

MODERN SLAVERY LEGISLATION

Final Report

Impact and effectiveness of modern slavery legislation

July 2021

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Executive summary

This literature review focuses on legislative approaches in the UK, EU, Australia and US

The New Zealand Government has made a commitment to consider introducing modern slavery legislation to address exploitation in supply chains.

This detailed literature review summarises the impact and effectiveness of different legislative approaches to addressing modern slavery in supply chains. It focuses on regimes in the UK, the European Union, Australia and the US.

Key considerations for developing a legislative approach

This literature review identifies some key considerations that should inform the development of the policy approach to modern slavery legislation:

- The legislation should clearly and comprehensively define ‘modern slavery’ and ‘supply chain’. The extent to which the legislation is gender-responsive also needs to be considered.
- Transparency provisions are necessary but unlikely to give businesses and public sector organisations enough incentive to move beyond a minimum compliance approach to the issues.
- Enforcement, penalties and due diligence provisions may counter the weaknesses of transparency in supply chain provisions.
- Mandatory due diligence measures should be considered, but it is too early to tell whether these types of provisions have been effective internationally.
- Change led by investors and consumers has some benefit, but this should not be overstated or relied on in responding to concerns about modern slavery.
- Awareness among companies and organisations of the risk of modern slavery in supply chains is low in the jurisdictions reviewed. Suppliers themselves lack awareness too. It is reasonable to expect that there will be low business compliance with transparency in supply chain provisions in the early implementation years. Clear legislation and guidance will be needed.
- The business community generally opposes penalties for non-compliance with transparency in supply chain provisions, but penalties seem to work. Engagement with the business community and comprehensive guidance for businesses to which the legislation relates to are also critical.
- Consumers have low awareness of modern slavery and have not engaged much with legislative change to address modern slavery. Communications and awareness-raising for the general public is required to generate change.

A whole-system approach is needed

Given the complexity of the issues, a New Zealand response will be stronger if it takes a whole-system approach that recognises the key role that public-private partnerships and NGOs can play.

When considering the potential applicability of supply chain transparency legislation in New Zealand, consideration should be given to New Zealand's geopolitical context as a small but highly integrated trading nation:

- New Zealand is small, our firms are small, and they typically export earlier in their lifecycle than firms overseas. New Zealand will need to think carefully about the size of firms that are captured, and the benefits and costs that any change will have.
- Trade, and trading relationships, are essential to our economic prosperity. Further, New Zealand values its wider international relationships. New Zealand will need to consider how we align with existing regimes, as well as manage risks to our international reputation that may arise from being out-of-step from our partners.
- The New Zealand labour market has recently been highly reliant on a temporary migrant workforce. This brings a particular set benefits and risks, which mean that New Zealand should consider what it means by modern slavery and how well different definitions will address the particular risk profile of these workers.
- Ensuring Treaty of Waitangi principles are taken into account, and how a Te Ao Māori perspective may influence approaches to transparency, compliance, enforcement and penalties, as well as implementation of legislation.

Introduction and context

The Government has committed to considering modern slavery legislation

The New Zealand Government has made a commitment to consider introducing modern slavery legislation to address exploitation in supply chains.

The Ministry of Business, Innovation and Employment's (MBIE's) *Combatting modern forms of slavery: Plan of action against forced labour, people trafficking and slavery 2020-25* (MBIE, 2020c) lists as one of the actions over the next five years:

Consider introducing legislation requiring businesses to report publicly on transparency in supply chains, to help eliminate practices of modern slavery.

The [Trade for All Advisory Board](#) (2019) also recommended that the Government assess whether the Cabinet framework for trade and labour, and New Zealand's legislation to address modern slavery, are sufficient given international trends.

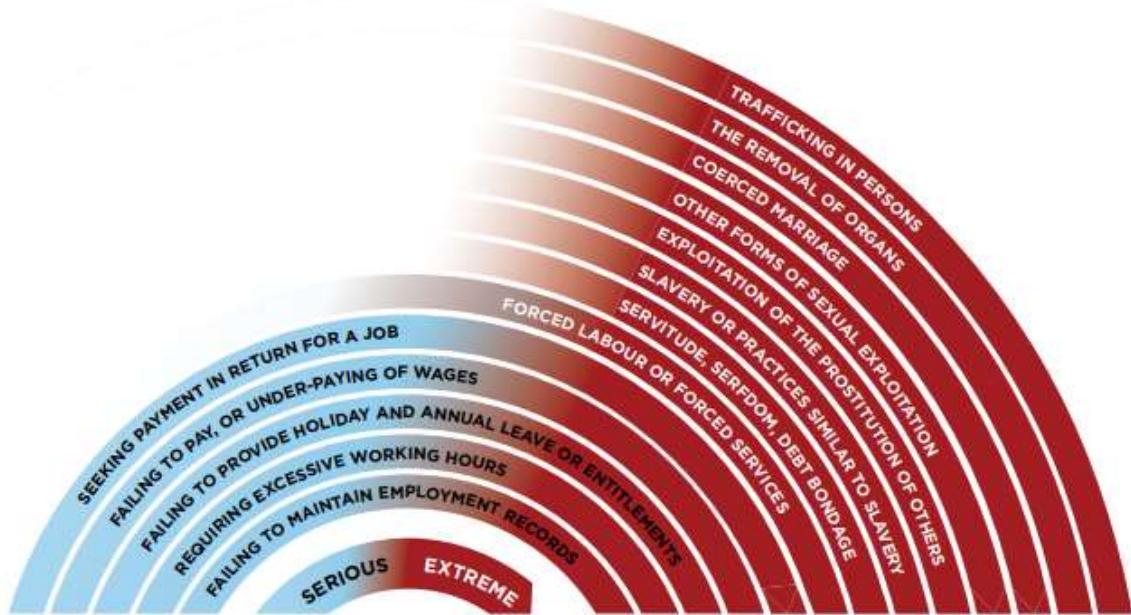
Existing legislation and international conventions relevant to modern slavery

New Zealand has already ratified a number of international treaties that define and set out obligations to directly address forced labour, people trafficking, and slavery:

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

Further, a range of exploitative practices are already criminalised in New Zealand's legislation, including the Immigration Act 2009 and Crimes Act 1961 (MBIE, 2020c) (Figure 1).

Figure 1. The spectrum of exploitation



Source: MBIE (2020c)

What is modern slavery?

Slavery is an issue around the world

The International Labour Organization (ILO) estimates that, at any given time, around 40 million people are victims of slavery – with 25 million in forced labour and 15 million in forced marriage.

Of the 25 million people who are victims of forced labour (ILO & Walk Free Foundation, 2017):

- 16 million people are exploited in the private sector in areas such as domestic work, construction and agriculture
- 1 in 4 victims of forced labour are children
- 5 million are victims of forced sexual exploitation, and
- 4 million people are victims of forced labour imposed by state authorities.

Slavery, forced labour, and human trafficking are covered by a range of conventions

Slavery and forced or compulsory labour are the subject of multiple international conventions and agreements.

The ILO's Forced Labour Convention, in particular, is one of the most highly ratified ILO treaties. Each Party to the Convention 'undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period'. The 2014 Forced Labour Protocol supplements this with a legally binding instrument that requires countries to improve prevention, protection and compensation measures, and to strengthen efforts to eliminate contemporary slavery (ILO, 2016; Nolan & Bott, 2018). New Zealand ratified this Protocol in December 2019, becoming the 43rd country to do so (ILO, 2019b).

Nolan and Bott (2018) note that most of the international treaties and conventions governing forced labour and slavery focus on the role of the state. However, the role of business practices and supply chains in facilitating or hiding modern slavery has come under increasing scrutiny. That role is the focus of a range of national and international regulatory regimes that are aimed at improving awareness of the risks of modern slavery and improving the mitigation of them – whether this is aimed at businesses operating supply chains, or consumers, or investors.

In recent years, a focus on ‘modern slavery’ has emerged...

The term 'modern slavery' is increasingly being used internationally and within New Zealand to describe a range of exploitative practices, and to convey the pervasive and hidden nature of the risks.

The exploitative behaviours that are commonly taken to comprise modern slavery include forms of slavery and forced labour. But they can go beyond this into a wider range of behaviours that capitalise on power imbalances between workers and employers.

... but ‘modern slavery’ is not well-defined

The term 'modern slavery', however, does not have a formal, internationally agreed definition. The term can span a broad range of interpretations and can mean different things to different people.

New Zealand's Plan of Action sets its scope as '**people trafficking, slavery and slavery-like practices including forced labour, debt bondage and serfdom. These are exploitative crimes which can occur domestically to New Zealanders and migrants, as well as internationally'** (MBIE, 2020c).

The Plan then goes on to define the following terms:

“Forced labour is all work or service exacted from a person under threat and for which the person has not offered themselves voluntarily.¹ It can occur as the result of trafficking or through labour exploitation.

“In its simplest form, **people trafficking** (also referred to as trafficking in persons or human trafficking) is the recruitment, transportation, transfer, harbouring or receipt of a person, achieved through coercion, deception, or both, for the purpose of the exploitation of the person.² Exploitation can occur in relation to prostitution or other sexual services, slavery, practices similar to slavery, servitude, forced labour or other forced services, and the removal of organs. In New Zealand, people trafficking can be prosecuted without exploitation having actually occurred.³

“Slavery is defined in New Zealand’s Crimes Act 1961 as including, without limitation, a person subject to debt-bondage or serfdom. The Supplementary Convention on the Abolition of Slavery recognises institutions and practices similar to slavery, including debt bondage, serfdom, marriage-related and exploitative child labour-related practices.”

With no internationally accepted definition of ‘modern slavery’, the term tends to be used to mean labour market exploitation, forced labour, or human trafficking, or to encompass all of these (Balch, 2019; Broad & Turnbull, 2019). The UK Modern Slavery Act 2015 was the first national legislation to use the term ‘modern slavery’ rather than ‘human trafficking’ or ‘forced labour’ (Broad & Turnbull, 2019), and it was also the first to explicitly mention ‘slavery’.

The UK’s Modern Slavery Act does not define ‘modern slavery’. Instead it specifies the following categories:

- Slavery, servitude and forced or compulsory labour
- Human trafficking
- Sexual exploitation
- Removal of organs etc
- Securing services etc by force, threats or deception
- Securing services etc from children and vulnerable persons.

It is important for legislation to be clear about exactly what behaviours and practices it relates to, as that will drive behaviour, reporting and enforcement.

As will be discussed later, emphasising specific parts of the exploitation spectrum may mean that other forms of exploitation will not be addressed, or will require closer integration with existing employment laws and regulatory approaches. The Australian legislation, the Modern Slavery Act 2018, has been criticised for focusing on labour exploitation and not paying attention to other forms of modern slavery (Fellows & Chong, 2020), while European Union legislation has been criticised for emphasising sex trafficking at the expense of labour trafficking (Cockbain et al., 2018). Further, labour

¹ See Forced Labour Convention, 1930 (No. 29), International Labour Organization.

² See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, United Nations Office on Drugs and Crime.

³ In New Zealand, people trafficking that occurs domestically is investigated and prosecuted by the New Zealand Police, while cross-border trafficking is investigated and prosecuted by Immigration New Zealand.

trafficking can overlap with other labour market practices like child labour, forced labour, illegal working and inadequate health and safety practices (Cockbain et al., 2018).

In the US, state-level legislation tends to apply to human trafficking and the more extreme forms of exploitation, with less focus on labour exploitation (Branscum et al., 2021). A review of US state legislation finds that without comprehensive definitions (such as in Florida and North Dakota), the courts are left to decide the scope of the legislation, which can mean that victims and survivors are less likely to come forward (Branscum et al., 2021).

A literature review from an accounting research perspective usefully highlights that use of the term 'modern slavery' is less likely to be about people owning other people as property (although that does exist), and more about being exploited and completely controlled by someone else (Christ et al., 2020).

The structure of this report

This report is divided into two sections:

- 1. Modern slavery legislation**
- 2. The efficiency and effectiveness of legislative approaches.**

Section 1: Modern slavery legislation

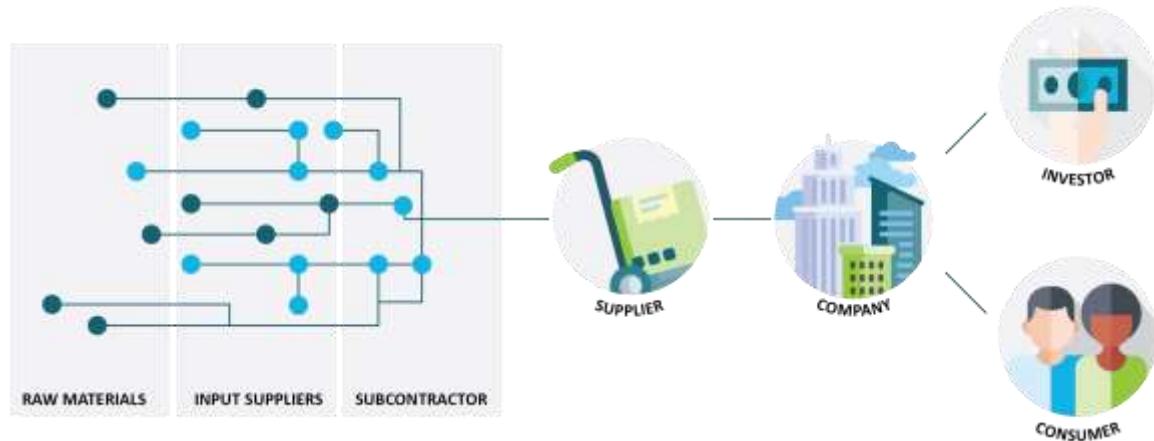


The role of supply chains

Modern supply chains are complex

Modern supply chains typically span a diverse range of suppliers and contracted parties, including producers of raw materials, suppliers of further inputs, and various sub-contractors. This means that primary buyers (the 'company' in the diagram below) can be supplied by a large number of different parties, including those they do not have a direct business relationship with. It can also mean that investors and consumers are removed from producers and suppliers by quite a few steps (Figure 2).

Figure 2. Conceptualising a supply chain



Source: Adapted from knowthechain.org

These complicated relationships form the basis of global trade and commerce, in which various companies specialise in providing different goods or services within a supply chain. The OECD (2021) states that about 70% of international trade today involves global value chains. They form a complex network of producers, suppliers, intermediaries, distributors, and vendors, all involved in the production and distribution of a final products, services, raw materials, parts and components across borders and markets, often numerous times (O'Brien & Boersma, 2016; OECD, 2021).

The range of actors involved can mean that the companies that are responsible for designing or marketing goods and services and that have a direct relationship with consumers may not be familiar with the sources of their inputs or the companies providing them. This could be because of physical distance, or because of distance within the supply chain, as chains often have multiple levels of suppliers and intermediaries (ILO, 2019a).

These modern supply chain relationships result in a range of key features that increase the risk of facilitating modern slavery:

- Responsibilities can be diffused and uncertain
- Supply chains can span multiple regulatory regimes
- There can be power imbalances between buyers and suppliers.

Responsibilities can be diffused and uncertain

Across a multi-layered supply chain, responsibilities for labour conditions can be diffused among a range of different companies and actors, creating uncertainty about where responsibility lies.

Responsibility for oversight of labour practices within these arrangements can be dispersed among multiple parties – especially where primary procurers are operating at a distance from various suppliers, either geographically or in the number of steps in the supply chain.

Nolan and Bott (2018) chart some of these diffused responsibilities. They discuss how multi-layered chains can have fluid supply chain relationships, especially below the first tier, making it difficult to trace those who may be involved. They also note that it is increasingly common for companies to not own or manage the factory producing their goods – and that companies may contract with a large number of different suppliers, into the ‘hundreds, sometimes thousands’ each year.

Hess (2020) provides a simple illustration:

A clothing company might contract a factory to produce garments.

The factory may not have issues with labour conditions, but there may be an issue with the producer of a raw material sourced by one of the factory’s suppliers.

While removed from the company by multiple steps, the final product and its consumers may still have benefitted from labour exploitation.

These issues can be compounded in sectors where supplier relationships are inter-connected at multiple levels within a supply chain, or where subcontractors supply primary buyers through multiple routes. KnowTheChain (2020) has attempted to map some of the longest global supplier relationship chains within the ICT sector. They found that ending a direct relationship with a supplier may not remove that supplier from the entire supply chain as that supplier may still be providing goods or services to another supplier in the chain.

Attempts to contract out of the risk (for example, by setting expectations about labour standards with primary suppliers) are not always successful and do not always filter down the chain – especially where the relationship is indirect. Therefore, while a firm may believe they have provided for the risks of modern slavery with their direct suppliers, there may still be risks upstream or with indirect suppliers, as suppliers may subcontract with additional parties. Hess (2020) points to the difficulties companies face in understanding and dealing with challenges posed indirectly by business relationships between third parties. Hess (2020) argues that:

efforts against trafficking for forced labour in global supply chains will be inadequate if they do not extend beyond immediate suppliers to include actors operating further upstream in global supply chains.

There can be economic and other power imbalances between buyers and suppliers

Different participants in supply chains can also exert different levels of power. Some supply chains can be dominated by large, influential companies, with multiple and rapidly changing supplier relationships, and an increasing dominance of transnational actors. These large buyers can in theory exert significant influence over their suppliers, including to displace economic risk to suppliers further down the supply chain. Examples can include immediate reductions in the agreed sale price, changing orders, delays in payments, and a focus on short-term relationships.

Where a supplier's largest cost is labour, it can be pressured to meet these market demands by reducing their relative cost of labour (or pushing the risks onto their own suppliers) (Hess, 2020; Nolan & Bott, 2018). Similarly, attempts to enforce labour standards through contractual requirements can be seen as another form of displacing economic risk onto suppliers that are subject to a range of economic pressures to remain competitive.

The nature of the supply chain places pressure on upstream businesses (such as farmers) to reduce labor costs as close to zero as possible due to the power of downstream businesses (such as supermarkets) to demand lower prices. This is especially problematic in labor intensive industries where margins are narrow and where value is captured further downstream by larger and more powerful interests. (Hess, 2020)

Similarly, some participants in a supply chain can lack power and be vulnerable to undue economic pressure and exploitative practices. While, theoretically, markets should re-balance these sources of power, imbalances, in practice, can persist. For example, imbalance can occur both in large international supply chains and also within local labour supply arrangements – for example through the increasing use of subcontracting models to transfer risks to smaller entities or even to individuals. The subcontracting model has come under focus both in New Zealand and Australia due to the vulnerable position that it can put workers in, especially migrant workers (see reports into risks of exploitation in the Chorus supply chain in New Zealand (Martin & Baddeley, 2019), and in 7 Eleven stores in Australia (Fair Work Ombudsman, 2016)).

While subcontracting models help to reduce demand and capacity risk for buyers, this risk can be moved onto the end contractor. Conversely, the model can provide the subcontractor with more flexibility than direct employment, as the subcontractors can work across multiple parties within relevant industries, spreading their risk and taking as little or as much work as they choose (Fair Work Ombudsman, 2016; Martin & Baddeley, 2019).

Supply chains can span multiple jurisdictions with differing standards and expectations

Although supply chains are now global and operate across national and state borders, regulatory approaches have been largely focused within those borders.

One country's demand may be filled by other countries – with production and sourcing in other jurisdictions where labour standards may be lower or enforcement is weak. This presents challenges both for the primary buyers in the supply chain and for regulators, as human rights offences may take place offshore within other regulatory regimes (Hampton, 2019; Nolan & Bott, 2018).

These challenges can be exacerbated in several ways:

- Supply chain developments outpacing the regulatory regimes of some developing states and their ability to protect workers' rights. Laws and regulations may be inadequate, or there may be insufficient resources to detect violations or enforce existing laws (Hess, 2020; Nolan & Bott, 2018).
- Socio-economic factors in different jurisdictions – including poverty, lack of access to alternative job options, and lack of government supports – may pressure people into taking or staying in exploitative employment (Hess, 2020).

The role of supply chains is increasingly an area of international focus

The focus has been motivated by high-profile cases

The role that supply chains play in facilitating risks of labour exploitation has increasingly become an area of focus over the past two decades, particularly because of a number of high-profile cases that highlight how responsibility for protecting workers' rights is diffused across multiple regulatory regimes.

Recent high-profile examples include:

- the collapse of the Rana Plaza garment factory in Bangladesh in 2013, which killed more than 1,130 workers, and the disaster highlighted poor working conditions and the lack of health and safety protections for workers.
- the Thai shrimp industry using forced labour to peel shrimp for export to the US and Europe (Hampton, 2019).
- concerns about exploitation of subcontracted migrant labour in telecommunications and retail stores in Australia and New Zealand (Fair Work Ombudsman, 2016; Martin & Baddeley, 2019).

Most recently, reports by the Australian Strategic Policy Institute (ASPI) have suggested that Uygher forced labour is now part of the global supply chain and is connected to 80 international brands selling to consumers, businesses and governments (Xu, 2020).

An international shift in norms and expectations

International bodies have played a key role in emphasising the role of businesses in taking responsibility for the risk of modern slavery across their entire operations. The main driver is the United Nations Guiding Principles on Business and Human Rights (UNGPs), published in 2011 (United Nations, 2011).

