasingly falling behind the actions taken by other countries (including key trading partners) to managing serious labour exploitation risks in supply chains and operations. In the medium to longer term, this could have negative trade consequences. | 0<br>There is increasing international consensus that voluntary disclosures without enforcement is ineffective in addressing exploitation in supply chains. | +<br>This option will demonstrate NZ's commitment to taking effective action to address exploitation. Mandatory reporting based on UNGPs aligns with current international approaches, and the design incorporates recommendations from reviews of the Australian and UK legislation. |
| **Overall assessment** | Not preferred<br>0 | Not preferred<br>A small reduction in risk of exploitation. There would be a small fiscal cost and compliance costs for those entities who choose to comply. | Preferred option<br>Provides comparable information to consumers about the actions entities are taking to identify risks of exploitation in their supply chain. A legislative requirement is more likely to be consistent with international expectations. This is the highest cost option. |

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

129. Our preferred option is Option 3: that organisations with more than $20 million annual revenue must publicly report on any due diligence activities against prescribed criteria, with financial penalties and publication of non-compliance. The expectation is that the reputational impacts of increased transparency will incentivise entities to put in place some measures to manage risks of exploitation, and this will be more effective at managing labour exploitation risks than the status quo. The regulatory burden will be proportionate to the benefits realised because there will be very low costs for an entity to meet the minimum requirements, and the benefits will depend on the resources and effort put in by entities. This proposal is also comparable to those of many other jurisdictions and will demonstrate New Zealand's commitment to taking effective measures to address this global issue.

**Effectiveness at mitigating the risks of labour exploitation**

130. There are actions currently being taken to address labour exploitation in New Zealand's supply chains and operations, however, the current approach is unlikely to significantly improve the domestic problem and modern slavery in our international supply chains. Government procurement actions and guidance for businesses will have a small positive impact on a few domestic sectors where they are focused.

131. There have been recent changes to immigration laws that may reduce domestic exploitation of migrants. A small proportion of businesses are voluntarily managing risks. However, without significant new incentives to drive improvements, we expect that modern slavery will continue to increase in international supply chains and operations, and domestic exploitation may remain at similar levels.

132. Greater transparency provided by the preferred disclosure proposal will incentivise businesses to improve and manage risks in their supply chains and operations in order to maintain or enhance their reputation. Disclosure regimes are effective where there is an information gap and the provision of that information would affect the behaviour of consumers, business partners and/or investors. Consumer surveys show that knowledge about labour exploitation would impact their choice of products. There is significant public demand for action, with a large petition and response to our consultation. Retailers in export markets and our key trading partners are increasingly demanding information showing there is no labour exploitation in the production of our goods. We are also seeing an increase in ethical investment as investors consider labour exploitation a risk to the value of their investment.

133. Mandatory, prescribed disclosure from entities with more than $20 million in annual revenue, allows consumers, business partners, investors NGOs and academic to more effectively evaluate and compare the efforts of medium and large sized New Zealand entities to reduce exploitation in their supply chains. It achieves this by creating standardised reporting requirements for all firms above a certain size. Imposing penalties and publicly naming firms that don't provide the minimum information required incentivises all firms to meet their disclosure obligation to avoid financial penalty or reputational damage. The scrutiny enabled by mandatory disclosure will indicate those firms that are not taking sufficient steps to address exploitation in their supply chains. The consequences of inaction are still likely to vary according to the standards within a particular sector, to the sensitivity of consumers or investors to inaction, and to the price and availability of alternative goods and services from better performing competitors.

134. Reviews of early modern slavery disclosure regimes indicate that due to weaknesses in their specific design there have been minor benefits of focusing entities on the issue and setting clear expectations, however, there has not been widespread adoption of better practices for managing risks. We have sought to address these issues through the design of Option 3. For example, reviews of the Australian and UK disclosure regimes recommended that there should be penalties for failing to disclose the required information and enforcement of the requirements. A review of the UK legislation recommended that a register be put in place so that statements could be easily compared. A voluntary register was established in 2021 and the UK government has committed to making it mandatory. These changes to the Australian and UK regimes would help to establish a trusted database of statements that can easily be compared, amplifying the reputational impacts of the disclosures.

135. Experience with the Australian regime has also shown the importance of a standardised approach to disclosure. The independent review into the quality of disclosures focused on a limited subset of 100 statements, and there is not a good overview of the general quality of statements. An organised structure will make it easier for the public to identify relevant aspects of the information and compare approaches.

