



Modern Slavery in New Zealand

Time to Act

An Equal Justice Project Symposium Paper

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I Introduction

With the mention of the word ‘slavery’, the first image that jumps to people’s minds is a picture provided by the history books: African-Americans forced to work long hours with no pay in Antebellum America – an era in which humans were a valuable commodity. In the 21st century, slavery is illegal, however it is not merely a historic crime. While many find it hard to believe these conditions currently exist in developed nations such as New Zealand, slavery continues at shocking rates today, constituting an assault on human dignity and freedom. Amongst a flurry of recent media reports, it is now apparent that elements of slavery still exist. In New Zealand, modern slavery predominantly takes the form of human trafficking and the exploitation of workers, especially migrants. It infiltrates our communities unnoticed, and slips through existing enforcement and monitoring regimes. It is conservatively estimated that there are currently at least 1000 victims of modern slavery in New Zealand, a figure expected to grow without government intervention.¹

In light of the continued exploitation of migrant workers in New Zealand, increasing rates of human trafficking, the issue of orphanage tourism as a form of modern slavery, and limited supply chain accountability for businesses, this paper seeks to explore where we should go from here. Should New Zealand follow the lead of the United Kingdom and Australia and adopt a Modern Slavery Act, or should we pursue other policy options? To answer this question, this paper will first define modern slavery, and explore how it arises through the exploitation of workers, in the supply chains of companies, and through the orphanage ‘voluntourism’ of well-intentioned travelers. The United Kingdom Modern Slavery Act 2015, and the Australian Bill on this issue, will then be appraised and compared, before exploring possible legislative and policy changes in New Zealand.

II What is Modern Slavery?

There is a clear distinction between human trafficking and migrant exploitation. Human trafficking encompasses the orchestrated migration and trade of individuals for the purposes of forced labour or sexual exploitation.² In contrast, migrant exploitation occurs when migrant workers have their employment rights breached.³ The story of a migrant worker in New Zealand is not an uncommon one. These victims often come from low socio-economic backgrounds and are promised a life of wealth and opportunity if they

¹ Unknown “NZ would be shocked by modern-day slavery numbers” (9 February 2018) Radio New Zealand www.radionz.co.nz.

² Katja Heesterman “Protection Against Slavery in New Zealand” (LLB (Hons) Dissertation, Victoria University of Wellington, 2014).

³ Ministry of Business, Innovation & Employment “Migrant Exploitation” www.immigration.govt.nz.

come to New Zealand to work for their sponsor. Once here, they remain uneducated about the rights of New Zealand employees. This allows for easy exploitation and manipulation by their sponsors. Furthermore, given that the sponsors are typically also their employer, a power imbalance arises, leaving the worker incredibly vulnerable.

Both human trafficking and migrant exploitation are punishable offences in New Zealand. The Crimes Act prohibits the trafficking of persons, the punishment of which is a prison sentence of up to 20 years, or a fine of up to \$50,000, or both.⁴ Furthermore, the Immigration Act specifies exploitation of unlawful and temporary workers as an offence.⁵ Despite legislation against these practices, they do not seem to deter offending. Successful convictions have been rare, with the first prosecution for human trafficking only recently occurring in 2016.⁶ An investigation by the Ministry of Business, Innovation & Employment (MBIE) in 2017 revealed that 73 companies in New Zealand, ranging from small locally-owned petrol stations to big companies, such as Mainfreight, were engaging in migrant exploitation between 1 April to 30 September 2017.⁷ This statistic provides a small snapshot of the gross injustices occurring in New Zealand. Evidently, change is desperately needed. Despite the government's efforts to 'blacklist' the discovered perpetrators and issue warnings, it begs the question – is this really enough? With such high rates of offending and so few convictions, New Zealand must do more.

III Worker Exploitation and Human Trafficking

A Worker Exploitation

A major problem for New Zealand's worker exploitation epidemic is the fact that many of our biggest industries (horticulture, hospitality, and construction) are labour intensive. As a result, they all rely heavily on migrant labour workers. The investigation by MBIE revealed that over two-thirds of the 73 companies found to have exploited workers were operating in the above mentioned industries.⁸

Exploitation of migrant workers takes many forms. Dr Christina Stringer compiled a list of these in her report on modern slavery in New Zealand. One of the main problems is

⁴ Crimes Act 1961, s 98D.