These Guiding Principles represented a substantial shift in the social expectations placed on businesses and emphasise that businesses have a responsibility:

- to avoid causing or contributing to adverse human rights impacts through their own activities, and to address those impacts when they occur, and
- to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

Hess (2020) discusses how these requirements extend a business's obligations beyond its direct operations to include the ways it may inadvertently contribute to human rights violations through its supply chain:

Thus, the UNGPs set out three ways in which a business may be connected to a negative human rights impact:

First, the business can directly cause violations, such as through hazardous conditions at its own factory.

Second, a business contributes to a violation when another party may have caused the problem, but this business contributed to it in some way. For example, a business contributes to a violation by "[c]hanging product requirements for suppliers at the eleventh hour without adjusting production deadlines and prices, thus pushing suppliers to breach labour standards in order to deliver."

Third, a business is directly linked to a violation through the action of others, such as a supplier subcontracting a portion of the contract (even if that is a violation of the contract) to a third party that is using exploitative labor practices.

The UN Guiding Principles recommend that firms undertake due diligence to help meet these obligations, which would include assessing actual and potential human rights impacts, integrating their findings and acting on them, tracking responses, and communicating how they have addressed the impacts. These are guidelines only, however, and do not create legal obligations or provide sanctions for non-compliance.

These Guiding Principles have also been supplemented by the OECD Guidelines for Multinational Enterprises, which set standards for responsible business conduct across a range of issues, such as human rights, labour rights, and the environment. These guidelines cover issues relating to international and extraterritorial scope, and recognition of supply chain responsibility (OECD, 2011).

Measuring modern slavery and labour exploitation is difficult and approaches are still evolving

Detailed measurement is challenging

High-profile cases have helped focus international attention, but it is difficult to understand the full extent of potential labour exploitation across international supply chains, and to determine whether it is increasing.

The ILO (2019a) sets out some of the challenges for understanding the full extent of child labour. It says that this would require:

- mapping intricate supply chain relationships, which is a complex undertaking
- tracing final products and individual components, which requires data across multiple markets where the product is 'consumed', but also all along its supply chain – this challenges traditional surveying and national accounting methods
- identifying where and to what extent child labour, forced labour and human trafficking occur along these supply chains steps.

The ILO (2019) writes that:

Identifying child labour at each segment of a global supply chain would require very detailed information on the sectoral composition of child labour and on the interdependencies between industries within an economy and across countries.

The science of measuring the prevalence of modern slavery is still evolving

Because modern slavery tends to be hidden and victims often do not want to self-identify, it is difficult to obtain data and statistics on how prevalent modern slavery is, both worldwide and within New Zealand (Amahazion, 2015; Balch, 2019; ONS, 2020). The unknown volume of crime is often referred to as the 'dark figure' (Coleman & Moynihan, 1996).

While there is no one source or method available that accurately quantifies the number of victims in the UK, evidence suggests there have been improvements in identification since the introduction of the modern slavery Acts in 2015. Yet this is only part of the story, as many cases remain hidden and unreported. (National Statistician, UK Office for National Statistics (ONS, 2020))

Two main methods for estimating numbers of victims

Two main methods of estimating modern slavery victims are:

- 1 statistical modelling techniques, using the multiple systems estimation (MSE) approach. MSE estimates the unknown figure based on the overlaps that can be observed across multiple samples of a population. It captures individuals who are detected and recorded within independent data or recording systems. Individuals are matched across databases to count the various combinations in which they appear.
- 2 estimations of prevalence based on survey and administrative data (and in some cases, police and security intelligence data) extrapolated or weighted to ensure it is globally or nationally representative.

The methods have led to a wide range of estimated figures for potential victims globally and nationally (Table 1).

Table 1. Estimating the size of the problem

Worldwide	United Kingdom	Australia	New Zealand
<p>International Labour Organisation and Walk Free Foundation calculates</p> <ul style="list-style-type: none">• 40.3 million in 2016 <p>Includes 25 million in force labour and 15 million in forced marriage</p>	<p>In 2014, the Home Office produced an estimate of the scale of modern slavery in the UK of</p> <ul style="list-style-type: none">• between 10,000 and 13,000 potential victims <p>using a multiple systems estimation (MSE) approach.</p> <p>The Office for National Statistics recommends not repeating that method due to the subsequent changes to data sources and issues related to the statistical model used.</p>	<p>Using MSE it was estimated that the number of human trafficking and slavery victims in Australia in 2015–16 and 2016–17 was</p> <ul style="list-style-type: none">• between 1,300 and 1,900. <p>This means there are approximately four undetected victims for every victim detected.</p>	<ul style="list-style-type: none">• No estimates currently available, <p>but the National Action Plan indicates that MBIE (with Oranga Tamariki and NZ Police) are undertaking research and monitoring activity to better understand the nature and extent of forced labour, people trafficking and slavery in New Zealand.</p>

Worldwide	United Kingdom	Australia	New Zealand
<p>The Centre for Social Justice estimated that there could be, at least,</p> <ul style="list-style-type: none"> • 100,000 victims of modern slavery in the UK in 2017. <p>This was based on data collected by the National Data Analytic Solutions partnership, using a new technique that analysed crime reports and intelligence records of West Midlands Police. Results were scaled up to derive an estimate for the UK population.</p> <hr/> <p>Walk Free Foundation's Global Slavery Index estimated the number of victims of modern slavery in the UK at</p> <ul style="list-style-type: none"> • 136,000. <p>The method used data from a small number of countries to estimate prevalence for a wider range of countries. The ONS (2020) states that the number cannot be regarded as accurate or reliable.</p>	<p>The Global Slavery Index 2018 estimates that on any given day in 2016, there were</p> <ul style="list-style-type: none"> • 15,000 <p>living in conditions of modern slavery in Australia, a prevalence of 0.6 victims of modern slavery for every thousand people in the country.</p>		

Sources: (ILO & Walk Free Foundation, 2017; ONS, 2020) add Australian dark figure, GSI and national action plan, CSJ 2020

Unlike with many policy problems, there hasn't been an internationally consistent approach to defining and empirically measuring the policy problem to enable countries to understand whether their approaches are successful or not. Measurement of modern slavery, including the two main approaches outlined above, have been criticised on grounds both of the definitions and the methodologies used (Broad & Turnbull, 2019; ONS, 2020). The science of estimating prevalence is ongoing (HM Government et al., 2020).

International legislative regimes

There are a range of approaches to legislation, transparency being one. This section describes the key transparency regimes, and key changes and approaches as well as looking at other types of approaches that are now being developed, such as, due diligence.

The main approaches to supply chain transparency

A range of legislative approaches have emerged in the past decade, focused largely on demystifying the transnational supply chains and placing greater onus on primary buyers or those at the end of the supply chain to identify and disclose risks of modern slavery within their supply chains.

Different regimes require different levels of detail in any reporting, and they also differ in whether they require firms to simply disclose or take action against risks. For example, different activities that firms can be required to do under different regimes include:

- Disclosing what efforts they have made to identify or address modern slavery risks, if any
- Providing an assessment of the risks in their supply chain
- Describing the due diligence activities they have carried out, if any
- Actively carrying out due diligence activities
- Giving details of their future plans for addressing modern slavery risks.

A range of mechanisms and choices are available to countries for tackling modern slavery (Figure 3). For the jurisdictions covered in this report, the extent of the reporting expectations broadly aligns with the age of the regulatory regime: the older regimes are simpler and the more recent regimes are more prescriptive and also place more emphasis on enforcement, with heavier penalties for non-compliance. Nolan and Bott (2018) discuss how this reflects an evolving understanding of the actions a company might be expected to take to prevent human rights violations.

Overall, current transparency schemes for supply chains:

- use definitions that are focused on narrow understandings of forced labour and slavery, or on broader corporate social responsibilities
- are unclear about how they apply across supply chains – and how many tiers within a supply chain businesses are expected to report
- are typically focused on requiring firms to disclose what actions they have taken, rather than requiring them to take certain actions
- have limited enforcement, and limited penalties for non-compliance.

Description of the main regimes

Greater detail is set out in Appendix 1.

United States – supply chain transparency and import bans

California – Transparency in Supply Chains Act 2010

The California Transparency in Supply Chains Act 2010, enacted in 2012, was one of the first regimes aimed at improving extra-jurisdictional supply chain transparency. Its stated policy objective is:

To ensure large retailers and manufacturers provide consumers with information regarding their efforts to eradicate slavery and human trafficking from their supply chains, to educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, to improve the lives of victims of slavery and human trafficking [Section 2 (j)]

The Act requires all retailers and manufacturers that do business in California and that have annual worldwide gross receipts of more than US\$100 million to disclose, in a conspicuous and easily understood link on their webpage, to what extent, **if any**, it:

- Engages in **verification** of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.
- Conducts **audits** of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.
- Requires direct suppliers to **certify** that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
- Maintains **internal accountability standards** and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
- Provides company employees and management, who have direct responsibility for supply chain management, **training** on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

The disclosure regime is limited to the ‘hard’ forms of ‘slavery and human trafficking’ and does not appear to capture softer forms of exploitation. The Act also does not require the companies to do any of the activities identified, they are simply required to state whether or not they do them.

The requirement is limited to a simple one-off disclosure. Companies are not required to update their disclosures (Nolan & Bott, 2018)

United States: Import bans

Complementing California’s Transparency in Supply Chains Act, the United States Tariff Act 1930 bans the importation of goods produced by forced labour:

all goods mined, produced or manufactured by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited

This prohibition was originally intended to protect American producers against unfair competition from offshore producers that draw on cheaper labour. It contained an exclusion – the ‘consumptive demand’ clause – that allowed entry to products of forced labour if no comparable

product was made in the US or if US production was not sufficient to meet demand (Casey et al., 2021).

This exemption was repealed in 2015 as part of the Trade Facilitation and Trade Enforcement Act. This recognised the increasing focus on humanitarian concerns relating to forced labour, and concerns that the 'consumptive demand' clause limited the ability to prevent the products of forced labour from entering the country.

The import bans are enforced by the US Customs and Border Protection Agency (CBP). The CBP targets specific goods from specific producers in response to reports from individuals of suspected forced labour, rather than targeting entire product lines or problematic countries or regions. When it receives a report, the CBP investigates and can issue a 'Withhold Release Order' if they have reasonable concerns that the imports are the product of forced labour.

These tools are focused more on enforcement against foreign companies, rather than on the role that US companies may play (Di Martino, 2020).

United Kingdom – supply chain transparency through a holistic reform of modern slavery

The UK enacted the Modern Slavery Act in March 2015. Compared to the California Act this takes a wider-ranging and more holistic approach to reforming the regulatory regime surrounding modern slavery. The Act's stated purpose is as follows:

An Act to make provision about slavery, servitude and forced or compulsory labour and about human trafficking, including provision for the protection of victims; to make provision for an Independent Anti-slavery Commissioner; and for connected purposes.

As with other regimes, modern slavery was already a crime in the UK before the Act was passed, with modern slavery offences punishable under various Acts. The new legislation increased the maximum penalties for offences to life imprisonment and introduced further protection and support for victims.

The new Act unified and simplified previous slavery and trafficking legislation into a single new Act, with two consolidated offences, supported by new enforcement and sentencing powers, greater penalties, and strengthened protections for survivors (Haughey, 2016; ONS, 2020).

The two consolidated offences are

- slavery, servitude and forced or compulsory labour (section 1), and
- human trafficking for the purposes of exploitation (section 2) (Modern Slavery Act, 2015).

Section 3 of the Act defines 'exploitation', although the construction of the legislation means that definition cannot be read in isolation and must be considered alongside section 1 on slavery, servitude and forced or compulsory labour and section 2 on human trafficking (Secretary of State for the Home Department, 2019).

The UK Modern Slavery Act also established the first Independent Anti-Slavery Commissioner, to promote good practice in the prevention, detection, investigation and prosecution of modern slavery offences. The Act also requires supply chain transparency, placing a duty on large businesses to play a part in eradicating slavery from global supply chains (Haughey, 2016).

Transparency in supply chains

The transparency in supply chains (TISC) provisions in the UK Modern Slavery Act 2015 require commercial organisations⁴ to prepare and publish on their website an annual Slavery and Human Trafficking Statement each financial year. The statement must set out either:

- the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its own business, or
- a statement that the organisation has taken no such steps.

The Act includes guidance on the type of information that statements may include, including:

- the organisation's structure
- company policies in relation to slavery and human trafficking
- due diligence processes in relation to slavery and human trafficking in its business and supply chains
- the parts of its business and supply chains where there is a risk of slavery and human trafficking, and the steps it has taken to assess and manage that risk
- effectiveness and performance indicators, and
- training relating to slavery and human trafficking available to its staff.

Nolan and Bott (2018) note that the Act does not define 'supply chain', or require specific topics to be reported on, or apply financial penalties for non-compliance with the disclosure obligation.

Enforcement is limited to a civil injunction brought against a company by the UK Home Secretary requiring it to publish a statement. However, that enforcement measure has not been used and there have been no penalties to date for non-compliant organisations (Secretary of State for the Home Department, 2019).

In addition, while the Act consolidated and simplified existing legislation relating to modern slavery, the new Act sits within a complex regulatory system, including the Immigration Act 2016, and seven regulatory authorities responsible for different aspects of regulatory oversight, as set out in Appendix 2.

⁴ The Act states that a "commercial organisation" means—(a) a body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom, or (b) a partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom and for this purpose "business" includes a trade or profession'.

The Australian Modern Slavery Act 2018 – refining and strengthening supply chain transparency requirements, but with limited enforcement

Australia's Modern Slavery Act 2018 focuses on establishing a supply chain transparency regime. It describes its purpose as follows:

An Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes

The Australian reporting regime covers commercial entities that are based in or operating in Australia and that have an annual consolidated revenue of more than AUD\$100 million, and non-corporate government entities defined in the Public Governance, Performance and Accountability Act 2013. The Act requires these entities to produce a modern slavery statement.

The reporting regime also applies to any other entity that wishes to provide a modern slavery statement.

Key features of the Australian regime

- The Act defines 'modern slavery' – the first Act to do so. The Act refers to existing criminal offences which are specified in the Australian Criminal Code:

The Act defines modern slavery as including eight types of serious exploitation: trafficking in persons; slavery; servitude; forced marriage; forced labour; debt bondage; deceptive recruiting for labour or services; and the worst forms of child labour. The worst forms of child labour means situations where children are subjected to slavery or similar practices, or engaged in hazardous work, including slavery, slavery-like practices (including forced labour and exploitation), and trafficking in persons.

Commonwealth of Australia, Guidance for Reporting Entities (2018)

- The Act specifies the required content for a modern slavery statement. This includes requiring a risk assessment across the supply chain, rather than just reporting on any efforts undertaken (Example 1).
- It requires all modern slavery statements to be collated within a public register maintained by the relevant Minister.

Example 1. Required content for a Modern Slavery Statement

Australian modern slavery statements must:

- identify the reporting entity; and
- describe the structure, operations and supply chains of the reporting entity; and
- describe the **risks** of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls; and
- describe the **actions** taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes; and
- describe how the reporting entity assesses the effectiveness of such actions; and
- describe the process of consultation with any entities that the reporting entity owns or controls
- include any other information that the reporting entity, or the entity giving the statement, considers relevant.

Similar to the UK, there is limited ability to enforce the supply chain reporting requirements. Enforcement is focused on the Minister's power to 'name and shame' non-compliers by publishing their details on the register.

European Union – non-financial reporting for large undertakings

The European Union's Directive 2014/95/EU – also called the Non-Financial Reporting Directive (NFRD) (European Parliament, 2014) effective from 2017, aims to:

Raise the level of transparency of social and environmental information provided by undertakings in all sectors.

It requires all 'undertakings' – that is, listed companies, banks, insurance undertakings and other companies as designated in national regulations – that have more than 500 employees to publish information about the non-financial impacts of their activities and supply chains. This covers approximately 11,700 firms.

The information that must be published is that relating to these areas:

- environmental matters
- social matters and treatment of employees
- respect for human rights
- anti-corruption and bribery
- diversity on company boards (in terms of age, gender, educational and professional background).

This includes (European Parliament, 2014):

- a brief description of the undertaking's business model
- a description of the undertaking's policies on those areas, including due diligence processes that have been implemented
- the outcome of those policies
- the principal risks the undertaking faces in relation to those areas, including, where relevant and proportionate, its business relationships, products or services that are likely to cause adverse impacts in those areas, and how the undertaking manages those risks
- non-financial key performance indicators relevant to the particular business.

Similar to the Australian regime, the EU Directive specifies the information that must be included, but does not require companies to carry out due diligence, instead requiring them to provide a statement for why they are not pursuing policies in one or more of the identified areas (European Parliament, 2014). It applies more broadly than the other regimes discussed, as it applies to all human rights impacts, not just modern slavery (O'Brien & Boersma, 2016).

The EU regime does not specify a reporting framework to be used, but companies must specify which one they have adopted.

The information is expected to be published either as a consolidated report as part of the annual financial statements and management report, or as a separate document. The information is

apparently intended to ‘help investors, civil society organisations, consumers, policy makers and other stakeholders to evaluate the non-financial performance of large companies’ (European Commission, 2020). However, its form suggests it is largely targeted at and used by investors rather than consumers.

While it covers a broader range of issues than other regimes, the EU approach allows firms to identify which disclosure requirements across the range of subject areas are material to them. EU guidance specifies that information should be **relevant** and **useful** to help provide an understanding of a company’s development, performance, and position, and of the impact of their activity, rather than exhaustive and detailed (European Commission, 2017).

The EU Directive requires companies to consider two forms of risk materiality – how environmental and social risks might affect the company, and how the company affects the environment and society. The uncertainty around determining materiality has made it difficult for some to implement, and there are challenges relating to a lack of comparability, reliability and relevance (European Parliamentary Research Service, 2021).

Changing and strengthening the regulatory approach

The main regulatory regimes for modern slavery are now bedding in. As a range of other countries develop new approaches, the main regimes are amending their requirements to address perceived weaknesses, including through adopting approaches seen in other areas.

This is taking a few key forms, including:

- Strengthening supply chain transparency requirements, by clarifying expectations, aligning processes, mandating requirements, and exploring penalties for non-compliance.
- Complementing disclosures and reporting with greater requirements around due diligence and action.
- Expanding import bans to a wider range of economies, especially in response to specific concerns in the current geopolitical context.

Strengthening supply chain transparency and reporting

There have been a number of attempts to strengthen the supply chain transparency requirements across different regimes.

United States: Attempts to pass federal legislation

There have been multiple attempts at the US federal level to introduce Transparency in Supply Chains Acts modelled on that in force in California.

The most recent attempts are the following two Bills:

- **Business Supply Chain Transparency on Trafficking and Slavery Act of 2020** – This Bill is similar to the Californian legislation, requiring businesses to disclose whether they have policies and have made efforts to evaluate and address the risks in their supply chains. The Bill is focused on forced labour, slavery, trafficking, and the 'worst forms of child labour'. In contrast to the Californian Act, the Bill would require annual reporting, and would require disclosure both on a company's website and within a centralised searchable database.
- **Slave-Free Business Certification Act of 2020** – This Bill would require businesses with annual worldwide receipts of more than USD\$500 million to audit their supply chain to investigate the presence or use of forced labour and report the results to the US Department of Labor. The supply chain extends to 'direct suppliers, secondary suppliers, and on-site service providers of the covered business entity'. The Bill also specifies specific audit requirements, including interviews with workers and managers, and a detailed review of a range of relevant documents to consider discrepancies from the interviews.

These two Bills are still before congressional committees and it is unclear whether they will be passed and become law.

Changes to the UK Modern Slavery Act

An independent review recommended targeted changes to improve the compliance, enforcement, and certainty

In 2019, a wide-ranging independent review of the Modern Slavery Act 2015 was completed:

- **No changes to the definition of 'exploitation'** – The Review concluded that the definition was sufficiently flexible to meet a range of circumstances involving forced labour and trafficking.

The Review specifically considered whether a standalone 'exploitation' offence should be included, but decided that there are other routes for dealing with exploitation that does not meet the threshold for slavery, trafficking, or forced or compulsory labour – for example, the Gangmasters and Labour Abuse Authority and employment tribunals.
- **Strengthening transparency in supply chains** – The Review recommended that:
 - the six recommended areas that modern slavery statements can cover should become compulsory
 - companies should not be able to state that they had taken no steps to address modern slavery
 - companies should be required to consider their entire supply chain, or explain why they have not done so and what steps they will take in the future.

These changes, when taken together, appear to create a stronger obligation on the companies producing the reports to actively consider the risks across all parts of their supply chain, regardless of whether the company has taken any steps.