136. Option 2, voluntary disclosure with a register, is likely to be less effective than overseas regimes because there will be limited incentive for entities that are not currently managing risks, or are talking limited actions, to make a disclosure. A recent review of Australia's compulsory disclosure system found that 66% of companies did not address all of the mandatory reporting requirements, which we expect would be more pronounced with a voluntary approach.

**Regulatory Efficiency and Coherence**

137. There is currently no regulatory burden on most entities because there are no regulatory requirements. The main regulatory action is currently provided through guidance by Employment Services and the OECD MNE National Contact point in MBIE. The government procurement rules place a small burden on some government entities in relation to the sectors where labour exploitation is a mandatory consideration.

138. Our preferred option imposes the highest regulatory burden on entities, of the three options considered, but the mandatory costs will be low proportionate to the benefits realised. The cost for entities will vary depending on how valuable they consider the disclosure will be to their reputation because there will be no minimum standard for the risk assessment and risk management required of regulated entities, and there will be a very low cost for entities that only provide the minimum information required. For example, the minimum disclosure could provide a high-level description of the entities' supply chains and operations, state that they have not identified any risks, have no risk mitigation measures in place, and have not assessed the effectiveness of their approach.

139. We estimate that the average cost for preparing a comprehensive statement will be $15,000 for entities that do not already undertake labour exploitation due diligence. This is based on the Australian estimate which was based on similar reporting requirements but for larger entities with AU$100m annual revenue. This estimate allowed 5 weeks to gather information and prepare a disclosure statement, and 3 days for senior staff to review and sign-off the disclosure. Notably, the cost estimate from the British Retail Association for their legislation was significantly lower, at just 6 hours work.

140. The cost will be lower for smaller entities with simpler supply chains and operations, which is why we have reduced the average cost. Also, the cost of subsequent disclosures will be lower as entities will be able to repeat some processes and reuse some material, for example, the description of their supply chains and operations.

141. Some entities have already undertaken labour exploitation risk assessments for their supply chains and operations, and have put measures in place to manage those risks. These entities either are doing so voluntarily or because they have reporting obligations under other jurisdictions. The regulatory burden on these entities will be lower because it will be easy for them pull together the mandatory information.

142. Option 3 is coherent with existing regulatory regimes in that it does not duplicate any existing requirements and is aligned with other reporting timeframes. The reporting timeframe allows governing bodies to sign off the disclosure statement alongside other annual reporting requirements.

143. Option 2 places no mandatory regulatory requirements on entities and, therefore, all costs will arise from voluntary actions putting together a disclosure statement. The benefits will depend on how much resources and effort entities voluntarily put towards disclosure so, in effect, the costs will be proportionate to the benefits. However, as the register is unlikely to include disclosure statements from entities that are not managing risks, there will be less incentives overall to improve practices and the benefits will be lower in proportion to the same costs expended under option 3. Fiscal costs to establish and maintain a register will also be disproportionately higher than the benefit of partial coverage of entities as a consequence of a voluntary register, which is less effective at incentivising improvements in practices.

**Supporting New Zealand's reputation for upholding human rights and our exporters**

144. The preferred option best aligns with current international efforts to address exploitation in supply chains, by making disclosure mandatory for some entities, imposing penalties for non-compliance and establishing a central register for disclosure statements. Taking no legislative action would mean that New Zealand would continue to be seen as falling behind some of our key trading partners in managing serious labour exploitation risks in supply chains and operations.

145. The mandatory criteria are based on the due diligence process recommended in the UNGPs and OECD Guidelines for Multinational Enterprises, which serve as the international standards, and the reporting criteria are also consistent with Australia's current disclosure model.

146. A voluntary disclosure regime would likely be seen as ineffective and insufficient, particularly given recent reviews of the Australian and UK legislation which have recommended the inclusion of penalties and enforcement of non-disclosure of required information.

147. We expect that there will be criticism from some organisations for not including mandatory due diligence or import bans on goods produced with forced labour at this stage. The recent review of the Australian system recommended that mandatory due diligence be added in. However, mandatory disclosure will bring New Zealand in line with Australia, the UK and Canada, and help prepare businesses to meet the expectations of mandatory due diligence regimes in the EU. The inclusion of a register, enforcement powers and financial penalties is likely to be seen as an improvement on early disclosure regimes in other jurisdictions. Overall, we expect that mandatory disclosure will generally be seen as a positive step that will improve New Zealand's reputation for upholding human rights.