⁵ Immigration Act 2009, s 351.

⁶ Peter Cullen "Modern day slavery and human trafficking in New Zealand" (14 March 2018) Stuff News www.stuff.co.nz.

⁷ Teuila Fuatai "Employers blacklisted by govt. for exploiting workers" (5 October 2017) Newsroom www.newsroom.com.

⁸ Teuila Fuatai "Employers blacklisted by govt. for exploiting workers" (5 October 2017) Newsroom www.newsroom.com.

working many hours without breaks (some reports cite 18 hour shifts).⁹ Another common thread was pay cheques being reduced to as little as \$4 an hour, or employers neglecting holiday pay.¹⁰ In addition, the treatment of workers is often unacceptable, involving rude and abusive language.¹¹ Stringer's report revealed that even some New Zealand authorities had denied pleas from migrant workers for help.¹²

There are a few public cases involving worker exploitation in New Zealand that illustrate the horrendous crimes that occur here. In a recent conviction this year, restaurant owners, Luisito and Virgil Balajadia, were sentenced to 26 months in prison and 8 months home detention respectively.¹³ The owners had sponsored the victims to move to New Zealand and work at their restaurant. Eventually, one worker informed the Philippines Consulate of the dire conditions imposed by the owners. He reported having to work up to 60 hours a week, despite only being paid for 40 hours work. An investigation from the Labour Inspectorate revealed the victim was underpaid by roughly \$15,000.¹⁴ The worker was also paying his employers \$150 a week to live in their garage. The owners were breaching a myriad of legislation including: Section 6 of the Minimum Wage Act 1983, the Employment Relations Act 2000, Section 27 of the Holidays Act 2003, Section 351 of the Immigration Act 2009, and Section 98D of the Crimes Act 1961. In addition, the victims also suffered emotional manipulation and threats of being turned in to the police if they did not comply with their employer's rules. This particular victim had the bravery to come forward and seek help. However, many victims have no ability to communicate with other parties, are too fearful of the threats laid by their employers or are afraid of being deported. An obvious solution is greater labour monitoring and it is promising to see that the Minister for Immigration, Iain Lees-Galloway, has committed to doubling the number of current inspectors by 2020.¹⁵ If people are not able to disclose their struggles, they need to be found.

Another recently reported case of migrant worker exploitation was taking place at a restaurant in Auckland, called Masala. There were three convictions in this case. It involved the hiring of an Indian national to work as an Assistant Manager at the restaurant.¹⁶ After the work visa was approved, the promises of fair work and pay were

⁹ Dr Christina Stringer "Worker Exploitation in New Zealand: A Troubling Landscape" (paper prepared for The Human Trafficking Research Coalition, December, 2016).

¹⁰ Dr Christina Stringer, above n9.

¹¹ Dr Christina Stringer, above n9.

¹² Unknown "Workers treated like 'modern slaves' (11 September 2017) Stuff News www.stuff.co.nz.

¹³ Laura Tupou "Restaurant workers treated like modern-day slaves- judge" Radio NZ www.radionz.co.nz.

¹⁴ Laura Tupou, above n13.

¹⁵ Emile Donovan, "Labour Inspector Numbers Set to Double in 3 Years" (6 November 2017) Radio New Zealand www.radionz.co.nz.

¹⁶ New Zealand Immigration "Third person involved in Masala case sentenced on immigration charge" (28 October 2016) www.immigration.govt.nz.

ignored. Instead, the victim was made to work as a waitress and also as a cleaner for one of the perpetrators. At payment rates as low as \$3 an hour and working approximately 66 hours a week, the court found that the victim was owed a combination of wages and holiday pay totaling more than \$23,000 after only 10 months at the job. Immigration New Zealand subsequently completed an investigation and found that between 2012 and 2014, four Indian nationals suffered the same fate of severe underpayment and overworked hours.¹⁷ The three defendants all received sentences of home detention, reparation fees and some also had court ordered community service.

B Human Trafficking

In addition to cases of worker exploitation occurring in New Zealand, the first human trafficking case was brought in 2015. Faroz Ali was found guilty of 15 charges of human trafficking and a further 15 charges of aiding and abetting a person to unlawfully enter New Zealand.¹⁸ Ali's practices involved forcing the victims to pay him thousands of dollars, estimated to be up to \$8000 in order to obtain working visas. However, the visas were ineffective. Moreover, the accommodation arranged by Ali for the victims included them sharing lounges and basements with no bedding. They were forced to work from 6am to 5pm, often up to 7 days a week and without breaks. As is seen to be a common thread through modern slavery cases, these victims were also threatened with being taken to the Police if they did not comply.