The Review also recommended:

- updating the guidance to include a template of the information to be provided under each of the six headings, and clarifying the period that statements cover
- creating a central government-run register of modern slavery statements (similar to that required by the Australian Modern Slavery Act 2018), to make it easier for consumers to view statements in the same format
- increasing monitoring and enforcement – the expectation behind the original Act was that the public, investors, and NGOs would monitor compliance with supply chain reporting requirements, but the Review found that government monitoring would carry greater weight, and it recommended that the Independent Anti-Slavery Commissioner monitor compliance
- a stronger framework for enforcing compliance, through a gradual regime comprising warnings, fines, court summons, and director disqualification, to be enforced by an assigned enforcement body.
- **Imposing greater responsibility on directors** – The Review also sought to place greater emphasis on the responsibilities of businesses, by making directors more accountable for the modern slavery statements. This included recommending that:
 - a designated board member should be personally accountable for producing the statement
 - failing to report as required or to act when cases of slavery are found should be an offence under the Company Directors Disqualification Act 1986.

The UK government has strengthened some transparency requirements but continues to consider enforcement and accountability arrangements

Following the independent review, the UK Government rejected a number of the recommendations, including designating a board member to be responsible for the report, requiring the slavery and human trafficking statement to be included in the annual report, and including disqualification of directors as a penalty (Hess, 2020).

The Government then consulted on a range of proposals to strengthen the transparency in supply chains provisions of the Modern Slavery Act. Its main decisions following this consultation included:

- requiring, rather than suggesting, that businesses must cover the six areas – and exploring whether other areas should be included
- establishing a government-run registry for modern slavery statements, which organisations captured by the Act would be required to use
- requiring a single reporting period (1 April – 31 March) and deadline (30 September)
- requiring a modern slavery statement to be clearer about the tiers and entities it covers, and requiring statements to state the date of board approval and director sign-off
- extending reporting to the public sector, using the budget threshold of GBP £36 million, and allowing group statements
- deferring the exploration of greater enforcement and civil penalties to a separate law-reform process looking at a single enforcement body for employment rights.

As part of its response to concerns about the treatment of Uyghers in Xinjiang, the UK Foreign Secretary announced the introduction of financial penalties for organisations that fail to meet statutory obligations to publish annual modern slavery statements. There is not yet any detail available of the form of these penalties (Foreign, Commonwealth & Development Office, 2021).

Australia and New South Wales: Parallel legislation

In parallel with the Australian Modern Slavery Act, New South Wales also developed its own Modern Slavery Act 2018. The NSW Act was passed in June 2018, but its coming into force was deferred indefinitely while a Parliamentary inquiry considered the Act and how it related to the Commonwealth Act.

How the NSW Modern Slavery Act differs from the Commonwealth Act

The NSW Act, while containing broadly similar supply chain reporting requirements, goes beyond the Commonwealth Act in a number of areas.

The NSW Act's **supply chain reporting requirements** are different in these ways:

- It has a lower threshold for coverage, at AUD\$50 million rather than AUD\$100 million.
- It provides for stronger fines and other penalties, including criminal penalties for commercial organisations that fail to prepare or publish a modern slavery statement, with fines up to AUD\$1.1 million
- Procurement and supply chain reporting obligations on NSW Government agencies.

The NSW Act also implements a **broader modern slavery framework**:

- It introduces new offences of slavery, servitude, child forced labour and child forced marriage.
- It establishes an Anti-Slavery Commissioner for New South Wales
- It gives a court the power to make a ‘modern slavery risk order’ against a person whom it has convicted of certain modern slavery offences – the order would restrict the person’s activities in order to reduce the risk of the person committing further modern slavery offences.

The Parliamentary Inquiry’s findings and recommendations

The Parliamentary Inquiry found that the NSW Act should be retained alongside the Commonwealth Act, because it provides a broader framework with wider application. The inquiry’s key recommendations included the following:

- **Harmonising the NSW Act with the Commonwealth Act**
 - The Inquiry agreed it was preferable to avoid a proliferation of rules and requirements, especially given the extra jurisdictional nature of the regimes and the requirements.
 - However, it found that the regimes were already well aligned around content, timing, and method of publication.
 - It also recommended aligning the statutory review period with the Commonwealth Act, to make it easier to consider how the two regimes are working in tandem.
 - It concluded that the AUD\$50 million threshold in the NSW Act was reasonable, and recommended that the NSW Government work with the Australian federal government to harmonise reporting thresholds at that level.
- Establishing NSW Anti-Slavery Commissioner was seen as a useful addition of the NSW regime – alongside its broad responsibilities, particular focus was given to the role it would play working with businesses to understand the reporting requirements and ensure that guidance is clear.
- Amending the public register to enable all statements to be published, not just those that identify modern slavery within the supply chain. This is in response to concerns that the register was focused on ‘naming and shaming’ which might disincentivise companies to undertake effective due diligence.
- Confirming that State Corporations were covered by the Act and expected to prepare and publish modern slavery statements.

The Australian Modern Slavery Act review is coming up

Australia is due to carry out a three-yearly review in 2021. The Act requires this review to cover:

- overall compliance
- whether additional measures to improve compliance are desirable, such as civil penalties
- whether a further review is required and when it should be done (Modern Slavery Act, 2018, section 24).

The Australian Government has indicated in the media that it will be looking at penalties.

EU: Strengthening the non-financial disclosure reporting

Addressing concerns about gaps in information and accountability

In April 2021, the European Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD), which would amend the existing reporting requirements of Directive 2014/95/EU – the Non-Financial Reporting Directive (NFRD).

This is a response to concerns that:

- the information provided does not always meet the needs of investors, NGOs, and other stakeholders, and that there are problems with consistency, comparability, reliability, relevance, and ease of access
- those needs for information will continue to increase as sustainability (including human rights) becomes an increasing risk area for companies – and with COVID-19 likely to further increase the demand for information from companies about the vulnerability of workers and the resilience of supply chains
- gaps in the information provided create gaps in accountability.

The proposed changes

These are the main proposed changes:

- **extending coverage** to all large companies and all companies listed on regulated markets (this will mean extending coverage to around 49,000 companies compared to the current 11,600 companies (European Commission, 2021)).
- introducing **detailed reporting requirements, supported by mandatory EU sustainability reporting standards**. These standards are being developed in parallel, but are likely to include social issues, including how to report impacts over the whole scope of the entity's ecosystem: workforce, value chain workers, affected communities, consumers/end users.⁵
- requiring that reported information be **audited**.
- requiring reporting to be **digitally ‘tagged’ so it is machine readable** and connects into a single access point (envisaged in the European Capital Markets Union action plan).

Moving beyond disclosure and requiring due diligence

A range of regimes have sought to strengthen oversight of supply chains by moving beyond disclosure or reporting, and requiring that companies take steps to address the risks identified, as part of a 'due diligence' requirement (see Example 2 below).

This section describes the main regimes that have taken that approach.

France: Duty of Vigilance Law 2017 (Law 2017-399)

This 2017 Law amends the French Commercial Code and requires companies above a certain size to draw up, implement and publish a 'due vigilance plan' that identifies serious risks of human rights violations (and environmental harms), creates measures to prevent those abuses, and monitors compliance with the plan throughout the company's supply chain (Hess, 2020). The requirement

⁵ It would also include standards for environmental and governance reporting.

applies to companies that have at least 5,000 employees in France or 10,000 worldwide, either directly or in their subsidiaries.

As part of their 'due vigilance plan', companies must include:

- a risk map
- procedures to regularly assess the situation of subsidiaries, subcontractors or suppliers
- appropriate action to mitigate risks and prevent serious infringements or harm
- a mechanism for issuing alerts and gathering reports of risks
- a system to monitor and assess the measures implemented.

Its supply chain approach covers the activities of the corporate group (company and its direct and indirect subsidiaries), and suppliers with which the company or subsidiary maintains an 'established business relationship'.

The scheme includes financial penalties of up to €10 million for non-compliance. In addition, private parties can sue the company for harm suffered as a result of it failing to implement an appropriate vigilance plan.

This approach has a number of challenges, however, as the level of proof is yet to be tested (with the burden likely to fall on the victim). It will be more difficult to demonstrate cause when the relevant issues are further along the chain (Di Martino, 2020; Hess, 2020).

Example 2. What is 'due diligence'?

'Due diligence' goes beyond reporting on risks and efforts, to requiring firms to demonstrate that they have considered the potential and actual adverse impacts of their activities and have taken steps to prevent and/or mitigate these impacts.

The OECD (2011) has produced guidance for how to undertake 'due diligence for responsible business conduct', and identifies six main steps:

- 1 Embed responsible business conduct into policies and management systems
- 2 Identify and assess adverse impacts in operations, supply chains and business relationships
- 3 Cease, prevent, or mitigate adverse impacts
- 4 Track implementation and results
- 5 Communicate how impacts are addressed
- 6 Provide for or cooperate in remediation when appropriate.

Germany: Act on Corporate Due Diligence in Supply Chains 2021

This new Act will come into force in 2023 and will initially apply to those companies with a registered office or branch in Germany that have 3,000 or more employees. From 2024 the threshold number of employees will reduce to 1,000.

The Act requires companies to:

- identify the risks of human rights violations and adverse environmental impacts presented by all **direct** suppliers
- extend this risk analysis to an indirect supplier if the company gains ‘substantiated knowledge’ of potential human rights violations
- take steps to address these risks, and document these steps for the Federal Office for Economic Affairs and Export Control (BAFA).

The BAFA can fine companies that violate their due diligence obligations.

The Netherlands: Child Labour Due Diligence Act (due to come into force in 2021)

This will apply to all companies that sell or supply goods or services to Dutch consumers, regardless of where the company is based or how big it is. Companies will need to identify whether child labour exists in their supply chains and if so, develop a plan to address it. The company only has to provide this statement once.

Financial and custodial penalties will be imposed for non-compliance, although the fine is small (€4,100), and relies on a third party reporting the non-compliance.

The Netherlands government can exempt sectors if it decides they have a low risk of child labour, although it is uncertain how this assessment will be made (Di Martino, 2020).

Norway: Proposed Act on Business Transparency and Work with Fundamental Human Rights and Decent Work

This proposed Act (Proposition 150 L 2020–21) would require companies to perform due diligence assessments that identify risks of human rights violations, and to take steps to address any risks they find (Taylor, 2021).

The Act takes a broader approach, including human rights as well as ‘decent work’, which is understood to mean workplace health and safety and a living wage.

The regime would require reporting of risks and steps both to authorities and publicly on company websites. It also has ‘on-demand’ provisions requiring that companies respond to public requests for information about their negative impacts and due diligence (Foss, 2021; Taylor, 2021).

The European Union: Proposal on Due Diligence in Supply Chains

In parallel with its proposals to strengthen the non-financial disclosure reporting requirements, the European Commission has announced it intends to develop legislation requiring companies operating in Europe to carry out mandatory ‘due diligence’ across their supply chains.

This is a much more far-reaching requirement than the current disclosures regime. While the specifics are still to be developed, the European Parliament has recommended to the Commission that companies be required to establish a ‘due diligence strategy’ (European Parliament, 2021b), and that the strategy:

- identify the potential or actual adverse impacts on human rights, the environment, and good governance that are likely to be present in its operations and business relationships, and on what basis (relevant data, information and methodology on severity, likelihood and urgency) has led to these conclusions

- map the company's value chain and make this information publicly available (but with allowances for commercial sensitivity), which may include information on subsidiaries, suppliers, and business partners
- identify and adopt policies and measures aimed at ceasing, preventing or mitigating the identified potential or actual adverse impacts on human rights, the environment or good governance
- include a prioritisation strategy on the basis of Principle 17 of the UN Guiding Principles on Business and Human Rights, if the company cannot deal with all the potential or actual adverse impacts at the same time
- include evaluating the effectiveness and appropriateness of the due diligence strategy and its implementation each year, and making any necessary revisions.

The proposal recommends that:

- the Commission will provide guidance 18 months after the proposals come into effect
- the Commission will propose tools to help with supply chain mapping
- voluntary sectoral or cross-sectoral due diligence plans at either a national or union level may help coordinate individual due diligence strategies
- member states will ensure liability regimes that enable companies to be held accountable for not taking due care to avoid adverse impacts on human rights, the environment or good governance (including impacts by companies under their control).

The proposal is expected to cover all large companies ('undertakings') operating in the European Union (more than 250 employees, more than €50 million in annual turnover, and a balance sheet of more than €43 million), as well as publicly listed or 'high risk' small and medium-sized entities (K&L Gates, 2021).

The Commission is expected to provide draft legislation in quarter 2 2021, although the final timing for implementing any change is unclear. Member states would be expected to implement measures to meet the requirements within two years of any new European legislation.

An increased interest in import bans responding to immediate concerns

In recent years, import bans have gained prominence, in particular as states look to address concerns about forced Uygher labour in their supply chains (Example 3). These are the main developments:

The multilateral US-Mexico-Canada Agreement requires the parties to ban imports produced by forced or compulsory labour

This requires the three countries to prohibit the importing of goods that are produced in whole or in part by forced or compulsory labour, and so effectively extending the United States' current import bans to wider North America (Office of the US Trade Representative, nd).

Article 23.6: Forced or Compulsory Labor

1. *The Parties recognize the goal of eliminating all forms of forced or compulsory labor, including forced or compulsory child labor. Accordingly, each Party shall prohibit the importation of goods into its*

territory from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.

2. To assist in the implementation of paragraph 1, the Parties shall establish cooperation for the identification and movement of goods produced by forced labor as provided for under Article 23.12.5(c) (Cooperation).

These provisions were implemented on 1 July 2020 in Canada, through an amendment to the country's Customs Tariff Act.

Example 3. Responding to concerns about forced labour in Xinjiang province

A number of states have begun calling for or exploring import bans to help address concerns of forced labour by Uyghers. These include:

- **Canada** – Companies that source directly or indirectly from Xinjiang or from entities relying on Uyghur labour will be required to sign a declaration acknowledging that the company is aware of the human rights situation in Xinjiang, complies with all relevant Canadian and international laws, respects human rights, and seeks to meet or exceed OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights (Global Affairs Canada, 2021).
- **UK** – The UK Government is reviewing export controls as they apply to Xinjiang to ensure the Government is doing all it can to prevent the exports of goods that may contribute to human rights abuses in the region. This review will determine which additional specific products will be subject to export controls in future (Foreign, Commonwealth & Development Office, 2021).
- **United States** – The US has proposed a Uyghur Forced Labor Prevention Act that would deem all goods produced in the Xinjiang Uyghur Autonomous Region of China to be produced by forced labour, and therefore ineligible to be imported into the US under section 307 of the Tariff Act 1930 (Uyghur Forced Labor Prevention Act, 2021).
- **Australia** – Parliament had considering amendments to the Customs Act 1901 to prohibit the importing into Australia of goods from Xinjiang, as well as goods from other parts of China that are produced by using forced labour (Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill, 2021). However, as at 24 June 2021 the Bill has been discharged and will not proceed.
- **EU** – The European Parliament, in its request for due diligence legislation, has asked the European Commission to thoroughly review businesses ('undertakings') based in Xinjiang that export products to the EU in order to identify potential breaches of human rights, especially those related to the repression of Uyghurs (European Parliament, 2021a).

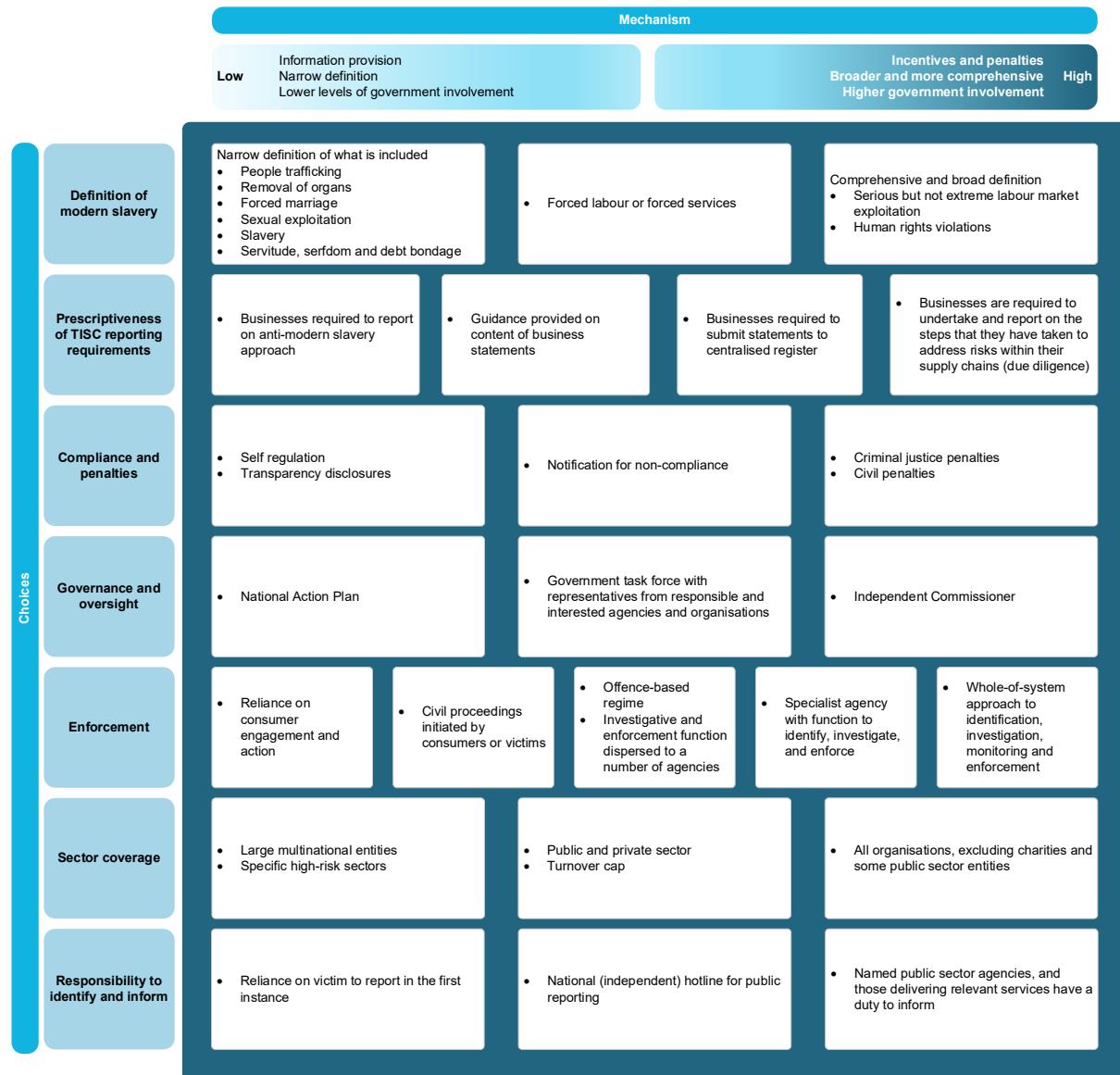
The European Parliament is also exploring new tools to enable import bans

As well as amendments relating to non-financial disclosures, and the new proposed law on due diligence, the European Parliament has explored options to allow import bans on products related to severe human rights violations, such as child labour or forced labour.

The Parliament released a paper 'Towards an Import Ban on Forced Labor and Modern Slavery', which recommended developing a new EU instrument with a trade legal basis that establishes a mandate to withhold the release of goods suspected to be made by or transported by forced labour – similar to the mechanism used in the United States. This was seen as complementing the proposed due diligence requirements.

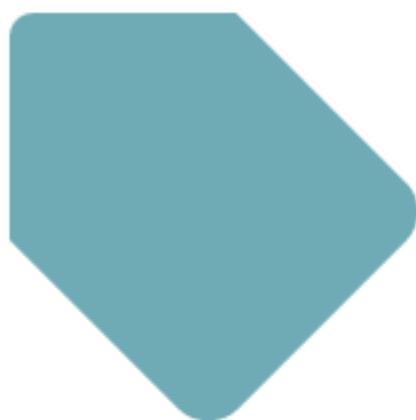
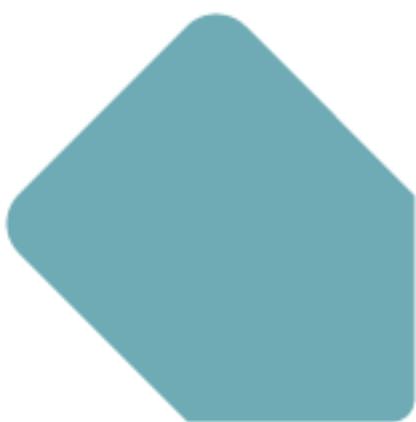
The European Parliament later asked the European Commission to develop a legislative proposal to trace and ban goods procured through forced labour.

Figure 3. Spectrum of legislative approaches and choices



Notes: Mechanisms identified in this diagram are not always mutually exclusive and may be additive. For example, a country could choose to include the whole spectrum above within the definition of 'modern slavery'.

Section 2: Efficiency and effectiveness of legislation



How success is measured or evaluated

In the absence of a robust ‘dark figure’, success is usually measured through outputs rather than outcomes

Because the prevalence of modern slavery is difficult to measure (as discussed earlier), countries have defaulted to activity reporting in order to gauge whether policies and legislation are succeeding.

In 2017, the UK National Audit Office (NAO) reviewed ‘the governance of the UK’s response to modern slavery, the National Referral Mechanism⁶ (NRM), the support provided for potential victims and the ability of the police forces and the Crown Prosecution Service (CPS) to prosecute offenders’ (NAO, 2017, p 8). At that time, the NAO noted that the UK government ‘does not have a measure of success for its objectives nor a definition of what success looks like’ (NAO, 2017, p 18).