148. New Zealand has fallen behind some of our key trading partners who are taking steps to address labour exploitation in their supply chains and operations, and a lack of action from the Government could harm New Zealand's reputation for upholding human rights and the ability of our exporters to meet the market expectations. Australia, Germany Norway and the UK have transparency requirements in place, and Canada and the EU legislative bodies are considering draft legislation. France, Germany and Norway have more stringent human rights due diligence requirements, and the US and Canada have banned the import of goods produced with forced labour. New Zealand is increasingly perceived as a late-comer to this issue. The consequence of not legislating to prevent labour exploitation in our supply chains could impact our international market access, though this risk is difficult to elaborate in detail.

149. There is an increasing expectation on our exporters from retailers and our key trading partners that they will manage risks of labour exploitation in their supply chains and operations. Also, that New Zealand will address modern slavery as part of negotiations for trade agreements. The UK-NZ FTA is one example of this already occurring, where we have committed to cooperate to address modern slavery. A further example of this type of action being required as part of an FTA is in the United States-Mexico-Canada Agreement (USMCA), which requires all parties to put import ban legislation in place to address forced labour.

### Consultation

150. Public consultation carried out in the first part of 2022 showed strong support for a fuller set of graduated responsibilities that would require:

    a. All organisations to act if they become aware of modern slavery or worker exploitation.

    b. Medium and large organisations, with more than $20 million revenue, to disclose the steps they are taking.

    c. Large organisations, with more than $50 million revenue, and organisations with control over New Zealand employers, to undertake due diligence.

151. The requirement for medium and large organisations to disclose the steps they are taking was supported by almost 87% of submissions. Most submitters said that legislation was necessary to reduce exploitation in supply chains and to achieve the other policy objectives. Many submitters said that the bare minimum reporting requirements should include information about the entities' own business, as well as information about the supply chains they are engaged in, as well as a basic risk assessment. Businesses that provided feedback said that alignment with the requirements of Australian legislation would be a good guide for the information necessary. Some submitters said that the disclosure requirement should not be overly burdensome for entities to ensure it does not become a barrier to operation, particularly for smaller entities.

152. Most submitters also supported a searchable, public central register or database for mandatory and voluntary disclosure statements. Many submitters said that all non-compliance (including failing to disclose) should be penalised and most agreed that the penalties should vary depending on the type of obligation. There was less alignment on the type of penalty that should be applied, with similar numbers supporting a 'name and shame' approach and a financial penalty regime.

153. Our preferred option best aligns with feedback received during consultation. Smaller entities (below $20 million annual revenue) are excluded from making disclosure statements, prescribing the information required allows the minimum standard

identified during consultation to be required of firms, and for this information requirement to align with that required in Australia, while financial and reputational penalties for non-compliance ensure that legislation is effective and that firms have sufficient incentives to engage with the requirements.

154. Voluntary disclosure would least meet the preferences expressed during public consultation. It would not require firms to publicly disclose the steps they are taking to reduce exploitation in the supply chains, nor to necessarily report information that could be readily understood and compared by consumers.

### What are the marginal costs and benefits of the option?

| **Affected groups** *(identify)* | **Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.* | **Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.* | **Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.* |
|---|---|---|---|
| **Additional costs of the preferred option compared to taking no action** | | | |
| Regulated groups | Costs are associated with submitting a disclosure statement or paying an infringement fee of $10,000 for failing to submit a statement. | $15,000 on average in the first year for entities making a comprehensive disclosure, which would be lower for entities making a minimum disclosure, and with costs reducing over time.<br><br>A total cost to all entities in the first year in the range of $20m to $60m depending on how many of the 4,000 entities make a comprehensive statement. This total cost will decline over time. | Low |
| Regulators | Costs are incurred in developing and maintaining a public register, ensuring compliance and providing guidance. | Confidential advice to Government | Medium – noting there is a large range estimated and final costing has not been completed. |
| Workers | No costs | No costs | High |
| Consumers | No costs | No costs | High |
| | | | |
| **Total monetised costs** | | Confidential advice to Government | Medium – there is good evidence about |

| | | | |
|---|---|---|---|
| | | Confidential advice to Government | the range but not where it will fall within that range. |
| **Non-monetised costs** | | Low | High |
| **Additional benefits of the preferred option compared to taking no action** | | | |
| Regulated groups | Most regulated entities supported this legislative action in consultation. Entities ensuring there is no exploitation in their supply chain are less likely to be undercut by non-compliant employers. | Medium | Medium – regulated groups told us they would benefit during consultation |
| Regulators | Regulators are able to encourage other entities with influence over suppliers and employers to improve their labour practices. May provide information about exploitation risks to other regulators, complementing existing employment, immigration and criminal regulation. | Low | Low – will depend on the type of information disclosed voluntarily by entities |
| Wider government | The Government will be seen by the international community as contributing to the resolutions of a global issue. Reduced risk of trade issues from not taking action. | Medium | Medium |
| Workers | More effective measures will be put in place to manage the risks of labour exploitation. | Medium | Medium – design is based on reviews of similar overseas systems with the same objectives. |
| Consumers | It will be easier to choose goods and services that align with consumers' values | Medium | Medium - |
| **Total monetised benefits** | | Not applicable | Not Applicable |