It is clear that worker exploitation and human trafficking are active features of New Zealand's economy, despite the perpetrators' best efforts to keep the crimes secret. These oppressive practices leave victims isolated and afraid, and constitute an assault on their human dignity, freedom and human rights.

IV Supply Chain Accountability

The phrase "Made in NZ" is one which carries with it a clean, green and ethical reputation both locally and overseas. It is a lucrative phrase, lapped up by consumers who believe that if a product is made locally, it was done so fairly and with transparency. The accountability of New Zealand businesses in terms of their supply chains – the processes involved in the production and distribution of a commodity – remains a foreign and often ambiguous concept about which little information is accessible. But is it our role as consumers to

¹⁷ New Zealand Immigration, above n15.

¹⁸ Peter Cullen "Modern day slavery and human trafficking in New Zealand" (14 March 2018) Stuff News www.stuff.co.nz.

question where a product is sourced from, who made it and how it got to New Zealand or should there be an assumption of transparency amongst businesses?

Incredibly, New Zealand is ranked number one on the Transparency International's 2017 Corruption Perceptions Index.¹⁹ However, findings of a report by the Human Trafficking Research Coalition have shown that worker exploitation or “modern slavery” is very much alive in supply chains associated with New Zealand businesses. This occurs both within New Zealand itself (often in labour intensive industries which experience seasonal shortages), as well in foreign countries where businesses source their products. Through globalisation processes and the relative size of New Zealand, both in terms of population and its influence on global economics, New Zealand businesses’ association with the corrupt practices of foreign countries is virtually inevitable through their supply chains. It should be noted that exploitative practices in business supply chains also affect New Zealand born workers and are not limited to migrant workers.

Currently, there is little legislation which holds companies accountable for their practices within supply chains. Although the Immigration Amendment Act 2015 aims to tackle exploitative practices in the form of penalties for employers and the protection of migrant worker’s rights, the International Labour Organisation outlines that in New Zealand, “no independent research has been conducted to determine the full extent of the [modern slavery] problem”.²⁰ The findings of recent reports have aimed to shed light onto the strategies to be implemented by businesses in addressing supply chain accountability. Specifically, it is evident that the Government needs to propose a Modern Slavery Act which clearly outlines and legislates against any form of slavery, in both local businesses and corporate supply chains that extend across national borders.

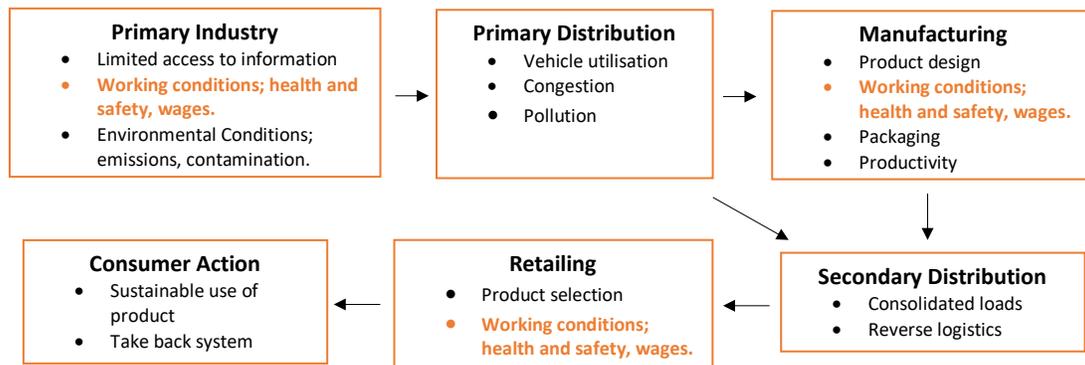
C The Supply Chain Process

Consumption patterns and the impact of globalisation has created a complex supply chain process with unclear practices that are difficult to monitor. It is evident that the potential exploitation of workers is present at several stages throughout the supply chain.²¹ The diagram below aims to outline issues present within this process:

¹⁹Transparency International “Corruption Perceptions Index” (2017)
<http://www.transparency.org/news/feature/corruption_perceptions_index_2017>.