The resulting metrics in the NAO’s report were at the agency level. They included numbers of reports of modern slavery, number of cases investigated, and the cost per enforcement action, which are all typical ways that success is recorded and reported. For example (DLME, 2019):

Country	Agency	Activity	Scope	Budget
United Kingdom	Her Majesty’s Revenue and Customs (HMRC) Minimum Wage Compliance Unit	2016-17: 363 staff 2015-16: 2,667 cases	2 million workers	2016-17: £20 million
	Gangmasters and Labour Abuse Authority (GLAA)	2016-17: 70 staff 2015-16: 335 cases	1,000 license holders supplying almost half a million workers	2016-17: £4.8 million
	Employment Agency Standards Inspectorate (EAS)	2016-17: 11 staff 2015-16: 924 cases and 924 cases	18,000 employment agencies with over one million workers	2016-17: £0.5 million

⁶ The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking and ensuring they receive the appropriate protection and support. The NRM is also the mechanism through which the UK government collects data about victims. This information contributes to building a clearer picture about the scope of human trafficking in the UK. The NRM was introduced in 2009 to meet the UK’s obligations under the Council of European Convention on Action against Trafficking in Human Beings. At the core of every country’s NRM is the process of locating and identifying ‘potential victims of trafficking’. The NRM grants a minimum 45-day reflection and recovery period for victims of human trafficking. Trained case owners decide whether individuals referred to them should be considered to be victims of trafficking according to the definition in the Council of Europe Convention.

However, this measurement approach not only leaves the question of policy effectiveness unanswered, it also does not provide further detail on exactly what a ‘case’ is. A specific case can fall anywhere along a spectrum ranging from criminal proceedings to formal letters sent to employers (Balch, 2019). There is also the danger of creating a ‘price per victim’ ratio (Balch, 2019), which is in an inappropriate way of assessing modern slavery policy outcomes.

Importantly, the NAO review found that the UK Home Office

‘has limited means of tracking its progress and there remains much more to do to ensure victims of modern slavery are identified, protected and supported effectively. The Home Office has an incomplete picture of the crime, the victims and the perpetrators. Accountabilities within the strategy are unclear, oversight of victims’ support is inadequate and few cases lead to prosecution or conviction. Until the government is able to establish effective oversight of the modern slavery system as a whole it will not be able to achieve its objective of significantly reducing the prevalence of modern slavery or demonstrate that it is achieving value for money for the resources it applies’ (NAO, 2017, p. 13 emphasis added).

Monitoring has taken the form of annual reports, in the UK as well as in Australia and the US (see Table 2 below).

Table 2. Approaches to reporting and measuring success

Country	United States
Key reports	<p>Annual Trafficking in Persons Reports (TIP Reports) is an outward-facing, international report on trafficking globally with sections on specific countries. The US has published this report since 2001, with the latest (2020) being the twentieth anniversary report.</p> <p>Follows the passage of the Trafficking Victims Protection Act (TVPA) 2000. The TVPA requires the Secretary of State to submit an annual report to Congress that ranks governments' efforts to combat trafficking in persons.</p> <p>There are no reports that document the success or progress of the California Transparency In Supply Chains Act. The last report on the state of human trafficking in California was published in 2012 (Harris, 2012).</p>
Success measures	<p>The three-tier ranking system was created to indicate how well other governments complied with the minimum standards for the elimination of trafficking laid out in US law. The US, UK, Australia and New Zealand are all in Tier 1.</p> <ul style="list-style-type: none"> • Nature and extent of severe forms of trafficking in persons • Assess government efforts to combat trafficking as per US law <p>Forms the basis of US diplomatic engagement with governments around the world on human trafficking (US Department of State, 2020).</p> <p>The TIP Office awards grants to combat all forms of human trafficking according to the 3P paradigm of prosecuting traffickers, protecting and assisting human trafficking victims, and preventing trafficking in persons. The TIP Report shapes the TIP Office's foreign assistance priorities.</p>

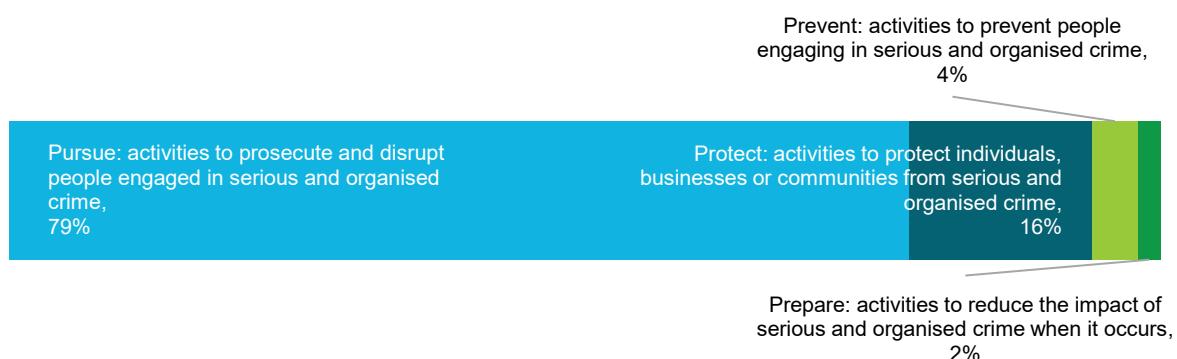
Country	United Kingdom
Key report 1	UK Annual report on modern slavery. Published annually since 2017, with the latest being 2020 (HM Government et al., 2020)
Success measures	<ul style="list-style-type: none"> • Pursue <ul style="list-style-type: none"> - In June 2020, there were 1,845 active law enforcement investigations, compared with 1,479 in June 2019 - The number of prosecutions and conviction rate increased with the number of completed “flagged modern slavery prosecutions” increasing from 294 to 349, and the conviction rate increasing to 71.9% in 2019, an increase from 65% in the previous year. - Additional GBP2 million to support law enforcement activity - GLAA conducted over 200 operations across a range of sectors. • Prevent <ul style="list-style-type: none"> - Investment of £10 million in the Modern Slavery Policy and Evidence Centre. Has issued two research calls. - Communication campaigns have increased awareness and understanding, and have directly led to over 1,000 referrals to the Modern Slavery Helpline through calls and online referrals. • Protect <ul style="list-style-type: none"> - Government issued a Modern Slavery [supply chain] Statement - Extension of reporting requirements to large public bodies - In process of developing a new Government digital reporting service for modern slavery statements • Victim identification and support <ul style="list-style-type: none"> - Continue to provide specialist support and advocacy services for victims of modern slavery - NRM Transformation Programme, including improving support for child victims - The five-year Modern Slavery Victim Care Contract (MSVCC) was awarded to The Salvation Army, via open procurement - published statutory guidance under section 49 of the Modern Slavery Act 2015, consolidating existing guidance and setting out detailed support for victims for the first time • International <ul style="list-style-type: none"> - Overseas Development Assistance has commitment over £200 million including the Home Office's £11 million Modern Slavery Innovation Fund to test innovative approaches to build the evidence base on what works. <p>Appointment of the Migration and Modern Slavery International Envoy. The Envoy is based in the Foreign, Commonwealth and Development Office (FCDO) and represents the UK in a range of bilateral and multilateral discussions.</p>
Key report 2	Recognising that there is not yet an estimated number of victims, the UK Office of National Statistics has taken an indicator approach to provide insight into the scale and nature of modern slavery. This was reported in the Modern slavery in the UK: March 2020 article by the UK ONS (2020). The approach quantifies and groups indicators known to be

Country	United Kingdom			
Monitoring measures	linked to modern slavery, to help the UK measure its progress towards combatting the crime.			
	UK Indicator framework to understand different aspects of modern slavery			
	Indicator	Legal	Support	Awareness
	How the Acts have impacted the criminal justice system and government processes	Level of support provided and routes available for victims	Level of awareness of modern slavery across different groups in society	
	Police recorded crime	✓		✓
	National Referral Mechanism	✓	✓	✓
	Duty to notify	✓		✓
	The criminal justice system	✓		
	Charity support		✓	
	Modern Slavery Helpline		✓	✓
	Public facing intelligence tools		✓	✓
	Modern slavery statements	✓		✓

Country	Australia
Key report	Implementing the Modern Slavery Act 2018: The Australian Government's annual report (Australian Government, 2020)
Success measures	<ul style="list-style-type: none"> • Convening Australia's first national modern slavery conference for over 400 delegates from 18 countries. • Releasing detailed guidance for reporting entities, developed in consultation with business and civil society. • Presenting at over 40 awareness-raising events and industry forums across Australia and overseas. • Delivering four workshops in Perth, Hobart and Melbourne for approximately 200 businesses. • Responding to over 240 direct requests for support from entities. • Establishing an Interdepartmental Committee to develop the Commonwealth modern slavery statement. • Committing to establish a Modern Slavery Expert Advisory Group to provide Government with strategic advice on the implementation of the Act. • Committing to establishing a Modern Slavery Recognition Scheme to formally recognise best practice innovation and/or collaboration to combat modern slavery in supply chains.

On the positive side, output reporting has been useful in providing an understanding of where effort is currently placed, and in what way this can be modified to improve outcomes. For example, the UK NAO found that while the immediate priority was disrupting criminals – that is, the ‘Pursue’ part of the four ‘P’ work strands of Prevent, Pursue, Protect and Prepare in the 2013 strategy – front-line spending was overly weighted to this area at the expense of other parts of the strategy.

Figure 4. Estimated front-line spending by government and law enforcement bodies tackling serious and organised crime on Prevent, Pursue, Protect and Prepare activities, 2015–16



Source: UK Home Office data on spending by law enforcement on serious and organised crime in 2015-16 (NAO, 2019)

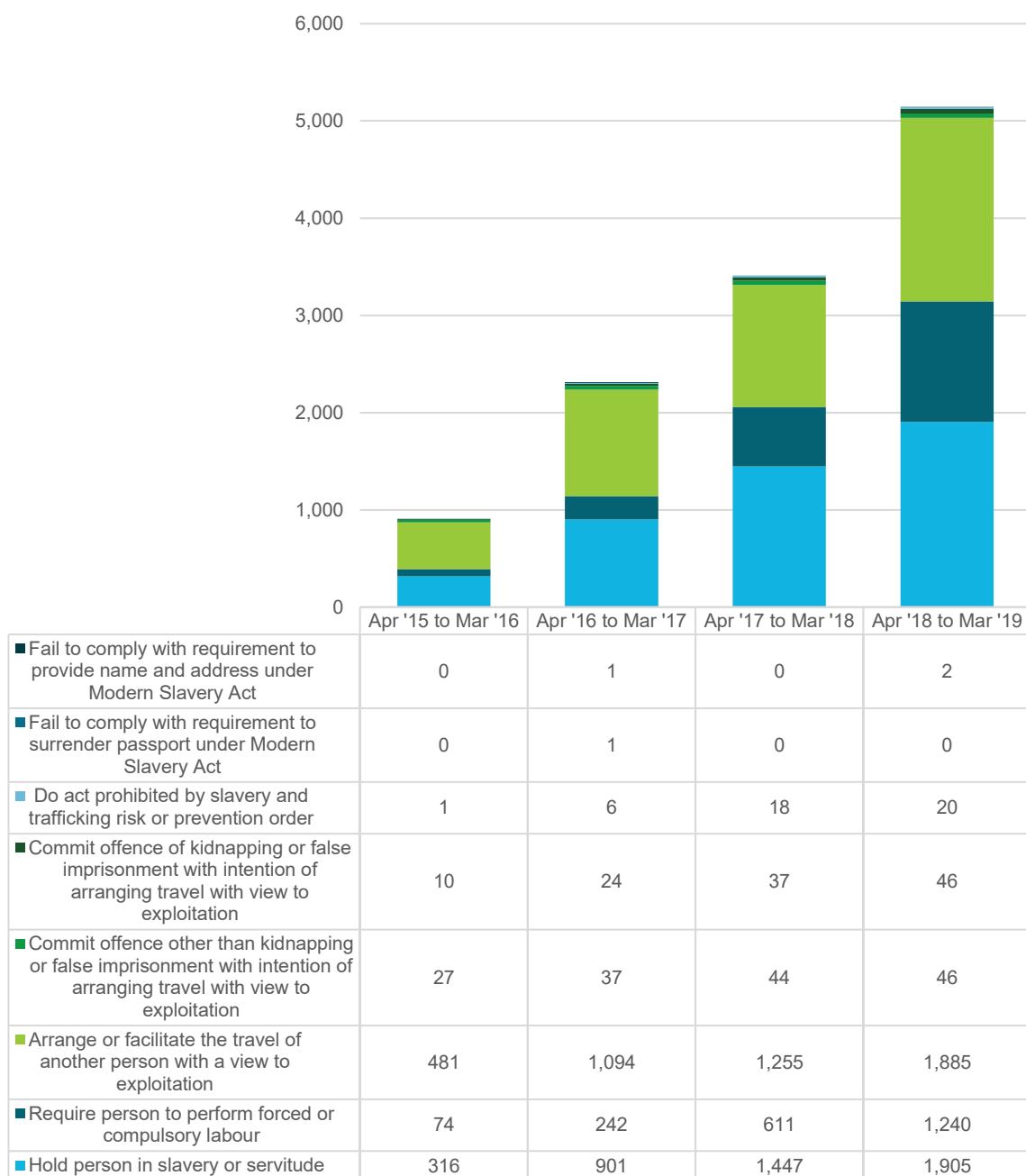
Inadequate data collection systems, and poor quality and inconsistency of data recording has hampered monitoring efforts

It was only in April 2015 that modern slavery was introduced into UK police data collection processes as a separate crime (Craig, 2017). The 2016 independent review of the UK Modern Slavery Act recommended better recording and investigation of offences (Haughey, 2016). The review said there should be guidance for recording cases, and nationally consistent processes to collect and synthesise data and intelligence from different partners. Those recommendations were echoed in the crime data integrity inspection programme operated by HM Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS, 2017).

As a result, the modern slavery police transformation programme was established, which includes police forces working closely with the National Referral Mechanism team to provide clear guidance on the recording of modern slavery offences (ONS, 2020). Since the year ending March 2016, there has been an increase in the number of modern slavery offences recorded by police in England and Wales, from 909 to 5,144 offences in the year ending March 2019 (see Figure 5), largely due to greater awareness as well as improvements in police recording practices.

Three-quarters of modern slavery offences relate to slavery or servitude or to human trafficking ('hold person in slavery or servitude' and 'arrange or facilitate the travel of another person with a view to exploitation'), with the remainder being labour exploitation ('require person to perform forced or compulsory labour').

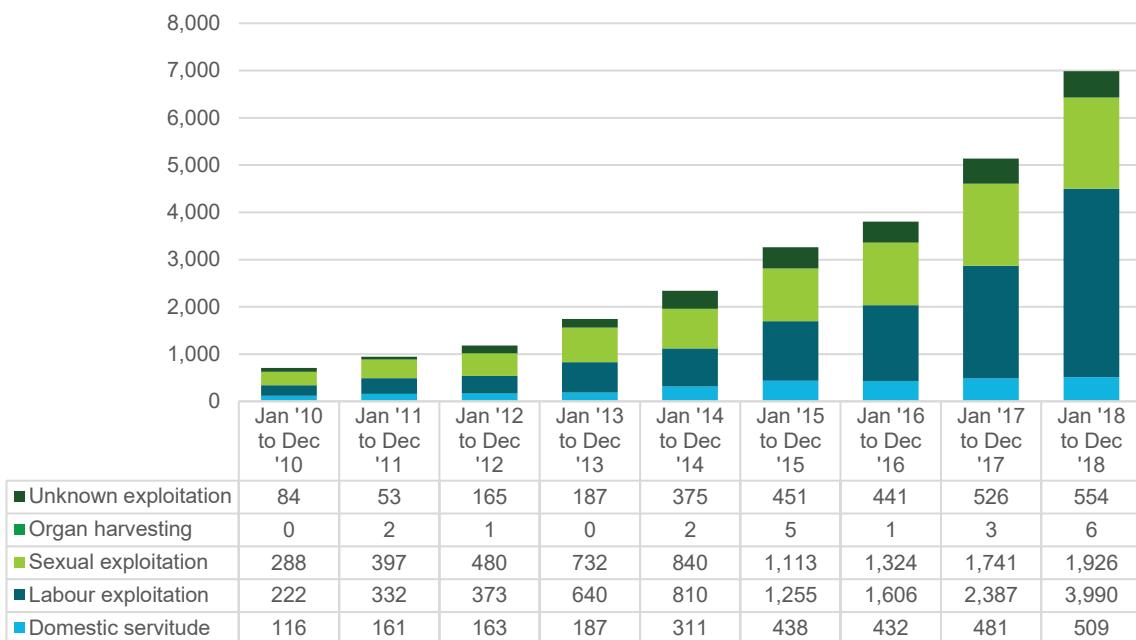
Figure 5. Modern slavery offences recorded by police, England Wales, year ending March 2016 to year ending March 2019, by type of offence



Source: Home Office – Home Office Data Hub (ONS, 2020)

But this only records half of the story, particularly as other organisations are mandated with recording and investigating labour-based exploitation cases. Using National Referral Mechanism data, labour exploitation is now 57% of referrals for the 2018 calendar year (Figure 6).

Figure 6. Number of referrals to the National Referral Mechanism by exploitation type, UK, year ending December 2010 to year ending December 2018



Source: Home Office – Home Office Data Hub (ONS, 2020)

Digital, public registries have been developed to improve transparency of disclosures from commercial organisations

The ILO, in their assessment of the effectiveness of disclosure requirements, highlighted the need for greater consistency and clarity on what is meant by 'effectiveness' (Phillips et al., 2018). It recommended that:

- companies report on a standardised set of indicators, to enable stakeholders to evaluate their progress towards the overarching objectives of disclosure legislation
- companies be required not only to report on the efforts they are making, but also to report on the effectiveness of those efforts
- evaluation of effectiveness should not be based just on company reports, but should also consider and triangulate these reports with data on the risk and prevalence of labour exploitation within supply chains.

On the first point, various governments have established registries of disclosure statements which require companies to report in a standardised way on a standardised set of indicators, to improve transparency and to ensure organisations are complying.

In California, organisations may [voluntarily submit compliance statements](#) to the Attorney General electronically. There is no search function available, nor information on how many companies have submitted statements and who they are.

In the UK, there is currently no legal requirement for companies to register with the [Modern slavery statement registry](#) but organisations are strongly encouraged, as this will be compulsory in the future.

Before this registry was launched, two independent NGOs provided this service, the Business & Human Rights Resource Centre and Semantrica (a small UK social enterprise, which provides the [Transparency in Supply Chains \(TISC\) report](#)).

The registry was launched on 23 February 2021 and is currently in beta form. Although it enables organisations to lodge statements and answer questions about that statement, it is not in a format that is easy for consumers to engage with, and it does not provide data on compliance to date. The Transparency in Supply Chains report indicates that:

- a total of 18,352 UK-registered companies were required to comply.

and that of that total

- 15,045 companies provided a statement, and
- 3,307 companies did not provide one.

In contrast, the Australian [online register for Modern Slavery Statements](#), launched in 2020,⁷ clearly indicates that:

- 2,751 reporting entities covered by statements
- 1,220 mandatory statements were lodged
- 179 voluntary statements were lodged.

The register also states that 317,181 searches have been performed, suggesting that consumers are actively using it to inform their purchasing choices.

Monitoring and evaluation in this field is under-developed

To date, it has been difficult to collect good-quality data on modern slavery in supply chains and on the effectiveness of policy and legislation. The hidden nature of modern slavery, and the emerging and evolving nature of the legislative regimes, has meant that research, monitoring and evaluation is in its relative infancy (Meehan & Pinnington, 2021).

Output and activity tracking has been the core approach to monitoring and evaluation in this policy area (Balch, 2019; Harkins, 2017). As a result, initiatives and programmes have tended to continue, without necessarily an evidence base showing that they are succeeding and should be funded further (Harkins, 2017).

The following are the key factors constraining monitoring and evaluation in this policy area (Harkins, 2017; Van Dyke, 2017; Vijeyarasa, 2020):

- 1 Lack of definitions and lack of robust methods of data collection
- 2 Focus on criminal justice responses
- 3 The difficulty of gathering evidence on changes in wellbeing. Outcomes are typically defined and identified by donors and governments, rather than by those being exploited. This has led to a focus on prosecution rather than compensation.
- 4 Over-emphasis on quantitative success and 'hard data', driven particularly by donors of NGOs focused on eliminating modern slavery

⁷ Australia's register is a world first in a publicly accessible and searchable Government-run web-based register.

- 5 Incentivised to present a picture of success and that progress has been achieved, as well as untested assumptions
- 6 Counting of outputs rather than measuring and reporting on outcomes. This is, in part, due to the paucity of quality data but also internal evaluation capacity and capability
- 7 Lack of rigour and of a critical and independent approach to assessment
- 8 Insufficient investment in monitoring and evaluation activities
- 9 Sharing of evidence between partner organisations
- 10 Lack of gender-blind indicators and measurement of gender differences in monitoring and evaluation of initiatives and programmes.