| | | | |
|---|---|---|---|
| **Non-monetised benefits** | | Medium | Medium |

155. The regulatory burden costings above are an estimate only. It is not possible to accurately determine actual compliance costs for individual reporting entities for the following reasons:

    a. Reporting entities will respond to the reporting requirement in different ways and with varying levels of effort. The way in which an entity responds to the reporting requirement is likely to be determined by a range of variables including: entity type; investor and consumer pressure; reputational risk; financial resources; and the perceived costs and benefits of compliance.

    b. Reporting entities' compliance costs will not be uniform and will be contingent on a range of variables. These variables include the entity's existing experience and expertise with human rights related reporting and the size and complexity of the entity's operations and supply chains.

    c. Reporting entities' compliance costs will vary year on year. Some entities may incur initial one-off compliance costs, such as implementing new reporting systems and databases. Compliance costs in later years may also be reduced as efficiencies are identified. Other entities may incur additional costs in subsequent years.

    d. Compliance costs will also vary where reporting entities elect to take additional discretionary actions to improve their compliance, such as implementing new policies and processes.

156. 2011 research from the European Commission found that it is difficult to quantify the costs of non-financial reporting more generally as there is 'no broadly recognised methodology in place for the assessment of costs arising from reporting activities.[23]

**Costs for entities**

157. A mid-point cost of $15,000 per entity per year is estimated to compile and provide a meaningful disclosure statement. This is based on the Australian estimate which was based on the same reporting requirements but for larger entities with AU$100m annual revenue. This estimate allowed 5 weeks to gather information and prepare a disclosure statement, and 3 days for senior staff to review and sign-off the disclosure and cost $25,750 per entity per year. The entities within scope of this proposal will be much smaller on average, and are likely to have simpler supply chains, so we have reduced the average estimate on this basis.

158. In contrast, the UK's 'central estimate' to draft, review and sign-off a statement was 6 hours of work, based on feedback from the British Retail Consortium. The UK's upper estimate was three days' work, based on feedback from Deloitte's who had experience drafting a statement. The UK methodology indicates an estimated range of NZ$348 – $1,392 (at $58/hour for the person compiling the statement) each year per entity.

159. Compliance costs for entities may decline over time, as entities incorporate exploitation disclosure duties into normal business operations, and as they increase their expertise and experience in meeting regulator and public expectations for disclosure (as noted by the UK in their regulatory impact statement). As the criteria are based on the Australian reporting requirements, we consider it the more appropriate comparison.

160. The cost of subsequent disclosures will be lower as entities will be able to repeat some processes and reuse some material, for example, the description of their supply chains and operations.

### Information on key assumptions that have gone into the CBA / further information on the preferred option

161. Approximately 4,000 entities are estimated to have a duty to provide a disclosure statement under the preferred option outlined above. This includes government, business and charity organisations with annual revenue over $20 million. Due to the uncertainty of revenue figures for some entities and the number of related entities that may make consolidated disclosures, a more precise number is not known.

162. Statistics New Zealand's 2021 Annual Enterprise Survey (AES) identifies that up to approximately 3,700 enterprises have revenue greater than $20 million and would have disclosure obligations based on their size[24]. Notably, this data reflects 'activity units' and includes, for example, company subsidiaries. In practice, parent companies may make disclosures on behalf of their subsidiaries. The AES does not include data for entities in certain sectors including superannuation funds, residential property operators, religious services, private households, and local and central government.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

163. New legislation would be required to implement a modern slavery and worker exploitation disclosure regime. This will include the establishment of a new public digital register for disclosure statements, which will include search functionality to support public access to and analysis of information published on the register. The costs of setting up the regulator, including the development and maintenance of the public register, are noted in the costings table above.

164. Reporting entities would be required to begin reporting 12-18 months after the legislation is passed, depending on their financial year. Entities are required to report no later than 6 months after their financial year ends. This obligation commences for financial years that begin once the legislation comes into force. If the legislation comes into effect on 1 January 2024, entities with financial years that begin on 1 January 2024 would be required to report no later than 1 July 2025, which is 6 months after that financial year ends. This provides sufficient time for reporting entities to familiarise themselves with the new reporting obligations and make any necessary adjustments to their reporting systems.