²⁰ Dr Christina Stringer *Worker Exploitation in New Zealand: A Troubling Landscape* (Human Trafficking Research Coalition) at 2.

²¹ New Zealand Business Council for Sustainable Development *Business Guide to a Sustainable Supply Chain* (November 2003) at 8.



D The Role of Business

There are several industries in which New Zealand businesses support “modern slavery” in their supply chains. These industries include construction, dairy, fishing, horticulture and viticulture, hospitality and prostitution.²² In particular, the construction industry has seen a rapid increase in foreign workers coming to New Zealand in the wake of the Christchurch Earthquakes. Even with more experience in their trade, these workers are paid \$16 less per hour than their New Zealand counterparts.²³ As a result, these workers are unable to repay immigration costs and debts and subsequently become stuck in a cycle of exploitation. With a lack of legislation to protect this kind of worker, it is likely that these practices will continue in the coming years, particularly as the government aims to tackle New Zealand housing issues through KiwiBuild. It is expected that the construction industry will face a shortage of 46,200 workers by 2020 relative to demand, thus forcing companies to look for workers overseas.²⁴

Despite a lack of transparency within these industries and exploitation on New Zealand soil, it is even harder for New Zealand businesses to maintain and regulate supply chain accountability with overseas partners. This is because countries which New Zealand associates with in these chains have their own labour laws with attendant obligations for factory owners and managers.²⁵ There is currently no legal requirement to undertake offshore supply chain assurance in New Zealand. At 66.02% China is New Zealand’s leading import partner, with New Zealand made products making up only 9.96% of our

²² *Worker Exploitation in New Zealand: A Troubling Landscape*, above n 19, at 6.

²³ Catriona MacLennan *Migrant Filipino Workers in the Construction Industry* (New Zealand Industrial Relations Foundation, July 2018)

²⁴ Ministry of Business, Innovation and Employment “Factsheet: KiwiBuild” (2018) <<https://www.mbie.govt.nz/info-services/immigration/oia-responses/kiwibuild/kiwibuild-factsheet.pdf>>

²⁵ The Warehouse *Ethical Sourcing Report* (March, 2017)

goods.²⁶ Chinese workers have as a result fallen victim to a huge trade industry to keep up with our local demand. For example, there is a high demand for what is known as “black gold” within the hair extension industry. Every year, New Zealand imports \$2.5 million of human hair from young girls in rural Chinese villages, simply to meet the supply and demand for goods “necessary” in the New Zealand beauty industry.²⁷ The factories where the hair is treated underpay workers and provide extremely unfavorable conditions. Although an unconventional example, this highlights just how little transparency and regulation there is regarding overseas supply chains and where goods come from.

E What Can New Zealand Companies Do?

Several steps have been identified in these reports to promote prevention, protection and prosecution with the aim to make supply chains and their practices more transparent.²⁸ In preventing exploitative practices, it is essential that companies manage issues internally before undergoing partnerships externally in their supply chains. This may involve identifying potential risks of labour standards and practices that may affect a business. In order to create ‘sustainable’ supply chains, both The Warehouse and Griffins have created Supply Chain Director roles to manage social and environmental conditions within their organisations. This ensures business practice is in line with a code of conduct that outlines the employment standards which the company must adhere to. Some of the standards which fall under this code of conduct include the prohibition of forced labour, as well as guidelines regarding minimum wage and maximum working hours. Using the example of the construction industry, specific requirements for the accreditation of labour hire companies may incorporate paying the market rate for the occupation and ensuring third parties who are contracted have good workplace practices.²⁹

Nonetheless, although the introduction of a Code of Conduct in the 1990’s, predominantly in Europe and the USA, aimed to enforce ethical guidelines on companies, these standards remain ineffective unless there is external monitoring and strict consequences if a company violates them.³⁰ The United Nations Guiding Principles on Business and Human Rights outlines that in order to safeguard human rights in supply chains businesses should maintain.³¹

- (a) Policy commitments to meet their responsibility in respecting human rights;

²⁶ At 6.

²⁷ Olivia Carville “Black Gold” *The New Zealand Herald* (New Zealand, December 2016)

²⁸ *Worker Exploitation in New Zealand: A Troubling Landscape*, above n 19, at 12.

²⁹ Factsheet KiwiBuild, above n 23, at 2.