How should success be measured?

Researchers have suggested that there may have been misplaced emphasis on conviction of traffickers and other criminal justice responses as the overall goal, rather than on protecting labour rights and remedies (including financial compensation) for trafficked people (Harkins, 2017).

Outcomes that governments should be evaluating are (Balch, 2019):

- **Labour conditions**
 - What are the longer-term labour market effects of targeted enforcement activities for different kinds of workers and employers?
 - How are employment relations and rates of pay affected?
 - How can a modern slavery agenda contribute to changes in broader indicators related to decent work?
- **Workers' rights, particularly those of migrants**
 - What happens to individuals who have been exploited in the longer term? Is there evidence of positive wellbeing impacts?
- **Labour market exploitation that does not meet the threshold of a criminal offence.**

Evaluations

The evaluative evidence for the impact and outcomes related to modern slavery legislation is weak, because of the short time that legislation has been in place (particularly in the UK, Europe and Australia) and the quality of the evaluations to date. The evidence from the US is stronger but most is based on one part of modern slavery, human trafficking, and the outcome of interest being criminal justice outcomes.

Empirical studies of human trafficking legislation in the US suggest that comprehensive legislation and investment in enforcement lead to positive criminal justice outcomes

In the US, the Trafficking Victims Protection Act 2000 led to human trafficking legislation being rolled out at the state level. By 2013, all states had criminalised human trafficking, but there are variations in the penalties and other legal provisions. Longitudinal, multivariate analysis of state laws and enforcement actions from 2003 to 2012 have found that the state responses that involve more comprehensive legislation and greater investment in anti-trafficking resources are most strongly associated with arrests and prosecutions (Bouché et al., 2016; Farrell et al., 2019). That same study found that legislative regimes that included provisions for victim assistance, law enforcement training, statutory task forces, and mandatory reporting tended to have higher levels of criminal enforcement.

Clarity in legislation is also important. Examinations of the varying state legislation and of how policy has been implemented has found that, on the whole, state legislation often included trafficking as an afterthought (Branscum et al., 2021). Hawaii and Pennsylvania are outliers here, with their legislation criminalising ‘non-payment of wages’ specifically, rather than requiring the courts to interpret broader terms like ‘exploitation’, ‘coercion’ or ‘debt bondage’.

Encouraging reporting and public intervention appears to matter

Some states (for example Oklahoma) attempt to encourage reporting and intervention by parties other than the victim (Branscum et al., 2021). This is consistent with literature which highlights that victims and survivors are often unable or unwilling to report abuse (Collins & Stringer, 2019), so it is important for others to intervene whenever possible. The longitudinal panel study mentioned above found that requiring the National Human Trafficking Hotline number to be posted in public places is the most important measure for increasing the number of human trafficking arrests (Bouché et al., 2016).

Dedicated taskforces, commissions or advisory committee to address human trafficking matter the most

State-level statutes often create, or encourage the creation of, a taskforce, commission, or advisory committee dedicated to addressing human trafficking.

Panel data analysis finds that these taskforces are most predictive of state prosecution, both for criminal offences generally and for human trafficking offences specifically (Bouché et al., 2016).

Taskforces are usually formed by the Attorney General and include representatives from relevant government departments, law enforcement, and the community. Their remit includes producing reports on the nature and prevalence of human trafficking in their state, developing training

programmes for law enforcement and other stakeholders, developing protocols for assisting victims and/or identifying shelters for assisting victims.

Severity of penalties is only one component of an effective response

Bouché et al (2016) tested to what extent harsh penalties sign the importance of the issue to law enforcement and/or deters criminal activity. Penalties are important but the analysis found that severity of criminal penalty was not significant in any of the models – harshness of penalty did not impact on the numbers of arrests and prosecutions.

Overall, the researchers found that it is more important that the legislation be comprehensive than that it include severe penalties (Bouché et al., 2016).

There is wide variation in state criminal penalties. On average, the harshest penalties are associated with sex trafficking a minor, while the weakest relate to labour trafficking an adult.

Most of the evaluations of European legislation are not of sufficient quality to determine whether the legislation is effective or not

As discussed in the previous section, the discipline of monitoring and evaluation in supply chain modern slavery is still only emerging. This is true both of small-scale evaluations of training and awareness programmes and of evaluations of operational effectiveness. A key finding from the UK independent review and the UK National Audit Office's audit is that operational agencies did not have a structured approach to identifying, investigating, prosecuting and preventing modern slavery, including learning from what works and what does not (Haughey, 2016; NAO, 2017).

Meta-analysis of European research found that the literature was limited and fragmented (Cockbain et al., 2018). Government department reports outnumbered academic and peer-reviewed research.

There is little research that assesses impact or evaluates interventions. The evaluative research reviewed did not meet the criteria for a scientific evaluation (Cockbain et al., 2018), instead focusing on victims' perceptions of interventions or practitioners' perceptions of barriers to interventions.

Systematic evidence of how effective modern slavery legislation is in changing the behaviour of businesses and employers and in reducing modern slavery is not yet available (Christ et al., 2020; Cockbain et al., 2018).

Although evaluative evidence is weak, in discussing what works we can identify some key themes

Legislation should clearly and exhaustively define ‘modern slavery’ and ‘supply chain’, and consider the extent to which it is gender-responsive

Modern slavery needs to be clearly defined. The Australian Act has been criticised as primarily targeting labour exploitation particularly regarding disclosures, but does not address other forms of modern slavery such as sexual exploitation, forced marriage, trafficking, and domestic servitude

(Fellows & Chong, 2020). Conversely, European research concludes that the EU legislation is too heavily focused on sex trafficking at the expense of labour trafficking (Cockbain et al., 2018).

What is meant by ‘supply chain’? UK law professors draw attention to section 54 of the UK Modern Slavery Act, and that it does not clearly define ‘supply chain’ for the purposes of the section (Wen & Zhao, 2020). This means that the full range of suppliers that corporate policies and actions apply to is not clear. The New South Wales Standing Committee on Social Issues (2020) recommended in their review of the NSW Act that the Anti-Slavery Commissioner consider whether franchisors should be captured by the legislation.

Lastly, Sydney-based human rights lawyer, researcher and academic Ramona Vijeyarasa contends that the Australian legislation should be more gender-responsive. She states that the Act ‘largely disregards systemic gender inequality, and thereby fails to effectively prevent Australian companies from perpetuating or benefiting from it’ (Vijeyarasa, 2020, p. 74). She proposes that the Act should require companies to conduct gender-sensitive due diligence and to collect gender-disaggregated data.

Legislation should be clear about the extent to which it applies to the public sector

Governments in the jurisdictions reviewed are large buyers of goods and services. In fact, the US government is the single largest buyer of goods and services in the world (US Small Business Administration, 2020). Some but not all of the jurisdictions reviewed include modern slavery provisions in their regulations for government procurement.

US government procurement

The US Federal Acquisition Regulations (FAR) state that the government may terminate any agreement if entities (or any of their subcontractors) engage in forced labour, engage in severe forms of human trafficking, provide substandard housing, use false promises to lure employees, charge unreasonable recruitment fees, or fail to pay the return transportation to the employee's country once the agreement ends. However, in the absence of an enforcement strategy it appears that this US provision has had limited impact (Aronowitz, 2019).

Australian and NSW government procurement

The NSW Act enables the NSW Procurement Board to issue directions about modern slavery, and requires annual reporting by government agencies about the action they have taken to ensure that the goods and services they procure are not the product of modern slavery.

Government agencies are excluded from the reporting requirements of commercial organisations. However, the Amendment Bill seeks to treat State-owned corporations as commercial organisations for the purposes of the Act (NSW Standing Committee on Social Issues, 2020).

In the case of local councils, the Committee recommends, as part of the overall review of the legislation, imposing procurement and reporting obligations on local councils equivalent to those for government agencies. However, recognising the challenges faced by smaller councils, the Committee recommends that amendments should include a regulation-making power to exempt any council or class of councils from the obligations (NSW Standing Committee on Social Issues, 2020).

Transparency provisions are necessary but not sufficient

Transparency in supply chain (TISC) provisions have led to businesses and public-sector organisations disclosing as required but not much more – and many are still not reporting at all

Up to 23 March 2020, of the 19,712 UK companies who exceed the turnover threshold of £36 million, almost half submitted reports to the Modern Slavery Registry (Wen & Zhao, 2020). Only 23% submitted reports that met all minimum requirements of the Act.

Compliance with the California Transparency in Supply Chains Act is also relatively low. While 1,325 companies posted disclosures, a minority addressed all relevant actions (that is, verification, audits, compliance, internal accountability, and employee and management training) (Aronowitz, 2019). A minority of companies report they are taking steps towards eliminating trafficking in their supply chains, and these steps tend to be internally focused (training and standards) rather than external (auditing and accountability) (Aronowitz, 2019).

In a study of 66 UK Government tier one suppliers, the researchers found that companies generally focus on their direct business chain rather than thorough audits, certifications and verifications of their suppliers and beyond (Meehan & Pinnington, 2021). The supply chain literature also tends not to include studies of practices that can create the conditions for modern slavery, particularly outsourcing and sub-contracting (Meehan & Pinnington, 2021).

Researchers and NGOs generally conclude that transparency in supply chain (TISC) provisions⁸ 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 (Aronowitz, 2019; Balch, 2019; Birkey et al., 2018; Business & Human Rights Resource Centre, 2018; Chambers & Vastardis, 2021; Dean & Marshall, 2020; Ford & Nolan, 2020; Hess, 2020; KnowTheChain, 2015; New & Hsin, 2021; Wen & Zhao, 2020).

For those that do report, their reporting has become more sophisticated over time (New & Hsin, 2021). However, an in-depth analysis of disclosures from a group of banking and finance organisations found a ‘race to the middle of the pack’, rather than continuing efforts to improve the quality of disclosures and do better in detecting and mitigating modern slavery (Dean & Marshall, 2020).

That study also found that disclosures tended to be different in style from other public-facing material, which suggests that the disclosures are symbolic rather than substantive, and are ends in themselves rather than a process that leads to organisational change. For other companies, it was evident they were engaged in impression management and were disclosing information selectively.

The same conclusions apply to suppliers to the UK government. Analysis of policy documents and 66 UK government suppliers’ statements found that government suppliers tended to transfer responsibility to suppliers, and used ‘impression management’ to suggest the use of best practice rather than providing evidence of it (Meehan & Pinnington, 2021).

In a study of UK universities, disclosures were light on detail, had a pro-forma approach, and did not appear to have led to meaningful action to tackle modern slavery (Rogerson et al., 2020). Like the study of financial institutions, there was a herding effect, with disclosures similar across the university sector, and therefore a ‘race to the middle’.

⁸ Acts with TISC provisions include the UK Modern Slavery Act, California’s Transparency in Supply Chains Act, and Australia’s Modern Slavery Act.

Enforcement, penalties, and due diligence provisions are promoted as ways to counter the weaknesses of transparency in supply chain provisions

TISC provisions effectively rely on businesses and civil society to provide oversight and enforcement – with businesses holding themselves and each other to account, and consumers voting with their feet and their spending. The effect on business, investor and consumer behaviour is further discussed in the next section. In general, TISC provisions have not led to a critical mass of behaviour change on all sides that is sufficient to significantly change the prevalence of modern slavery.

In order to meet policy goals, researchers and NGOs argue that regulation must include the following elements (Aronowitz, 2019; Chambers & Vastardis, 2021; Cockbain et al., 2018; Fellows & Chong, 2020; Ford & Nolan, 2020; Hess, 2020; Koekkoek et al., 2017; Macchi & Bright, 2020; Nolan, 2018; Nolan & Bott, 2018; Phillips et al., 2018; Redmond, 2020):

- 1 a formal list of businesses covered by the requirements and a publicly accessible repository for storing and searching annual disclosures
 - 2 broadening the range of organisations it applies to by reducing the threshold for reporting requirements
 - 3 mandatory due diligence measures, and clarity on what must be reported
 - 4 an institutional structure to exercise oversight
 - 5 legal inducements and/or penalties
 - 6 enforcement functions
 - 7 addressing barriers that restrict victims' access to remedies.
-

'... adopt the maxim that action speaks louder than words displayed on the disclosure canvas.'

Christ, Burritt & Schaltegger (2020, p. 1494)

The studies of enforcement and prosecutions centre mostly on labour trafficking and criminal justice outcomes, and recommend better collaboration and training for all parties

Responses to labour trafficking vary between countries but researchers generally see them as inadequate (Cockbain et al., 2018). Areas of weakness include:

- **the ability to identify victims** (for example, Farrell, 2014; Van Dyke, 2019)
- **service provision**

- The UK Salvation Army, which provides victim support during the National Referral Mechanism 45-day reflection period, reports a four-fold rise in labour exploitation cases between 2013 and 2017 (Craig, 2017).
- **law enforcement and prosecutions** (Craig, 2017)
 - Some police forces have established specialist modern slavery units or threat groups to focus, coordinate and lead investigations (for example, Craig, 2017; Haughey, 2016).
 - Media reports highlight the difficulties in investigating and enforcing human and sex trafficking cases. In 2009, a six-month campaign in the UK involving the Human Trafficking Centre, HM Revenue & Customs, the Crown Prosecution Service, the Serious Organised Crime Agency and the UK Border Agency led to 406 arrests, but only 22 people were prosecuted for trafficking, with seven of them later acquitted (Davies, 2009).
 - Import bans related activity are not well enforced. US Customs and Border Protection in the US indicated that in the first two years of implementing the Trade Facilitation and Trade Enforcement Act 2015, 57 shipments (valued at US\$6.3 million) were detained on the suspicion that goods were made with forced labour. However, this is likely to be a very small proportion of all imported goods likely to have been produced with forced labour, and there is no evidence that the powers change industry practices or reduce prevalence of modern slavery in supply chains (Hampton, 2019). Similarly, the Tariff Act 1930 allows federal agents to seize shipments where forced labour is suspected and to block further imports. However, in 85 years, that power had only been used 39 times (Holtz, 2016).
- **preventative activity** (for example, Amahazion, 2015)
- **inadequate resourcing**
 - Craig (2017) notes that at the time the GLAA's remit was expanded, its resourcing increased from 70 staff to include an additional 40 staff, but the number of workers it monitored increased from about 0.5 million to over 30 million workers.
- **limited awareness** (Van Dyke, 2019)
- **unmet training needs** (for example, Branscum et al., 2021; Haughey, 2016; Van Dyke, 2019)
- **insufficient information sharing, as well as sharing of good practice and lessons learned** (Haughey, 2016)
- **ineffective collaboration** (Farrell et al., 2014)
- **corruption**
- **confusion about what constitutes labour trafficking** (Van Dyke, 2019).

In the UK, the only legal measure available to respond to non-compliance with Modern Slavery Act requirements to publish statements is a civil application for an injunction in the High Court. This measure provides little deterrent as an injunction is likely to have limited impact on profitability (Craig, 2017).

Having agencies that are focused on labour exploitation can be cost-effective, but these agencies suffer from inadequate resourcing, narrow remits, and insufficient powers

The enforcement and labour exploitation literature is mostly confined to the UK, in relation to the establishment and operation of the Gangmasters Licensing Authority (GLA) and the Gangmasters and Labour Abuse Authority (GLAA).

The GLA was specifically designed to deal with labour market exploitation. Inspectors tended to be retired police officers, and it set up intelligence and other systems in a similar manner to standard police methods (Balch, 2019). Its sectors of interest were initially in the food supply chain and temporary agency work, focusing on employment standards and licensing of labour providers.

An evaluation of the Gangmasters Licensing Authority over 2008 and 2009 (Wilkinson et al., 2009), conducted by academics from the Contemporary Slavery Research Unit at the University of Hull, had these conclusions:

- The National Minimum Wage Inspectorate and the GLA have had broad support from unions, businesses and migrant workers. They investigate proactively, and are determined to take punitive action and to seek redress for exploited workers. But too much is left to individual migrant workers to seek redress. This is usually through the Employment Tribunal, which is not fit for purpose for most migrant workers.
- The GLA is cost-efficient.
- The GLA's remit should be extended to all sectors of the labour hire, agency and temporary labour workforce.
- The GLA should be provided with additional resources so that it can employ more field inspectors, and so that it can do research into the number of legal and illegal labour hire organisations currently operating, and the form and extent of exploitation of temporary labour.
- The GLA should also be given the power to confiscate criminal assets. Legislation needs to guide the courts on minimum sentencing for severe exploitation. Current penalties are insufficient to deter.
- The civil penalty regime does not appear to protect migrant workers. The available evidence suggests it further drives undocumented migrants into labour exploitation.
- The Worker Registration Scheme does not appear to be working well for a significant number of migrant workers.

Mandatory due diligence measures have been introduced in many countries, but it is too early to tell whether they are effective

France's Duty of Corporate Vigilance Law of 2017 was the first legislation to require due diligence measures for modern slavery. It requires multinational companies, along with their subsidiaries, sub-contractors and suppliers, to prevent risks and take responsibility for the harm that their business does in the areas of human rights and the environment. Sub-contractors and suppliers are no longer legal entities separate from the contract holder. The Duty of Corporate Vigilance Law also provides victims with avenues they can pursue through the courts.

The legislation requires large French companies to adopt, implement and disclose a vigilance plan. The plan must include five elements⁹:

- 1 a mapping of the risks involved – in particular this must include identifying, analysing, and prioritising risks
- 2 procedures to regularly assess risks associated with the activities of subsidiaries, subcontractors or suppliers with whom the company has an established business relationship
- 3 actions to mitigate risks and prevent serious harm
- 4 an alert mechanism that collects reports of potential and actual risks and effects, drawn up in consultation with trade union representatives
- 5 a mechanism to monitor measures that have been implemented and evaluate their effectiveness.

Judges can impose fines of up to €10 million when companies fail to publish a vigilance plan. Fines can go up to €30 million if this failure resulted in human rights or environmental violations that would otherwise have been preventable.

The French Law has been described as what was envisaged by the United Nations Guiding Principles on Business and Human Rights (UNGPs): ‘the need for businesses to assess actual and potential human rights impacts, integrate and act upon the findings, track responses and communicate how impacts are addressed’ (Macchi & Bright, 2020, p. 14).

There is little evaluative evidence showing that this approach is more effective than TISC measures in addressing modern slavery in supply chains, as the legislation is relatively new. However, this approach has grown more popular, with more countries adopting it. Due diligence measures appear to increase compliance, with more companies reporting on their supply chain activities and their actions to address labour challenges, but the quality of the reporting varies (Phillips et al., 2018). Further, the due diligence measures do not always include meaningful enforcement mechanisms.

As yet there is no evidence that due diligence approaches lead to improved labour standards and rights in supply chains, nor to modern slavery being less prevalent. A 2017 report by Corporate Human Rights Benchmark reported low levels of due diligence practice and reporting. A survey by Norton Rose Fulbright and the British Institute of International Comparative Law found that over half of the companies surveyed had never carried out a due diligence process specifically focused on human rights (Nolan, 2018). A 2019 report found that the first vigilance plans did not sufficiently comply with the law, and most plans focused on business risks and performance, rather than on risks to workers or the environment (Macchi & Bright, 2020). A 2020 report by the British Institute of International Comparative Law, Civic Consulting and the London School of Economics states that just over one-third of businesses surveyed undertake due diligence which takes into account all human rights and environmental impacts¹⁰, and one-third undertake due diligence on certain areas (BIICL et al., 2020). In addition, the majority only undertake due diligence in their first tier of suppliers only.

Capacity and capability for monitoring and evaluation is hampered by the absence of any statutory mechanisms to measure effectiveness, or of any agreed measures as to what success looks like

⁹ See <https://respect.international/wp-content/uploads/2017/10/ngo-translation-french-corporate-duty-of-vigilance-law.pdf> for a translation of the French Duty of Corporate Vigilance Law 2017.

¹⁰ This study examined broad due diligence requirements through the supply chain, not just related to modern slavery.

(Phillips et al., 2018). The ILO has recommended a suite of potential measures for evaluating the effectiveness of disclosure legislation, aimed at organisations, suppliers and stakeholders (Appendix 3).

Both Australia and the UK have legislation requiring due diligence, and these are focused on specific sectors and/or other areas of corporate disclosure. The House of Lords and House of Commons Joint Committee on Human Rights (2017) recommended that business and human rights legislation be modelled on the ‘failure to prevent’ mechanism in the UK Bribery Act 2010.

The following shows the differences in reporting companies provide depending on whether the UK Modern Slavery Act applies or the UK Bribery Act (Table 3).