165. The proposed approach to compliance enforcement is for the registrar to assess whether disclosure statements include information on each of the mandatory criteria and have been signed off by the governing body of the entity. If a statement is incomplete or not submitted, the regulator would take a graduated approach, in the first instance providing the entity with an improvement notice before considering an infringement fee of $10,000 if it is not remedied. If necessary, the regulator could also publish the infringement notice so that the public is aware of an entity that has not correctly submitted a disclosure statement.

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[24] https://stats.govt.nz/information-releases/annual-enterprise-survey-2021-financial-year-provisional/

166. The regulator would maintain the integrity of the register by investigating false and misleading statements. They would work with entities to correct any false or misleading statements but could also seek a penalty of up to $200,000 for serious failures in this respect.

167. MBIE would communicate the new obligations to reporting entities through a range of channels, including Business New Zealand, CAANZ, IoD, Chambers of Commerce, Regional Business Partner Network, Xero, MYOB, NZX and through business.govt.nz. We would also proactively communicate with any large enterprises already providing financial reports under the requirements of the Companies Act.

168. The proposed legislation establishes information sharing arrangements with the Inland Revenue Department to identify all entities that meet the criteria. MBIE officials are also investigating other information sharing arrangements where information sharing does not require legislative change.

169. MBIE officials propose a standard communication to inform the entities of their new obligations, informed by information obtained by IRD as well as publicly available information (such as on the Charities Register).

170. Comprehensive guidance would be made available to reporting entities on how to comply with the new obligations. MBIE would also communicate the existence of the new disclosure regime to interested parties, such as smaller businesses and suppliers, through a range of channels. This would include making user guidance available.

## How will the new arrangements be monitored, evaluated, and reviewed?

171. A new regulatory system would be established under the proposed legislation. This legislation will be administered by MBIE which will monitor, evaluate and review the legislation in line with its regulatory stewardship obligations. An earlier review of the legislation could be prompted in the event that unforeseen or unintended consequences arise.

172. Subject to Budget funding, outcome and/or process evaluations may be undertaken. An outcomes evaluation would assess progress towards achieving the intended outcomes and impacts of the disclosure regime. A process evaluation would assess whether the regime has been administered and implemented as intended and identify any areas for improvement.

173. MBIE officials intend to discuss evaluation approaches adopted by counterparts in similar jurisdictions and will seek to optimise any benefits from alignment with their approaches.

# Annex One: International comparison of legislative responses

| Country | Measures in place or proposed | Threshold for who the obligation applies to |
|---|---|---|
| Due diligence | | |
| France | Human rights and environmental due diligence | Enterprises with 5,000 employees or 10,000 employees with overseas head office |
| Germany | Human rights and environmental due diligence | Enterprises with 1,000 employees |
| Norway | Human rights and environmental due diligence | Enterprises with NOK $70 million (~$12m NZD) in revenue or NOK $35 million (~$6m NZD) in assets. |
| *Note that the EU is considering requirements, but they have stalled | Human rights and environmental due diligence | TBC |
| New Zealand discussion document proposal | Modern slavery due diligence internationally and domestically, and worker exploitation due diligence domestically | Entities with $50 million revenue and entities with control and influence over New Zealand employers |
| Disclosure | | |
| Australia | Businesses must disclose information based on UN Guiding Principles on Business and Human Rights | Businesses with AUD $100 million in revenue, and the federal government |
| United Kingdom | Businesses must disclose what they are doing to address modern slavery | Businesses with £36 million in revenue |
| Norway | Businesses must disclose identified human rights and environmental risks and any risk mitigation measures | Enterprises with NOK $70 million (~$12m NZD) in revenue or NOK $35 million (~$6m NZD) in assets. |
| California | Retail sellers and manufacturers must disclose slavery and human trafficking risks | Enterprises with USD $100 million in revenue |
| *Note that the EU is considering | Businesses must disclose identified human rights and environmental risks and any risk | TBC |

| | | |
|---|---|---|
| requirements, but they have stalled | mitigation measures and any risk mitigation measures they have in place | |
| New Zealand discussion document proposal | Entities must disclose information based on UN Guiding Principles on Business and Human Rights | Entities with $20 million revenue |
| Take action | | |
| Germany | Must put in place measures to address ongoing risks when violations of human rights and environmental requirements are found. | Enterprises with 1,000 employees |
| New Zealand discussion document proposal | Must work with the supplier or third party if they become aware of modern slavery internationally and domestically, and worker exploitation domestically | All entities, proportionate to their control and influence over the third party |
| Import bans | | |
| United States of America | Bans in place for products produced with forced labour | N/A |
| Canada | Option to put bans in place for products produced with forced labour (has not been used to date) | N/A |