³⁰ *Business Guide to a Sustainable Supply Chain*, above n 20, at 18.

³¹ United Nations Human Rights *Guiding Principles on Business and Human Rights* (2011) at 16.

- (b) A process of due diligence whereby businesses identify, prevent, mitigate and account for their impacts on human rights; and
- (c) Processes which reconcile any previous or potential human rights arbitrations.

When these guidelines are followed, companies ensure transparency and accountability at every stage of their supply chains. This in turn, positively impacts on New Zealand's international reputation in respect of human rights.

F The Role of Consumers

While previously manufacturers lead supply chain interaction, retailers currently play a large role in meeting customer demands and their opinion impacts largely on supplier decisions. According to Griffin's Supply Chain Director, Brent Wollaston, the role of the consumer is paramount as "ultimately we will grow our business by having the products consumers want to buy at the right time, in the right place, consistently and cost effectively".³² This suggests that consumers play a substantial role in the supply chain of goods and services. Despite this, a 2002 survey commissioned by The Warehouse revealed that although there was an expectation of trustworthy and responsible behaviour, 70% of consumers would not rank a retailer or service higher if the company adopted favourable environmental and social practices in the production of these goods and services.³³

G What Can New Zealand Consumers Do?

Whilst many New Zealanders believe they have no influence on company supply chains, ultimately, a product is designed to meet the needs of the consumer. Therefore, it is critical to encourage consumer engagement in product stewardship – the responsible planning and management of resources. To stimulate this sustainable buying practice amongst consumers, it is essential that they demand sustainable business practices which promote fair treatment of the workers involved in every stage of the supply chain. If a consumer prioritises sustainable practices alongside the durability and price of a product, it may help to influence the company's supply chain.

³² *Business Guide to a Sustainable Supply Chain*, above n 20, at 7.

³³ *Ethical Sourcing Report*, above n 25, at 4.

V Orphanage Tourism as a Form of Modern Slavery

Orphanage tourism is another issue entangled in the problem of modern-day slavery. It is a form of tourism where well-meaning tourists opt to volunteer in the orphanages of developing nations.³⁴ However, these institutions harbour a dark secret. Many of the ‘orphans’ are not really orphans, and suffer significant development harm in these institutions. For many of them, their parents are still alive, and the children have been taken away from their homes to meet demand created by tourists wanting to volunteer.

UNICEF, Save the Children and ReThink Orphanages all recommend refraining from participating in the orphanage tourism market. Instead of volunteering in these institutions, the focus should instead be on family-based care, reuniting children with their families and working to address and reduce the prevalence of these institutions.

Countries such as Cambodia, where this institutionalisation is present, have made attempts to address the problem. However, these attempts at meaningful change have been frustrated by a continuing demand of tourists volunteering. New Zealand therefore has a responsibility to help limit the unnecessary institutionalization of these children due to the large number of New Zealanders that continue to create demand for this form of voluntourism.

A Harm Suffered by the Children

Often the children in these institutions, having been separated from their families, search for new ways to replace the familial bonds disrupted by this industry. In the voluntourism market the children are often exposed to a multitude of volunteers, who eventually leave after bonding with the children, creating significant harm to their emotional wellbeing.³⁵ Research demonstrates that children raised in institutions ‘showed serious disturbances of attachment’ and established that there is a correlation between the quality of care and a child’s ability to form attachments.³⁶ Furthermore, the children often do not receive affection and attention from permanent staff members, which is essential to child development.³⁷

³⁴ “Fact Sheet: Children in Residential Care Institutions” ReThink Orphanages <www.rethinkorphanages.org>.

³⁵ “Children in Residential Care Institutions”, above n 33.

³⁶ *With the Best Intentions... A Study of Attitudes Towards Residential Care in Cambodia* (Ministry of Social Affairs, Veterans and Youth Rehabilitation, Cambodia, 2011) at 21. This report was published by “MoSVY” with the guidance of the UNICEF Cambodia Child Protection team so the views expressed in the report are being treated as the views of UNICEF.

³⁷ At 58.