Table 3. Comparison of company approaches to bribery and forced-labour disclosures due to legislation

	Key trends in 25 FTSE100 companies	Bribery	Forced labour
Wording	25 out of 25 companies (100%) use stricter language in relation to bribery compared to forced labour	Companies use strict language in relation to bribery and usually link it with ‘anti’ and ‘zero tolerance’ Companies stress that they ‘comply with’ bribery laws	Companies use more aspirational language, e.g., ‘we will work to’ Several companies mention that they ‘seek to conduct business in a manner that respects human rights’
Quality of reporting	20 out of 25 (80%) have more extensive reporting about bribery in their company CSR/sustainability report	Companies often include a separate section about bribery in their CSR/sustainability report	Companies report about forced labour in a less prominent way. It is usually only one issue among others, often in a section entitled ‘human rights’
Quantity of reporting	20 out of 25 (85%) use the word ‘bribery’ much more frequently than ‘forced labour’	Bribery is addressed much more frequently in the various documents than forced labour	Forced labour is usually covered much less than bribery in the CSR / sustainability report
Policies on bribery and forced labour	25 out of 25 companies (100%) publish a bribery policy or mention bribery due diligence and/or risk assessment or antibribery policies on their website and do not have (publish) comparably stringent or detailed policies for forced labour	Companies publish or mention their strong and often detailed anti-bribery policies These policies appear to constitute due diligence practices Bribery is sometimes referred to as a ‘governance issue’	There is sporadic reference to specific policies for forced labour Rather, companies often mention that they expect third parties to meet the labour standards of the International Labour Organisation (ILO)
Code of conduct	23 out of 25 (92%) of companies have stricter requirements on bribery than forced labour in their code of conduct or other	Several terms and conditions of purchase and the codes of conduct demonstrate a clear	The wording for forced labour used in the codes of conduct is more aspirational such as ‘we

Key trends in 25 FTSE100 companies	Bribery	Forced labour
supplier-related documents The language is strict, clearly prohibiting bribery amongst suppliers	prioritisation given to bribery prioritisation given to bribery	do not support forced labour'

Source: Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance (LeBaron & Rühmkorf, 2017)

The Australian Illegal Logging Prohibition Act 2012 includes both due diligence and penalties. It establishes a mechanism for the prosecution of downstream activities ancillary to the illegal logging, that is, importation and processing (Wen & Zhao, 2020). By reducing the markets for unlawful goods and services, it seeks to indirectly strengthen compliance in developing states overseas.

A review of the literature by the European Parliament Research Service indicates that mandatory due diligence (in its broader form, not just on modern slavery) requirements are likely to be associated with (Navarra, 2020):

- Improved compliance and greater access to remedy
- Harmonisation of rules and level the playing field
- Improved legal certainty
- Potential for improved economic performance of businesses
- Improved social outcomes and their positive effect on the economy.

Changing behaviour, attitudes and awareness among companies, investors and consumers

Investor behaviour

There is some evidence that organisations who show they are making a difference in mitigating modern slavery are rewarded with positive reactions from investors

The extent to which modern slavery legislation affects the reactions of investors is limited by the business environment in which the country operates. Redmond (2020) acknowledges that, compared to the UK, Australian investors, media and civil society have less experience in and resources for monitoring this area.¹¹

Relevant studies usually focus on environmental issues, and generally show that increasing the regulatory costs to businesses tends to be viewed negatively by the market (Birkey et al., 2018). Whether or not disclosures actually lead to substantial compliance costs is not important – what is important is whether investors **believe** that new legislation will do this (Birkey et al., 2018).

Studies of investors' reactions to new modern slavery legislation are generally event-based – that is, they assess market reaction to events surrounding the introduction and passing of an Act. This can include public announcements by prime ministers, the release of an independent think tank's report with recommendations for legislation, announcements of an evidence review ahead of a Bill, and the Act receiving Royal Assent (for example, Cousins et al., 2020). This approach doesn't untangle the extent to which behaviour is due to the legislation itself from the extent to which it is due to the media and public discussions.

A review of 105 retail companies who are subject to the Californian Act and of market reactions found significant negative market reactions while the Act was going through the California legislature and during its subsequent implementation in 2010 (Birkey et al., 2018). Firms with greater supply chain risk – clothing and footwear retailers – had more negative market reaction than others. That finding is supported by an analysis of how stock prices of UK businesses covered by the UK Modern Slavery Act reacted to eight separate events associated with the adoption of the Act (Cousins et al., 2020). UK firms who had higher slavery risk had more negative stock price reactions.

On the positive side, the UK study found that firms that operate in high-risk environments but can demonstrate a track record of addressing slavery risk in their supply chain had the most favourable stock price reactions to Modern Slavery Act events (Cousins et al., 2020). This lends some support to the theory that good corporate performance in showing social responsibility can provide firms with a competitive advantage (Cousins et al., 2020).

¹¹ Redmond is a key legal academic in Australia and was a member of the Supply Chains Working Group that originally recommended a Commonwealth Modern Slavery Act.

“[The UK Modern Slavery Act] is pretty much focused on TISC. The other bits are unnecessary. Investors do not seem aware of [the other bits]”.

– *Investor interviewed by Cousins et al., (2020)*

Mechanisms that rank and shed light on the relative performance of organisations in relation to modern slavery, such as registries and public-facing documents and benchmarking reports, can lead to investors becoming part of social change. In the case of Woolworths, it was investor pressure and media attention that led to the business signing an agreement with the National Union of Workers to improve rights for farmworkers in their supply chain (Hampton, 2019).

Corporate awareness and behaviour

Organisational awareness of the risk of modern slavery in supply chains is low. Suppliers themselves lack awareness too

Not only do larger multinational organisations need to be aware of the requirements of modern slavery legislation, SMEs and subcontractors also face greater scrutiny from the larger businesses that they supply to. Nevertheless, in a survey of SMEs by the UK Chartered Institute of Procurement & Supply (2016; Donati, 2016):

- 61% of small businesses were unaware of the Act and its impact on them
- 67% had never taken any steps to tackle supply chain slavery
- 75% didn't know how to respond if supply chain slavery was uncovered
- 10% had ensured that all their workers received the minimum wage and that immigration checks are in place
- 5% had mapped their supply chains
- 4% had provided training to staff or suppliers on how to spot signs of slavery.

There is low business compliance with transparency provisions in the early implementation years – clear legislation and guidance are needed

After five years of the California Act (KnowTheChain, 2015):

- Of the 500 companies that were required to comply, only 19% had in fact complied
- Of 500 companies required to comply, 31% had a disclosure statement available that complied with all of the Act's requirements
- 47% did not disclose sufficient information in all 5 categories
- Reporting tended to be one-time-only, with few reporting on actions or progress.

The Queensland researchers who studied California's Transparency in Supply Chains Act and market movements suggested that businesses' concerns about investors' perceptions of supply chain disclosures may mean they disclose less (Birkey et al., 2018). Disclosing companies tended to provide very limited information, with few providing extensive information across all five of the required categories. Therefore, without specific rules and guidance for what must be reported, those researchers suggest, TISC provisions alone are not sufficient to bring about meaningful disclosures and improved supply chains (Birkey et al., 2018). However, more businesses comply, and there are improved disclosures, once legislation has been in place for several years (Birkey et al., 2018).

The business community generally opposes penalties for non-compliance with transparency requirements – but penalties seem to work

The annual regulatory impact of modern slavery reporting requirements for entities covered by the Australian Act was estimated at \$21,950 per entity (NSW Standing Committee on Social Issues, 2020). The Commonwealth Act does not impose penalties nor establish a mechanism for independent oversight and enforcement. In the review by the NSW Standing Committee on Social Issues (2020) of their state Act, representatives of the business community strongly opposed the imposition of penalties. Conversely, other submitters highlighted the need for the NSW Act to retain its penalty provisions, arguing that the UK experience shows that lack of penalties for non-compliance equates to low compliance.

Assessing how FTSE 100 companies have reacted to the UK Modern Slavery Act and the UK Bribery Act, LeBaron and Rühmkorf (2017) found that criminal corporate liability (as in the Bribery Act) leads to much deeper changes to corporate strategy than voluntary reporting.

The supposed 'naming and shaming' aspect of transparency has not acted as 'the stick' as hoped, particularly with little consumer visibility of transparency statements and wide non-compliance. The policy discussions leading up to the passing of the UK Act highlighted 'reputational risk' and a peer-driven 'race to the top' as drivers of compliance (Nolan et al., 2019). But as discussed above, if anything the legislation has led to a 'race to the middle' (Rogerson et al., 2020). In an online survey of ASX 100 companies, all the respondents answered that 'legal requirement (penalty for not reporting)' was the most likely factor to influence their decisions to report externally on supply chain risks (Nolan et al., 2019). In contrast, 'match competitor practices' was ranked 7 out of 8 potential drivers. Customer expectations, reputational impact and adverse publicity, civil society's expectations and advocacy pressure were all less significant than 'legal expectation'. 'Global recognition, awards, benchmarks' was ranked least significant.

Organisations use a number of different methods to assess modern slavery risk and provide assurances

Entities, whether required by law or not, use a number of different methods to assess, detect, investigate and eradicate modern slavery in their supply chains (de Sterke, 2020; LeBaron & Rühmkorf, 2017):

- Auditing against codes of conduct
- Corporate social responsibility reports
- Supplier terms and conditions

- Certification schemes, either in-house or by private third parties
- Data-driven approaches, usually to target ‘risky’ countries, regions or firms.

LeBaron et al. (2017, p. 960) are particularly critical of the over-reliance on audits, as ‘many studies conducted over the last two decades … suggest [that] audit programs often fail to detect, report, and resolve labour and environmental problems in global supply chains’.

At the same time, companies face real challenges and barriers in identifying and addressing modern slavery (Lake et al., 2016; Theron, 2019). These include:

- the complexity of their supply chains, which in some cases means they are not able to map out their supply chains
- difficulty mapping their corporate functions and the supply chains within those (including logistics, warehousing, IT, procurement and catering)
- lack of resources for carrying out due diligence and for supporting suppliers to carry out improvements
- concern about what should be shared publicly.

Consumer attitudes and awareness

Consumers have low awareness of modern slavery and have had low engagement with legislative change related with modern slavery

Studies in the US suggest that one of the biggest obstacles to trafficking cases being investigated and prosecuted is that officials don’t prioritise this because they see a lack of public interest and awareness. The studies suggest that public opinion can drive human trafficking policy agendas (Bouché et al., 2016).

In general the legislation-related literature has paid little attention to the role of the consumer in modern slavery and the supply chain (de Sterke, 2020). In the consultation for the Australian Modern Slavery Act, few submissions were made by consumers or consumer groups, suggesting that consumers are not very engaged with the subject (de Sterke, 2020). In a UK study, one in three members of the public were not aware that slaves were used in the UK to produce and process fresh produce, and one in 10 believed that slavery was a thing of the past and did not exist anymore (Boersma & Nolan, 2019 as cited in de Sterke, 2020).

In New Zealand, the Minister for Workplace relations and Safety recently received a petition with 37,000 signatures calling for the Government to introduce legislation requiring public and private entities to report on risks of modern slavery in their supply chains, as well as what they are doing to address risks (Ensor, 2021). The petition was organised by Trade Aid and World Vision. While 37,000 signatures is a significant number, it is unclear to what extent this can be extrapolated to a population view.

A public opinion survey of a representative sample of 2,000 Americans in 2014 found that most hold incorrect beliefs about human trafficking (Bouché et al., 2016):

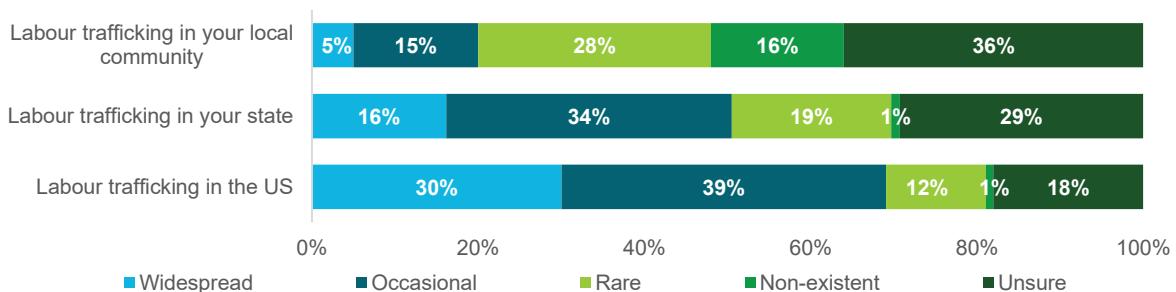
- 92% thought that victims are almost always female
- 71% thought that ‘human trafficking’ is another term for ‘smuggling’

- 62% thought that it always involves threatened or actual physical violence
- 62% thought that it mostly involves illegal immigrants
- 59% thought that it requires movement across state or national borders.

But they did understand that human trafficking is a form of slavery (90%). In relation to labour trafficking, there was a general sense that it occurred in the US, but were less willing to say that it happens in their own community (Figure 7). Half thought that labour trafficking was widespread or occasional in their state. Interestingly, survey participants believed that sex trafficking is more common than labour trafficking in the US and in their state.

When asked about how the government should prioritise anti-trafficking policies and programmes, 8% said it should be a top priority and 48% said it should be a high priority.

Figure 7. How common is human trafficking?



Source: Bouché, V., Farrell, A., & Wittmer, D. (2016). Identifying effective counter-trafficking programs and practices in the U.S.: Legislative, legal, and public opinion strategies that work (Research Report No. 249670; Research Funded by the US Department of Justice). Texas Christian University, Northeastern University and Colorado College.

“While people are becoming increasingly aware that modern slavery exists, it remains a phenomenon that is too often dismissed, underestimated or misunderstood.

“Modern slavery seems like an abstract concept, but we must better educate ourselves, what it is, how it evolves, and importantly how our often, small decisions can affect the lives of many”

– Associate Professor Justine Nolan (Berry, 2019)

Legislative requirements that seek to raise consumer awareness and spur action are often difficult to engage with

The corporate sector's track record in complying with TISC provisions and due diligence obligations has been sub-par, and information from companies about modern slavery is often not useful, or is difficult to find or is not meaningful (Aronowitz, 2019).

Digital registries have improved the situation somewhat, but some registries still have some way to go (for example, the UK and California). These registries also only raise awareness among and potentially spur action by those who are already motivated.

Public education and awareness raising can potentially change behaviour

Does modern slavery happen here?

Modern slavery is not at the forefront of some people's minds, and in some cases not thought of as something that even happens in their country. In a May 2020 poll of 1,001 financial services employees, 521 of whom were in middle management positions or above, 30% did not believe modern slavery is something that happens in the UK (Themis International Services, 2021). Further, 8% of the employees surveyed did not believe the subject had been raised more than 'a few times' by senior management, if at all, in the last 12 months.

Public education and behaviour change

While general awareness appears to be low, it appears that this can be rectified and that awareness can motivate individuals and the community into action.

In an experiment in the US, participants were randomly assigned to one of 10 public service announcements and asked how likely they would be to call a hotline about a suspicious situation or have a conversation about human trafficking. A PSA with an explicit call to action was more effective than one without (Bouché et al., 2016). A 10-second call to action increased the 'call hotline' responses by 12% and 'have conversation' responses by 6%. Across all PSAs, participants were more likely to call the trafficking hotline than have a conversation with a friend or family member.

In a survey of consumers in the UK, Brazil, US and India, most would no longer buy a product if they were made aware its manufacture involved modern slavery (Walk Free Foundation, 2015):

- 66% of UK consumers
- 78% of Brazilian consumers
- 66% of US consumers
- 54% of Indian consumers.

Additionally, certification from an independent body was the most trusted source of information when it came to products made without modern slavery (Walk Free Foundation, 2015).

While not specifically related to modern slavery, the New Zealand Consumer Survey 2020 indicates a growing awareness of the spectrum of labour practices amongst companies. Over time, the proportion of consumers seeking out extra information before purchasing something and 'knowing its workers fairly affects my decision on where to purchase products / services' 'always' or 'most of the time' has increased (MBIE, 2020d).

Research undertaken by academics in Scotland, England and Australia examines how consumers define modern slavery, why UK consumers do not recognise modern slavery in their everyday lives and how consumers can be empowered and mobilised (Carrington et al., 2018). Findings from the 15 exploratory interviews and 40 indepth interviews with consumers across London, Glasgow and Blackpool were:

- Consumers found it hard to define the boundaries between labour exploitation and slavery. For issues new to consumers, mass media and targeted social media, direct mail and other less mainstream media may be required.
- As discussed above, consumers generally considered slavery to be something that takes place 'far away' in locations 'abroad'. Local slavery was thought to be hidden – limited to domestic workers, sex slaves and agricultural workers who go early in the morning and come back late at night.
- Consumer inaction occurs due to a range of 'neutralisations' – justifications and accounts to explain the behaviour to themselves and others
 - denial of victim,
 - denial of injury,
 - condemnation of the condemners and
 - dehumanisation of modern slaves.

"In the UK they have the opportunity to get a proper job. If they don't take it, it's their choice."

"If they don't do anything about it, it's because they don't want to."

"Being paid a little is better than nothing. Some people do choose to go down that route."

- Interviewees in UK study (Carrington et al., 2018).

The broader policy framework

A whole-system approach

The UK National Audit Office highlighted that the UK government's response to serious and organised crime alone involves more than 100 organisations nationally, regionally, locally and internationally (NAO, 2019). Government has an important role in providing strategic clarity and an effective funding model and governance arrangements, underpinned by a strong accountability framework. The NAO found that ineffective funding models (with multiple funding sources, uncertainty of funding, and regional resources under pressure) and complex governance and accountability structures have hindered a coordinated, coherent and effective approach to serious and organised crime (NAO, 2019).

The UK has an independent Anti-Slavery Commissioner who takes an overarching role. In NSW this position is not yet established, but the state has an Interim Anti-Slavery Commissioner whose functions include:

- advocating for and promoting action to combat modern slavery
- identifying and providing assistance and support for victims of modern slavery
- working jointly with government and non-government agencies to combat modern slavery
- monitoring reporting on the risks of modern slavery occurring in the supply chains of government agencies and commercial organisations
- monitoring the effectiveness of legislation and government policies and action in combating modern slavery
- raising community awareness of modern slavery.

The NSW Parliament also proposed establishing a Modern Slavery Committee within the Parliament, and tasking the Committee with inquiring and reporting on matters relating to modern slavery.

Public-private partnerships and non-governmental organisations have a key role

In a literature and legislative review, Nolan and Bott (2018) identified four essential requirements for effective implementation of a legislative framework to combat modern slavery practices:

- 1 the legislation should incorporate human rights due diligence
- 2 it must include detailed disclosure requirements
- 3 there should be regulatory consequences for failing to comply, and
- 4 it should use the leverage of individual stakeholders – including businesses, governments, NGOs, unions, consumers and workers – to regulate supply chains.

The importance of civil society actors as key contributors to modern slavery responses have been acknowledged by others (Amahazion, 2015). They may take a variety of roles:

- **Public education, training and awareness raising**
 - [Just Enough Group](#) is an NGO in the UK, now with a sister organisation in the US, that raises awareness of modern slavery among primary school and secondary school learners and is sponsored by a wide range of donors.
 - Other UK NGOs that raise public awareness or train staff working in different settings are [Stop The Traffik](#), [Unseen](#) and [ECPAT UK](#).
- **Whistle-blower or reporting hotlines/mechanisms**
 - [CrimeStoppers](#), in the UK, is a charity which allows people to give information anonymously and encourages members of the public to report any suspected incidents.
 - The UK's [Modern Slavery and Exploitation Helpline](#) is independently operated by the anti-slavery charity Unseen. The helpline is free to call and provides victims, the public and businesses access to information and support. Reports can also be submitted online and via the app.
- **Promoting transparency**
- **Independent assessments**
- **Victim support and protection**
 - [Hagar](#), in Australia, helps survivors secure safe accommodation, access counselling, get legal support, complete their education, and find suitable employment. They also provide training and awareness to help stop trafficking, slavery and abuse, and they have an advocacy role.
 - Support and protection for potential victims of modern slavery is available across the UK. Specific charities are contracted to support potential victims of modern slavery through the NRM process. The support and assistance may include: safe accommodation, practical help and advice, financial support, healthcare support (physical, emotional and mental health), specialist legal advice, counselling services, interpretation and translation services, education for school-aged dependent children, transport to important appointments, and support for future-planning. The main provider of the service is [The Salvation Army](#), who were awarded a new five-year Modern Slavery Victim Care contract in January 2021. The contract will enable more flexible support, including for those with specialist and complex needs.
- **Monitoring, benchmarking and reporting**
 - [Walk Free](#) is an international human rights group focussed on the eradication of modern slavery. The NGO works with WikiRate and the Business & Human Rights Resource Centre to understand compliance with the UK's Modern Slavery Act. Amongst others, it has released reports on compliance in the hotel sector (Minderoo Foundation's Walk Free Initiative et al., 2019) and the finance sector (Walk Free Foundation et al., 2021). Walk Free also developed the Global Slavery Index.

- **Research and work to identify solutions and services to end modern slavery**
 - [Anti-Slavery Australia](#) is a specialist legal practice, research and policy centre. It is headed by Professor Jennifer Burn, the NSW Interim Anti-Slavery Commissioner in 2019 and 2020.
 - The Partnership for Freedom in the US launched three 'Innovation Challenges' (Hampton, 2019). One of the winning solutions was the Labor Safe Digital Certificate and [Labor Safe Screen](#), a digital risk assessment tool to help the seafood industry screen for and address high-risk areas for modern slavery in their supply chain.