In many of these institutions the poor conditions are deliberately maintained so that they continue to receive the pity and support from tourists.³⁸ Many facilities lack general amenities like running water and proper sanitation facilities. There are often not enough beds for each child. Any educational opportunities that are available are often limited to display a sense of hardship to the tourists.³⁹

B International Law

The United Nations Convention on the Rights of the Child affirms the right of all children to be raised in a loving home by their family wherever possible. Of the children living in institutions, 80% have family that can care for them.⁴⁰ These children are not really orphans, but simply come from poor families.⁴¹ The separation of children from their families contravenes the child's right to know and be cared for by their parents (Article 7) and also the right to not be separated from their parents unless it is in their best interests (Article 9).

C Insufficient Safeguards in Place to Protect Vulnerable Children

Many of the institutions do not require background checks for the staff or volunteers. This means that it is open for anyone to be placed in close proximity to these particularly vulnerable children. The sleeping arrangements also mean that children can be sleeping in the same beds as workers, which places them at risk of sexual abuse.⁴² These children are four times more likely to experience sexual abuse compared to children in family-based care. This leads to heightened risks of “engaging in self-harm, violence against others, criminal activity, prostitution, and substance abuse.”⁴³

D New Zealand Voluntourism Market

In New Zealand, there are very few companies that offer placements in orphanages. Some businesses do, however, offer placements caring for vulnerable children which is similar to the experience of orphanage tourism.

³⁸ “Children in Residential Care Institutions”, above n 33.

³⁹ *With the Best Intention*, above n 35, at 58.

⁴⁰ “Children in Residential Care Institutions”, above n 33.

⁴¹ “Fact Sheet: The Orphanage Industry” ReThink Orphanages <www.rethinkorphanges.org>.

⁴² At 64.

⁴³ At 66.

(a) Latitude Global Volunteering

Under the ‘Community Worker’ placement, there are a wide range of experiences offered. These include working in residential homes or centers or working as a Medical Assistant. This work is offered in countries such as Argentina, Canada, Ecuador, Ghana, Ireland, Japan, Malawi and the United Kingdom. For placements where there is direct contact with children, there is no requirement of prior experience or qualifications for volunteers. Furthermore, some of the medical placements (for example those in Malawi) require no experience in the medical field.⁴⁴ During the process there are Police Checks performed, however, there is nothing relating to the appropriateness of the person potentially working with children.⁴⁵

(b) AIESEC

AIESEC is the largest youth-led volunteering charity in the world. There are over 29,000 members worldwide, spread across over 120 countries. There are over 300 placements working with children in a variety of different ways: community placement, coaching and other child-based placements. Due to the large number of placements offered, it is difficult to establish exactly what each one entails and therefore also difficult to ascertain the impacts. The projects offered by AIESEC take place in over 34 countries.⁴⁶ AIESEC requires that their volunteers be current university students, however beyond that, there are no specific requirements of having worked with children. Any mention of “preferred skills” are not prerequisites of being granted a volunteer position.⁴⁷ There are also no criminal background checks required. In light of the vulnerability of these children, the lack of adequate volunteer screening in these organisations is concerning.

VI Modern Slavery Legislation

A What Are Other Countries Doing?

Australia and the United Kingdom (UK) have pioneered to lead the way to address the aforementioned issues surrounding modern slavery through statutory reform. In 2015, the UK introduced the Modern Slavery Act 2015, whilst Australia is currently drafting a

⁴⁴ “Community Worker” (2017) Latitude Global Volunteering <<https://latitude.org.nz/what-can-i-do/community-worker/>>.

⁴⁵ “Apply Now” (2017) Latitude Global Volunteering <<https://latitude.org.nz/apply-now/>>.

⁴⁶ “Global Volunteering” AIESEC https://aiesec.org/search?q=children%&type=1&earliest_start_deate=2018-04-28&sort=relevance.

⁴⁷ “About AIESEC” AIESEC <<http://help.aiesec.org/about-aiesec/>>.

similar statute. The Australian Bill is modelled upon the UK Modern Slavery Act and attempts to address the inadequacies through additional sections. The primary purpose for both countries is to create a statutory enforcement regime to properly address modern slavery in its varying forms, through holding entities accountable in their business dealings. The following paragraphs seek to provide a brief summary and analysis of the UK Modern Slavery Act and Australia's Modern Slavery Bill, in order to lay a foundation for the discussion around the options available for New Zealand to take.

1 *United Kingdom*

(a) Effects of the Modern Slavery Act 2015

The 2015 Act has yet to demonstrate its long-term impacts, however it has already had a number of positive effects on employees and modern slavery prosecutions.⁴⁸ The relevant provisions in the UK Modern Slavery Act for the purposes of this article include Part 1-5.⁴⁹ The provisions seek to increase transparency within organisations, and make labour conditions a top priority for businesses. The Act introduced, among other things, life sentences for traffickers, measures to protect people at risk of being enslaved, and made large companies scrutinize supply chains for forced labour. The supply chain transparency provision in the UK Act aims to eliminate slavery hiding in supply chains around the world.

(b) Shortcomings of the UK Modern Slavery Act

There is little incentive for companies to properly investigate slavery in their supply chains, due to the lack of accountability from the government. So long as they fulfil their legal obligation to publish a modern slavery statement, they do not have to implement any meaningful change. This means that even if a company publishes a statement saying that it does nothing to prevent slavery in its business, it will not be penalised. The result is therefore a surface-level accountability mechanism that does not encourage businesses to reduce slavery in their supply chains. Furthermore, the UK Act does not have a roll call, which provides a list of companies that must report, thus as a result, one-third of companies

⁴⁸ S. J. New. (2015). Modern slavery and the supply chain: the limits of corporate social responsibility?. *Supply Chain Management: An International Journal*, 20(6), 697-707.

⁴⁹ Modern Slavery Act 2015 (UK):

- Part 1: Offences and Penalties
- Part 2: Slavery and Trafficking Prevention Orders
- Part 5: Protection of Victims
- Part 6: Transparency in Supply chains

fail to report.⁵⁰ There should thus be stricter penalties imposed in order for the Act to have the desired effect.

(i) The “Get-Out” Clause

Furthermore, the provisions of the Modern Slavery Act are somewhat ambiguous, potentially providing “a get-out clause.” The legislation requires UK businesses that have a global turnover of over £36 million and that supply goods or services in the UK to produce and publish an annual slavery and trafficking statement in a “prominent” place on its website every year. The statement must set out what steps the organisation has taken to ensure there is no slavery in any part of its business, including its supply chains. This legislation extends not only to companies in the UK, but also foreign companies and subsidiaries of the UK company. However, it does not explicitly state whether non-UK domiciled companies or non-UK subsidiaries have to comply with this legislation. On the face of the current Act, it appears that UK companies which do not provide goods and services to the British market can argue that the provisions do not apply to their operations. The Act therefore needs to be revisited and made broader to cover non-UK domiciled companies.⁵¹

(ii) Insufficient Victim Protection

Parosha Chandran, a human rights barrister and UN human trafficking expert, claimed that the Bill is very “poor on victim protection.”⁵² Anthony Steen also critiqued the bill for neglecting the needs of victim of trafficking in the UK. Steen argued that the legislation is exclusively about law enforcement, when it should be victim-focused.⁵³

⁵⁰ S. J. New. (2015). Modern slavery and the supply chain: the limits of corporate social responsibility?. *Supply Chain Management: An International Journal*, 20(6), 697-707.

⁵¹ Annie Kelly “ The UK’s new slavery laws explained: what do they mean for business? (14 December 2015)< <https://www.theguardian.com/sustainable-business/2015/dec/14/modern-slavery-act-explained-business-responsibility-supply-chain>>.

⁵² Amelia Gentleman “Modern Slavery Bill is “Los Opportunity,” says Human Trafficking Advisor” (3 November 2014) The Guardian <https://www.theguardian.com/law/2014/nov/03/modern-slavery-bill-lost-opportunity-human-trafficking-adviser>.

⁵³ Anna Sereni “ Why we back the Slavery Victim Support Bill” (26 January 2018) <https://www.antislavery.org/why-we-back-slavery-victim-support-bill/>.

2 *Australia*

The Australia Modern Slavery Bill has finished its third reading in the House of representatives (as of 28 September 2018). Once enacted, the Act will require certain large Australian businesses to make annual public reports detailing their actions to address inherent modern slavery risks in their supply chains and operations, known as Modern Slavery Statements. If the Modern Slavery Bill passes in the future, the law would require all businesses with revenue exceeding AUS \$100 million a year to report what they have done to prevent modern slavery being used in their supply chains.

(a) Effects of the Australian Modern Slavery Bill

The effects of the Australian Bill are yet to be assessed. Nonetheless, the proposed bill attempts to address the shortcomings of the UK Modern Slavery Act, include reporting obligations for Commonwealth entities and a legislated and government-funded repository for the modern slavery statements. The Australian Bill also endeavors to address the problem of Orphanage tourism, by incorporating it under the definition of modern slavery, which is a notable difference from the UK Modern Slavery Act.