There is little evidence of the efficacy of the wide sphere of activities that support the implementation of modern slavery legislation. The following sets out some of the lessons from the evaluative evidence available.

Awareness-raising and training

A five-year theory-based evaluation of training for South Asian female migrant workers collected qualitative and quantitative data from Nepal, India and Bangladesh. It found that the training was not well-targeted, was not delivered by appropriate trainers, and did not address participants' expectations or concerns (Zimmerman et al., 2021).

The evaluation found that the training programme did not achieve the intended outcomes of empowerment, improving pre-migration decision-making and improving knowledge about the practical pros and cons of migration. The key barrier was that the training didn't take into account the social, political, migration and economic context of the workers.

As noted earlier, awareness-raising campaigns and training programmes appear to have had some success in getting the public to report suspected incidents and to stop buying products known to have been produced through modern slavery (Bouché et al., 2016; Themis International Services, 2021).

Whistle-blower mechanisms

CrimeStoppers has partnered with the Gangmasters and Labour Abuse Authority on a number of campaigns to educate the public and potential victims. Over 2019/20, CrimeStoppers referred 679 reports of modern slavery to the police – this was unchanged from the year before but up from 250 in 2015/16 when the Act was first in force (CrimeStoppers, 2020).

Example 4. CrimeStoppers and GLAA educating potential victims

The Gangmasters and Labour Abuse Authority (GLAA) worked with CrimeStoppers to help warn Romanian jobseekers that many recruitment adverts are not always what they appear to be. Intelligence suggested that young Romanian men are being recruited using Facebook ads to lure them into working for unscrupulous employers or for criminal gangs, specifically in London's busy construction sector.

CrimeStoppers used a series of ads across Facebook aimed at gaining potential victims' attention with headlines such as 'Are you looking for work?' or 'In need of a job?'. The ads performed as intended, with audiences progressing to the website landing page where they were warned to be aware of fake job ads and told what to look out for.

The ad reached nearly a million people, had over 3 million impressions and led to a 13% increase in reports on modern slavery over the two-week campaign period. The campaign generated nearly half a dozen specific reports relating to Romanians who were victims.

Funded by the GLAA, the campaign helped educate the target audience on how to spot fake ads to help prevent future cases of modern slavery.

Source: *Impact report 2019/20* (CrimeStoppers, 2020)

Over 2020, Unseen (2021), the charity that operates the UK Modern Slavery and Exploitation Helpline, reported:

- 3,481 potential victims
- 6,052 helpline calls
- 1,924 webforms and App
- 80 different nationalities
- 1,582 referrals
- 1,742 modern slavery cases.

Labour exploitation is the most prevalent form of exploitation reported to the Helpline. Throughout 2020, the Helpline numbers have decreased due to the impact of COVID-19 lockdowns. A total of 578 cases were reported, indicating 1,889 potential victims (Unseen, 2021).

The Helpline also works with and supports businesses. It deals with business requests and publishes cases to the Helpline Business Portal.

Responsibility to identify and report

Because victims face a number of barriers to reporting their own modern slavery, it is often up to other parties to identify and report it. The UK legislation specifically established the Modern Slavery Hotline, and also required certain public authorities to notify the Secretary of State of any individual identified in England and Wales as a suspected victim of slavery or human trafficking.

The National Referral Mechanism is the UK's system for identifying and supporting potential victims of modern slavery. At the time of a pilot evaluation of the NRM, it consisted of three stages:

- 1 **Identification and referral** – Potential victims of modern slavery are identified and referred to the NRM by a designated 'First Responder' organisation (this includes certain NGOs and statutory agencies mentioned above).
- 2 **The 'reasonable grounds' decision** – This decision, which means that it is 'suspected but not proven' that someone is a victim of modern slavery, allows the potential victim to access support. The decision is made by a 'competent authority':
 - the Modern Slavery Human Trafficking Unit in the National Crime Agency
 - the NRM Hub in UK Visas and Immigration, or
 - (in a very small number of criminal cases) Immigration Enforcement.
- 3 **Further information gathering and the 'conclusive grounds' decision** – The competent authority then gathers more information about the case (during the 'caseworking' phase) to make a 'conclusive grounds' decision, which means that on the evidence available 'it is more likely than not' that someone is a victim of modern slavery.

The 'reasonable grounds' decision is made by staff in statutory agencies who had been designated as Slavery Safeguarding Leads (SSLs). The statutory agencies are police, local authorities, UK Visas and Immigration, the National Crime Agency, the NHS, and the GLAA (Ellis et al., 2017). The casework and the decision making for the 'conclusive grounds' decision were separated with the establishing of a Case Management Unit (CMU) and multi-disciplinary panels (MDPs). The unit and the panels consisted of representatives from the statutory agencies as well as representatives from NGOs who were unpaid volunteers.

The pilot evaluation found that the Slavery Safeguarding Leads role was seen positively and that 'reasonable grounds' decisions were made earlier in the pilot areas than in the non-pilot areas (Ellis et al., 2017). Panel members were confident that the diversity of skills and experience on the panels contributed to robust and good decisions. Both the SSLs and the panel members raised concerns about adequate resourcing and time commitments, as these roles were all additional to existing responsibilities.

Support for victims and survivors

In the UK NGOs play the most significant role in supporting the needs of victims after the NRM decision (Van Dyke, 2019). NGOs deliver the government-funded 45-day reflection and recovery service, as well as additional services.

The Salvation Army facilitates the delivery of victim support services through a network of providers in England and Wales.¹² The number of victims supported by the organisation has increased each year (Example 5).

¹² Different support mechanisms are in place for potential victims identified in Scotland and Northern Ireland.

Example 5. The UK Salvation Army modern slavery service data, July 2019 – June 2020

2,592 potential victims entered the service to receive support through the contract during Year 8

a 15% increase on the previous year

- | | |
|---|--|
| <ul style="list-style-type: none">• 1,264 identified as women• 1,328 identified as men | <ul style="list-style-type: none">• 1,081 experienced labour exploitation (42%)• 848 experienced sexual exploitation (33%)• 273 experienced domestic servitude (10%)• 291 experienced criminal exploitation (11%)• 99 cases where the exploitation type was either not known or categorised as 'Other', as the type of exploitation was unclear at the time of the referral or not marked on the NRM referral form (4%) |
|---|--|

Source: Year nine report on The Salvation Army's Victim Care and Co-ordination Contract July 2019 to June 2020 (The Salvation Army, 2020)

The UK independent review recommended better follow-on services, suggesting that government formalise and clarify the duties of local authority agencies to support the victims of slavery and trafficking once they have left the NRM service (Haughey, 2016). The Salvation Army (2020) now regularly reports on those who have moved on from their support, including where they go to and what support they may now be accessing. A key issue is access to housing, which can be critical to recovery and re-integration (Craig, 2017; The Salvation Army, 2020; Van Dyke, 2017).

Worker voice and technology

An improved 'worker voice' in reporting and supply chain monitoring has been promoted by NGOs and researchers (Ford & Nolan, 2020; Hampton, 2019). The best auditors are workers themselves – they are best-placed to design and implement monitoring processes, and to identify what meaningful redress or remedies should be.

Worker voice and empowerment is often teamed with enabling technologies. A study of seven countries and how technologies impacted on identifying modern slavery (Rende Taylor & Shih, 2019) found that due diligence technology tools helped control supply chain risk but rarely identified modern slavery. The tools tended to not be trusted by workers, and suppliers and clients tended not to buy into using them.

On the other hand, worker feedback tools that are more empowerment-oriented had a better track record of identifying modern slavery, forced labour and human trafficking, but were not connected to business due diligence.

Some concerns were also raised about both types of tools, particularly the burden they place on workers and also whether they provided sufficient benefits and safeguards for especially vulnerable informants (Rende Taylor & Shih, 2019).

Additional implications for New Zealand

When considering the potential applicability of supply chain transparency legislation in New Zealand, additional consideration should be given to New Zealand's geopolitical context including as a small but highly integrated trading nation. These implications are in addition to any obligations New Zealand has as a part to a range of slavery, forced labour and human trafficking conventions.

New Zealand is relatively small

New Zealand is home to around 5 million people, with a GDP approximately US\$212 million. It is ranked 48th for gross GDP.

Reflecting its smaller size, New Zealand has a higher percentage of micro, small and medium-sized enterprises than other countries, and what it considers large businesses are generally smaller in comparison to those overseas. Many small businesses in the US would be considered a large business in New Zealand. Table 4 shows the different employment definitions for business size for the US, Australia, the UK and New Zealand.

Table 4. Comparison of definitions of small business

Category	US	Australia	UK	New Zealand
Micro	0-9	0-4	0-9	0-4
Small	10-99	5-19	0-49	5-19
Medium	100-499	20-199	50-249	20-49
Large	500+	200+	250+	50+

Source: MBIE (2020a), Briefing for Incoming Minister for Small Business

The EU model (Table 5) is different again and uses a combination of employment, turnover and assets.

Table 5. European model of small businesses

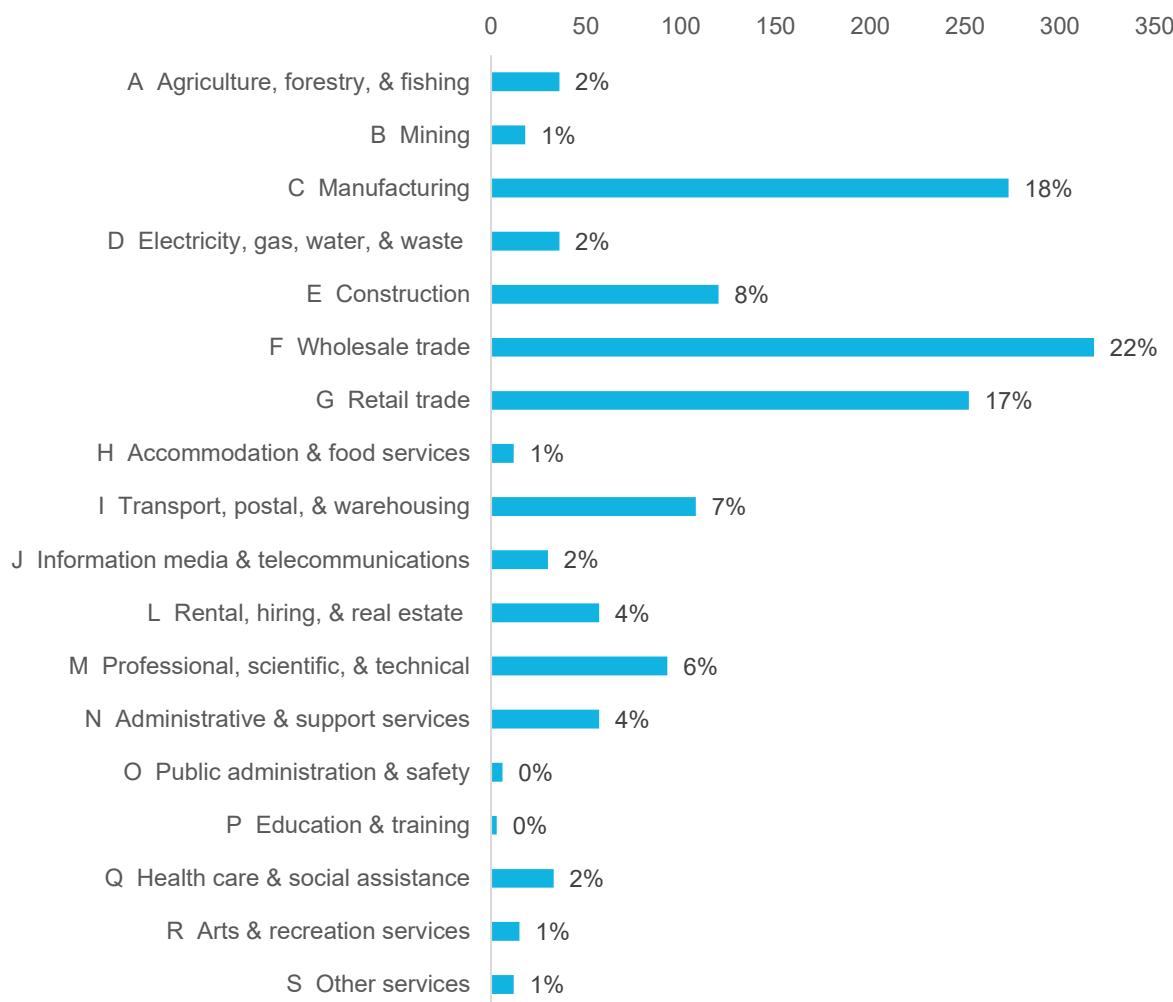
Category	Employment	Annual turnover	Total assets
Micro	0-9	Less than €2m	Less than €2m
Small	10-49	Less than €10m	Less than €10m
Medium	50-249	Less than €50m	Less than €43m
Large	250+	Greater than €50m	Greater than €43m

Source: MBIE (2020a), Briefing for Incoming Minister for Small Business

Stats NZ Business Demography data identifies 6,021 firms in New Zealand with 50 or more employees (of which 2,688 have more than 100), and 1,476 firms with annual turnover of \$50m or

more. The breakdown by industry is set out in Figure 8. More than half of these are in manufacturing, wholesale trade and retail trade.

Figure 8. Number of firms with annual turnover of \$50m or more, by industry



Source: Stats NZ, Business demography

The Productivity Commission has identified that given the small size of New Zealand's domestic market, New Zealand firms often engage in international exports relatively early in their lifecycle, while firms in larger domestic markets or adjoining markets within free-trade blocs are usually much larger before seeking to export goods or services (New Zealand Productivity Commission, 2021a).

What might this mean when considering design of legislation?

- New Zealand will need to identify the appropriate boundaries of which firms should be covered by modern slavery legislation, including whether it should choose to align in absolute or relative terms to approaches taken in other jurisdictions.

- Aligning to the definitions set in the Australian Commonwealth Modern Slavery Act, for example, may see a relatively small cohort of firms captured by the Act – the majority of which may already be covered by the Australian Act.
- Alternatively, New Zealand may choose to apply a tighter set of definitions recognising the different demographic profile of its firms, and that smaller firms are more likely to engage in international trade sooner than similarly sized firms in foreign markets.
- New Zealand may consider managing costs of compliance by phasing any new regulatory requirements to get wider scheme coverage over time.

Reliant on international trade

Maintaining a strong international reputation and good flows of international trade is essential to New Zealand's economic prosperity. Trade is a major driver of productivity, employment and incomes. Productivity per New Zealand worker is 36% greater in an exporting firm than a non-exporting firm. Employment grows 7% to 12% faster when New Zealand firms start exporting. Exporting firms pay higher wages – up to 6% more than non-exporters (MFAT, 2020).

Historically, trade flows have been concentrated with western and Commonwealth economies, especially Australia and the UK. In recent decades, New Zealand has pursued a multi-lateral and rules-based trading system, with a range of individual and multi-party free trade agreements. Over this period, New Zealand's trade flows have increasingly shifted towards Asia and the Pacific, and the China-New Zealand Free Trade Agreement has seen China overtake Australia as New Zealand's largest training partner.

New Zealand's relationship with Australia is especially close, underpinned by the Closer Economic Relations agreement and the free movement of goods and people. New Zealand and Australia's economic and trading relationship is recognised as one of the closest, broadest and mutually compatible in the world. Nineteen percent of all our services exports are to Australia (\$NZ3.46 billion) and services imports from Australia make up 25.5% (NZ\$4.23 billion) of all our service imports. New Zealand and Australia have committed to creating a Single Economic Market.

China is now New Zealand's single largest trading partner, with two-way trade exceeding NZ\$33 billion.

What might this mean when considering design of legislation?

- New Zealand will need to consider how its legislation might align with those economies that it is highly integrated with – for example, Australia and New South Wales – including the extent to which New Zealand companies will already be covered by other supply chain transparency regimes.
- New Zealand's shifting trade profile is increasing its trade with economies that may be considered higher risk for labour exploitation, including through having lower or different employment standards or less capability to enforce.
- Shifting international norms may carry reputational impacts or pressure for New Zealand to continue to be able to access certain foreign markets, especially those with the most mature anti-modern slavery or due diligence approach expectations.

Increasing reliance on a migrant workforce

Prior to COVID-19, the size of New Zealand's temporary migrant workforce was increasing (MBIE, 2020b). There were around 200,000 people with work visas in New Zealand, an increase of about 76% over the last five years, mainly driven by increases in the number of people on Essential Skills, Family and Work to Residence visas.

An increasing proportion of temporary workers are in lower-skilled roles, with 43% of essential skills visa approvals in 2019/20 for ANZSCO skill level 4 and 5 roles. Over time the proportion of Essential Skills visas granted for more highly skilled roles has decreased (with a slight fall in absolute numbers of skill level 1 and 2 approvals).

Temporary migration settings have come under scrutiny in recent years regarding the risks of labour and migrant exploitation that may be heightened due to power differentials between temporary migrant workers with jobs tied to specific employers, or who may not be familiar with New Zealand employment law (see for example, Collins & Stringer, 2019; MBIE, 2021).

What might this mean when considering design of legislation?

- The US, UK and Australian regimes focus mainly on defined forms of forced labour, labour trafficking, and child labour. European regimes tend to take a broader perspective of human rights violations.
- New Zealand will need to consider how it defines modern slavery, and where on the exploitation continuum it focuses supply chain transparency requirements. It may be appropriate to consider taking a broader approach to help mitigate broader risks of labour exploitation in supply chains although the costs and benefits will need to be weighed against taking a more narrow perspective, or of taking a different approach to primary trading partners.

Te Tiriti o Waitangi obligations and a Te Ao Māori perspective

How might Te Tiriti o Waitangi | Treaty of Waitangi be reflected?

The Treaty was signed, in part, as a response to immigration into New Zealand. There is explicit reference to 'deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress' (New Zealand Productivity Commission, 2021b).

How might Te Ao Māori perspectives be applied?

Two Te Ao Māori concepts that the Productivity Commission have identified as important for immigration policy, are also particularly relevant for modern slavery legislation and policy (New Zealand Productivity Commission, 2021b):

- **Rangatiratanga** – Rangatiratanga was used in Article 2 of the Māori language version of the Treaty to convey the idea of unqualified exercise of Māori chieftainship over their lands, villages and all their treasures. It is defined as (Cabinet Office, 2019):
 1. (noun) chieftainship, right to exercise authority, chiefly autonomy, chiefly authority, ownership, leadership of a social group, domain of the rangatira, noble birth and attributes of a chief.

2. (noun) kingdom, realm, sovereignty, principality, self-determination, self-management – connotations extending the original meaning of the word resulting from Bible and Treaty of Waitangi translations.

- **Manaakitanga** – Manaakitanga is a powerful way of expressing how Māori communities care about each other's wellbeing, nurture relationships, and engage with one another. Manaakitanga also extends to the whenua that needs care in order to ensure sustainability for future generations. The value of manaakitanga is often expressed through the responsibility to provide hospitality and protection. Manaakitanga derives from two words - 'mana' and 'aki'. Mana is a condition that holds everything in the highest regard. Aki means to uphold or support. Manaakitanga is defined as (Cabinet Office, 2019):

(noun) hospitality, kindness, generosity, support - the process of showing respect, generosity and care for others.

Māori have a long history in international trade

Māori ran small enterprises before Europeans arrived in New Zealand (Love & Love, 2010). There were bartering systems and regular trading patterns amongst whānau and hapū, within iwi, and between iwi. Most trading was initially around regional products, and by 1795, chiefs were sailing to Sydney aboard trading ships looking for bartering opportunities, and some Māori worked on European and American vessels (Ministry for Culture and Heritage, 2019).

What might this mean when considering design of legislation?

- What the rights and interest of iwi/Māori may be with respect to modern slavery policy and legislation.
- What, if any, impacts there may be on Māori employment and the Māori asset base.
- How modern slavery legislation may impact on Māori enterprises, and their capacity and capability to comply.

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APPENDIX 1: SUMMARY OF MAIN REGIMES

United States

California Transparency in Supply Chains Act 2010

California	
Legislative Instrument	Transparency in Supply Chains Act 2010 Senate Bill number 657, which inserts sections into the California Civil Code (s1714.43) and the Revenue and Taxation Code (s19547.5).
Definition of modern slavery	N/A. Refers: "Slavery and human trafficking are crimes under state, federal, and international law" (SEC.2(a))
Purpose	"To ensure large retailers and manufacturers provide consumers with information regarding their efforts to eradicate slavery and human trafficking from their supply chains, to educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, to improve the lives of victims of slavery and human trafficking" (SEC 2(j))
Key provisions	Every retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000) shall disclose, as set forth in subdivision (c), its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale (SEC 3(a)(1))
Transparency in Supply Chains	
Coverage	<ul style="list-style-type: none">Retail Sellers or Manufacturers (as defined by Tax Returns)Doing Business in the State of California (defined by Revenue and Taxation Code s23101)With Annual Worldwide Gross Receipts in Excess of \$100,000,000 (gross receipts defined by Revenue and Taxation Code s25120)
Reporting Requirement	Companies subject to the Transparency in Supply Chains Act must disclose the extent of their efforts in five areas: verification, audits, certification, internal accountability, and training. Specifically, in its supply chains disclosure, a company must disclose <u>to what extent, if any</u> , it: <ul style="list-style-type: none">Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.
Reporting form	<ul style="list-style-type: none">The disclosure must be posted on the retail seller's or manufacturer's Internet Web site with a conspicuous and easily understood link to the required information placed on the business' homepage.In the event the retail seller or manufacturer does not have an Internet Web site, consumers shall be provided the written disclosure within 30 days of receiving a written request for the disclosure from a consumer.Information targeted to consumers.