(b) Shortcomings of the Australian Modern Slavery Bill

Unfortunately, similarly to the UK Modern slavery Act, the Australian Bill imposes no penalties for companies that fail to report. This means enforcement is effectively left for non-governmental organisations to use the public repository to “name and shame” companies, and possibly investors who could put pressure on the companies to comply with their reporting obligations. Another shortcoming is that, unlike the UK legislation, there is no provision for an anti-slavery commissioner who might otherwise help enforce the law. Therefore, there are concerns around the mandatory scheme which raises no consequences for a failure to report.⁵⁴

VII Modern Slavery in New Zealand – Where to Now?

Businesses in New Zealand are enthusiastic about tackling the problem of modern slavery. The government, businesses, unions and non-government organizations are working together to address the problem. However, arguably, we need to do more.

⁵⁴ Fiona Mcgaughey and Justine Nolan “ Modern slavery bill a step in the right direction - now businesses must comply” (2 July 2018) < <https://newsroom.unsw.edu.au/news/social-affairs/modern-slavery-bill-step-right-direction-%E2%80%93-now-businesses-must-comply>>.

A A Modern Slavery Act

Introducing a Modern Slavery Act is one possible way of dealing with this complex problem. An ideal framework for New Zealand might involve a blend of the UK and the Australian version, which takes into account the shortcomings discussed above.

In an age where consumers are increasingly willing to take corporate accountability into their hands, a modern slavery statute will have a positive effect on the ways companies and businesses function. By ensuring greater transparency in supply chains and outlining the consequences of exploiting workers in businesses, this will therefore mitigate the issues posed by modern slavery. Furthermore, if New Zealand adopts this legislation, it will be at the forefront of global efforts to address modern-day slavery, and will aid in sending a strong message to the international community that modern slavery practices will not be tolerated in New Zealand.

B Other Options

1 Greater Focus on Victims

Discussions on modern slavery tend to be focused on holding the perpetrators to account. While this is undeniably important, we must also recognise that modern slavery is an assault on the human dignity, freedom and human rights of its victims. We therefore need to consider whether we are doing enough to address the needs and experience of victims, and to make reparation for the harm they have suffered.

The power struggle between employers and employees has caused an information deficit, as the workers are too afraid to admit their experience in case of further abuse. The Migrant Association is calling for the government to work with more compassion. They argue there needs to be a safer environment for whistle-blowers to come forward, whereby they can be guaranteed protection.⁵⁵ One positive change being looked into at the moment by immigration Minister Iain Lees-Galloway is the potential for a new scheme whereby work visas are not bonded to a single employer. This would allow migrants an escape route in the case of exploitation. Whilst this is a novel idea of possible long-term success, we are in desperate need a more short-term fix. Change needs to occur at an accelerated rate, given the immediate need to tackle migrant exploitation. One option touted by the Minister is to put more resources into the police force and establish a branch dedicated to investigating migrant exploitation claims.

⁵⁵ Laura Walters “No job, no qualification, no dream- migrant exploitation in NZ” (7 March 2018) Stuff News www.stuff.co.nz.

2 A Company Accord

An alternative to supply chain transparency provisions might consist of an accord which companies can sign up to, pledging to ensure that no slave labour is involved in the production of company resources. Companies may be incentivised to do so in the hopes of attracting a wider customer base, including those who make a concerted effort to shop ethically.

VIII Conclusion

It is evident that elements of slavery continue in current New Zealand employment relationships. In the shadows, migrants are promised well-paying jobs with reasonable hours. However, the reality is not all employers are keeping to their promises. Recent highly-publicised stories indicate some employers are exploiting the vulnerability of these migrant's precarious immigration status, forcing employees to work extended hours without pay. Additionally, New Zealanders are complicit in exploitative practices that occur offshore through products purchased in kiwi businesses, and even unknowingly while volunteering in deprived communities. It is therefore evident that more action is needed. The direction New Zealand takes is yet unknown. However, statutory reforms appear to be the most viable option to directly hold exploitative employers and businesses to account. In addition to this, we need to be cognizant of the impact on victims, and ensure our current laws and services are victim-oriented.