California	
Reporting Frequency	Not specified
Supporting provisions	Franchise Tax Board to make available to the Attorney General an annual list of retail sellers and manufacturers that meet the coverage requirements, based on Tax Returns at December 31 each year.
Enforcement	Injunctive relief brought by the Attorney General Note that requirement is for disclosure of efforts. Businesses may disclose no efforts.
Guidance	Guidance which sets out recommendations on Compliance and Model Disclosure Practices, including: <ul style="list-style-type: none"> • Complying with the format requirements (placing a direct disclosure link on a business's homepage, making it conspicuous and easy to understand) • Complying with content requirements, and the need to go beyond oblique and vague statements, with disclosures that are tailored to the specific supply chain practices.
Amendments	
State of play	In force as of January 1 2012

Import bans – section 307 of the Tariff Act 1930

United States – Import bans	
Legislative Instrument	Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) The Trade Facilitation and Trade Enforcement Act 2015 repealed the “consumptive demand” clause in 19 U.S.C. § 1307.
Definition of modern slavery	“Forced labor”, as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its non-performance and for which the worker does not offer himself voluntarily. For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor. Language is modelled on ILO Forced Labour Convention 1930 (ref. CRS)
Purpose	Section 307 of the Tariff Act 1930 (19 U.S.C. §1307) prohibits importing any product that was mined, produced, or manufactured wholly or in part by forced labor, including forced or indentured child labor.
Key provisions and coverage	All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.
Supporting provisions	Any individual who has “reason to believe that any class of merchandise that is being, or is likely to be, imported into the United States” is being produced by forced labor may communicate that belief to CBP (Figure 1). As required by 19 C.F.R. §12.42, port directors and other principal customs officers must report such instances to the CBP Commissioner. Persons outside of CBP may choose to report to the Commissioner, to any port director, or online.
Enforcement	Investigations and Withhold Release Orders Upon receipt of such a report, the Commissioner of CBP is required to initiate an investigation “as appears warranted” by the amount and reliability of the submitted information. If the Commissioner of CBP finds the information “reasonably but not conclusively indicates” that imports may be the product of forced labor, then she or he is to issue an order to withhold release of such goods (WRO) pending further instructions. CBP has usually issued WROs that target specific goods from specific producers.

United States – Import bans	
Guidance	<p>CBP encourages stakeholders in the trade community to closely examine their supply chains to ensure goods imported into the United States are not mined, produced or manufactured, wholly or in part, with prohibited forms of labor, i.e., slave, convict, indentured, forced or indentured child labor.</p> <p>Related activities</p> <p>Others congressionally mandated measures include</p> <ul style="list-style-type: none"> • the Department of Labor's Findings on the Worst Forms of Child Labor (prepared in accordance with the Trade and Development Act 2000, P.L. 106-200) • List of Goods Produced by Child Labor or Forced Labor (required by the Trafficking Victims Protection Reauthorization Act 2005, P.L. 109-164). <p>These reports contain country profiles and lists of goods suspected to have been produced by child or forced labor, but have traditionally been used to increase awareness rather than to inform CBP actions.</p>
Amendments	<p>The Trade Facilitation and Trade Enforcement Act 2015 repealed the “consumptive demand” clause in 19 U.S.C. § 1307.</p> <ul style="list-style-type: none"> • Originally allowed admission of products of forced labour if it could be shown that no comparable product was made in the United States, or domestic production did not meet domestic demand. • This exemption was repealed in 2015.
State of play	In force

United Kingdom

United Kingdom	
Legislative Instrument	Modern Slavery Act 2015
Definition of Modern Slavery	<ul style="list-style-type: none"> • Slavery, servitude and forced or compulsory labour <ul style="list-style-type: none"> a a person holds another person in slavery or servitude either knowingly, or ought to know b a person requires another person to perform forced or compulsory labour either knowingly or ought to know. c should be construed in accordance with Article 4 of the Human Rights Convention d regard may be had to any personal circumstances which may make the person more vulnerable, and to any work or services provided, which constitute exploitation. • Human Trafficking <ul style="list-style-type: none"> e if a person arranges or facilitates the travel of another person with a view to exploiting them, knowing they will be exploited, or ought to know they will be exploited, in any part of the world, during or after travel. • Exploitation <ul style="list-style-type: none"> f Slavery, servitude and forced or compulsory labour as set out above g Sexual exploitation h Removal of organs in contravention of the Human Tissue Act i Securing services etc by force, threats or deception j Security services etc from children and vulnerable persons
Purpose	<p>Consolidate all offences within one act</p> <p>An Act to make provision about slavery, servitude and forced or compulsory labour and about human trafficking, including provision for the protection of victims; to make provision for an Independent Anti-slavery Commissioner; and for connected purposes.</p>

United Kingdom	
Key provisions	<ul style="list-style-type: none"> Part 1 creates Offences, penalties, and sentencing (Part 1) Part 2 sets out prevention orders and arrangements Part 3 provides for Maritime Enforcement in United Kingdom waters Part 4 establishes an Independent Anti-Slavery commissioner Part 5 sets out protection of victims including a defence for victims who commit an offence, guidance and regulations for identifying and supporting victims, and a duty to notify the Secretary of State. Part 6 requires Transparency in Supply Chains
Transparency in Supply Chains	
Coverage	<p>A commercial organisation must prepare a slavery and human trafficking statement for each financial year of the organisation.</p> <p>A commercial organisation is an organisation which</p> <ul style="list-style-type: none"> supplies goods or services, and has a total turnover of not less than an amount prescribed by regulations made by the Secretary of State. <p>The current definition in regulations is a turnover of £36 million</p>
Reporting Requirement	<p>A slavery and human trafficking statement that sets out</p> <ul style="list-style-type: none"> the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place <ul style="list-style-type: none"> in any of its supply chains, and in any part of its own business, or a statement that the organisation has taken no such steps. <p>An organisation's slavery and human trafficking statement <u>may</u> include information about—</p> <ul style="list-style-type: none"> the organisation's structure, its business and its supply chains; its policies in relation to slavery and human trafficking; its due diligence processes in relation to slavery and human trafficking in its business and supply chains; the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk; its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; the training about slavery and human trafficking available to its staff. <p>A slavery and human trafficking statement should be approved signed by a director or equivalent, and approved by a board of directors or equivalent.</p>
Reporting form	<p>If the organisation has a website, it must</p> <ul style="list-style-type: none"> publish the slavery and human trafficking statement on that website, and include a link to the slavery and human trafficking statement in a prominent place on that website's homepage. <p>If the organisation does not have a website, it must provide a copy of the slavery and human trafficking statement to anyone who makes a written request for one, and must do so before the end of the period of 30 days beginning with the day on which the request is received.</p>
Reporting Frequency	Annual
Supporting provisions	Part 4: Creates an Independent Anti-Slavery Commissioner with a UK-wide remit to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences. The Commissioner works directly with statutory agencies, who have a duty to co-operate with the Commissioner set out in the Modern Slavery Act.

United Kingdom	
Enforcement	The duties imposed on commercial organisations by this section are enforceable by the Secretary of State bringing civil proceedings in the High Court for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988.
Guidance	<ul style="list-style-type: none"> • Guidance on the national referral mechanism, including how to identify and support victims. Guidance describes the signs that someone may be a victim of modern slavery, the support available to victims, and the process for determining whether someone is a victim., and specific guidance for <ul style="list-style-type: none"> - reporting modern slavery as a first responder - support for victims - recovery needs assessment process guidance - how to claim subsistence rates back for victims • Guidance on the duty to notify for specific public authorities • A range of guidance to support Transparency in Supply Chains, including <ul style="list-style-type: none"> - Statutory guidance for business setting out <ul style="list-style-type: none"> ▪ who is required to publish a statement ▪ how to write a slavery and human trafficking statement ▪ how to approve and publish the statement
Amendments	<p>The UK Government consulted on changes to the Transparency in Supply Chains provisions in 2019, with key decisions including:</p> <ul style="list-style-type: none"> • mandating the six areas that statements must cover (rather than suggesting), and exploring additional areas that should be included. • establishing a Government-run registry for modern slavery statements, which organisations captured by the Act will be required to use; • requiring a single reporting period (1 April-31 March) and deadline (30 September) • exploring greater enforcement and civil penalties, in line with a separately proposed single enforcement body for employment rights. • greater clarity within a modern slavery statement on the entities covered, and requiring statements to state the date of board approval and director signoff. • the extension of reporting to the public sector, using the budget threshold of GBP £36 million, and allowing 'group statements.' <p>The Foreign Secretary has announced an intention to include fines for non-compliance, as part of a response to concerns about forced labour in Xinjiang.</p>
State of play	Undergoing amendment

Australia

Australia – Commonwealth	
Legislative Instrument	<p>Modern Slavery Act 2018 – Establishes supply chain transparency requirements</p> <p>Criminal Code – Defines and creates offences for slavery, slavery-like (including exploitation), and trafficking.</p>
Definition of Modern Slavery	<p>Modern slavery means conduct which would constitute:</p> <p>(a) an offence under Division 270 or 271 of the Criminal Code; or</p> <p>(b) an offence under either of those Divisions if the conduct took place in Australia;</p> <ul style="list-style-type: none"> - Division 270: Criminalises slavery, defined as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. Slavery offences apply whether or not the conduct occurred in Australia, and whether or not the victim or the offender are Australian citizens or residents.

Australia – Commonwealth	
	<ul style="list-style-type: none"> - Division 270 also criminalises slavery-like practices, including servitude, forced labour, and deceptive recruiting for labour or services. These offences can apply to the exploitation of a person's labour or services in any industry, or to exploitation within intimate relationships. - Division 271 of the Criminal Code contains specific offences for trafficking in persons, fulfilling Australia's obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime. Division 271 includes provisions for trafficking people into, out of, and within Australia, and specific provisions for domestic trafficking, organ trafficking and trafficking in children. Division 271 also includes separate offences for debt bondage and harbouring a victim. <p>(c) trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27); or</p> <p>(d) the worst forms of child labour, as defined in Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).</p>
Purpose	An Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes
Key provisions	<ul style="list-style-type: none"> • Part 1 provides definitions and the constitutional basis • Part 2 sets the requirement for modern slavery statements • Part 3 sets out the access requirements for modern slavery statements • Part 4 is misc
Transparency in Supply Chains	
Coverage	<p>Entities based, or operating, in Australia, which have an annual consolidated revenue of more than \$100 million must provide a modern slavery statement.</p> <p>Any entity that is based, or operating within Australia may volunteer to provide a modern slavery statement.</p> <p>All non-corporate Commonwealth entities within the meaning of the Public Governance, Performance and Accountability Act 2013 must provide a modern slavery statement.</p>
Reporting Requirement	<p>(1) A modern slavery statement must, in relation to each reporting entity covered by the statement:</p> <ul style="list-style-type: none"> (a) identify the reporting entity; and (b) describe the structure, operations and supply chains of the reporting entity; and (c) describe the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls; and (d) describe the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes; and (e) describe how the reporting entity assesses the effectiveness of such actions; and (f) describe the process of consultation with: <ul style="list-style-type: none"> (i) any entities that the reporting entity owns or controls; and (ii) in the case of a reporting entity covered by a statement under section 14—the entity giving the statement; and (g) include any other information that the reporting entity, or the entity giving the statement, considers relevant. <p>The statement must include details of approval by the appropriate governing body of the reporting entity.</p>
Reporting form	The Minister must maintain a register of modern slavery statements, to be known as the Modern Slavery Statements Register. The register must be made available for public inspection, without charge, on the internet.
Reporting Frequency	Annual

Australia – Commonwealth	
Supporting provisions	S23A: The Minister must prepare an annual report providing an overview of compliance by entities with the Act during the year, and the identification of best practice modern slavery reporting under the Act during the year. S24: Three yearly review of the Act, including compliance, whether additional measures to improve compliance are desirable, such as civil penalties, whether a further review is required and when it should be undertaken
Enforcement	The Minister may publish on the Register details of non-compliance. S25: The Minister may make rules, but they may not create an offence or penalty, provide powers of arrest, detention, entry, search or seizure, impose a tax. Enforcement for slavery and trafficking themselves are contained in the Criminal Code.
Guidance	Commonwealth Modern Slavery Act – Guidance for reporting entities
Amendments	N/A
State of play	Three-year review is upcoming.

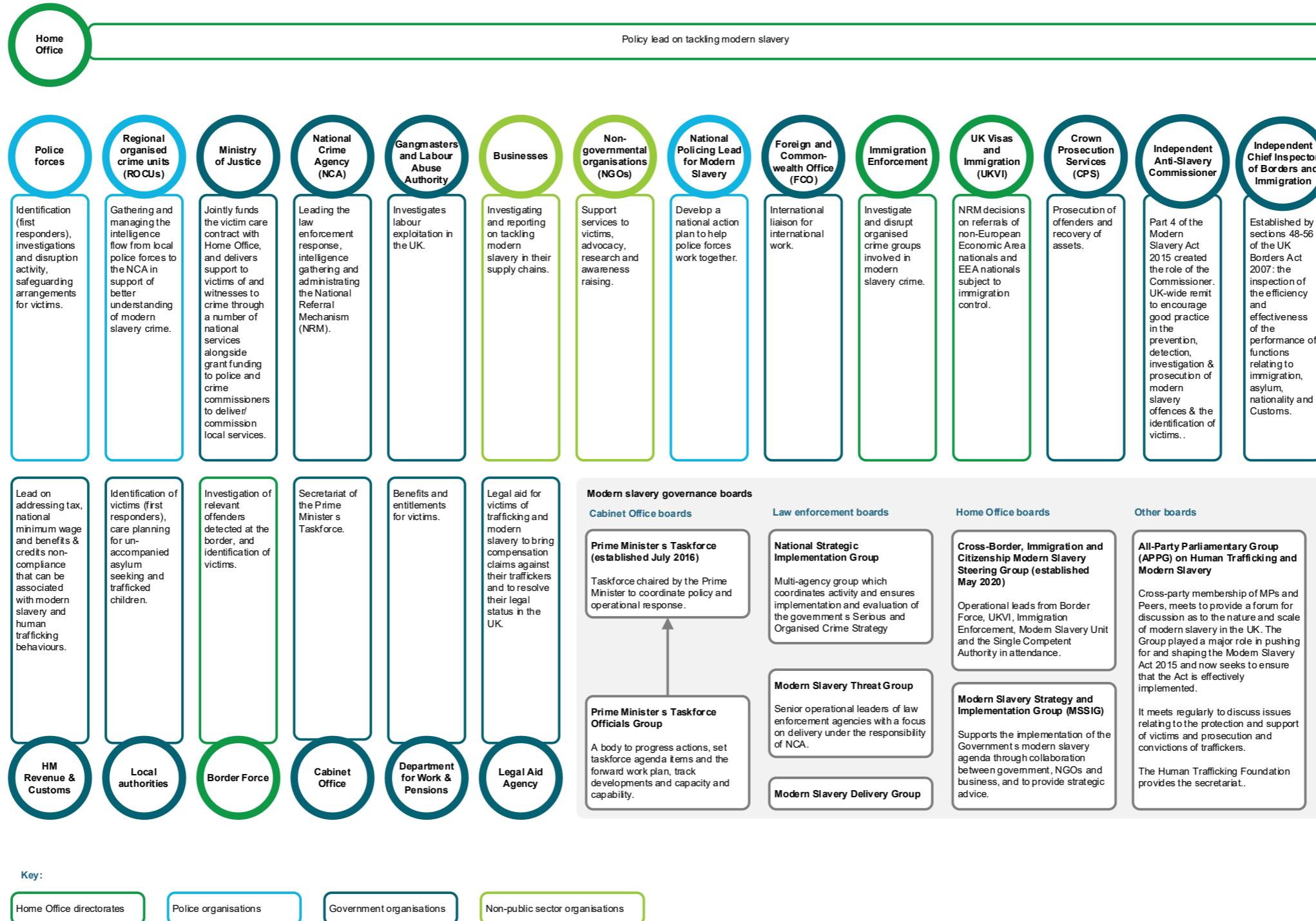
European Union non-financial reporting requirements

European Union	
Legislative Instrument	Directive 2014/95/EU – the Non-Financial Reporting Directive (NFRD)
Purpose	“...the Commission identified the need to raise to a similarly high level across all Member States the transparency of the social and environmental information provided by undertakings in all sectors...”
Key provisions	Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including: <ul style="list-style-type: none">• a brief description of the undertaking's business model;• a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;• the outcome of those policies;• the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;• non-financial key performance indicators relevant to the particular business.
Coverage	EU rules on non-financial reporting currently apply to large public-interest companies with more than 500 employees. This covers approximately 11,700 large companies and groups across the EU, including <ul style="list-style-type: none">• listed companies• banks• insurance companies• other companies designated by national authorities as public-interest entities
Reporting Requirement	Under Directive 2014/95/EU, large companies have to publish information related to <ul style="list-style-type: none">• environmental matters• social matters and treatment of employees

European Union	
	<ul style="list-style-type: none"> • respect for human rights • anti-corruption and bribery • diversity on company boards (in terms of age, gender, educational and professional background)
Reporting form	Consolidated report as part of annual financial statements, management report and corporate governance statement, or separately provided. Information targeted to investors.
Reporting Frequency	Annual
Supporting provisions	
Enforcement	The directive leaves penalties to Member States to decide as they implement. Thus there is a variance (e.g. Germany has a fine for failing to comply, which can range from €50,000 to €10 million).
Guidance	The Commission shall prepare non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectoral, with a view to facilitating relevant, useful and comparable disclosure of non-financial information by undertakings. In doing so, the Commission shall consult relevant stakeholders.
Amendments	
State of play	<p>On 21 April 2021, the Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD), which would amend the existing reporting requirements of the NFRD. The proposal</p> <ul style="list-style-type: none"> • extends the scope to all large companies and all companies listed on regulated markets (except listed micro-enterprises) • requires the audit (assurance) of reported information • introduces more detailed reporting requirements, and a requirement to report according to mandatory EU sustainability reporting standards • requires companies to digitally 'tag' the reported information, so it is machine readable and feeds into the European single access point envisaged in the capital markets union action plan <p>https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_1806</p> <p>Proposal to develop legislation requiring mandatory due diligence activities.</p>

APPENDIX 2: CASE STUDY – MAPPING THE UK REGULATORY REGIME





Key:

- Home Office directorates
- Police organisations
- Government organisations
- Non-public sector organisations

Source: Adapted and updated from *Reducing modern slavery – Home Office* (NAO, 2017)

Notes: The Independent Chief Inspector of Borders and Immigration (Bolt, 2021) conducted a review of the Home Office's work to date on modern slavery. The review was critical of the siloed work of the various departments involved in tackling modern slavery, the training and resources available to front-line staff and the lack of targets or measures of success. The Home Office, in response to review, agreed that the Serious and Organised Crime Group will revisit the roles and responsibilities of Border Force, Immigration Enforcement, UKVI and the NCA in relation to delivering the Government's overall objectives on tackling modern slavery. Border, Immigration and Citizenship System (BICS) representatives will be involved in this review. Findings will be shared with the BICS Board and Home Office Executive Committee, before being shared with partner agencies and communicated as appropriate (Home Office, 2021).



APPENDIX 3: EFFECTIVENESS MEASURES FOR DISCLOSURE LEGISLATION

Table 6. Measuring effectiveness of disclosure legislations

Level	Types of effectiveness	Measures of effectiveness	Possible tools
Multinational enterprises	Awareness	<ul style="list-style-type: none"> Increase in the number of companies reporting on labour in global supply chains. 	<ul style="list-style-type: none"> Database pooling company disclosures under all legislation, as well as company reports to shareholders, investors, and consumers, and other data.
	Compliance	<ul style="list-style-type: none"> Increased compliance with reporting requirements in legislation. Increased compliance of suppliers with company policies relating to labour standards. 	<ul style="list-style-type: none"> Clarification of companies covered under each piece of legislation. Sanctions for non-compliance. Collaboration between companies and suppliers.
	Consistency and quality of reporting	<ul style="list-style-type: none"> Reporting on standardised indicators, enabling year-on-year evaluation of progress. Intra-company consistency. Reporting at regular intervals. 	<ul style="list-style-type: none"> International guidelines on reporting. Sanctions for non-compliance.
	Stringency and transparency in policy	<ul style="list-style-type: none"> Greater stringency and transparency regarding policies and procedures related to labour issues in their supply chains, and their effectiveness. 	<ul style="list-style-type: none"> Database allowing stakeholders to evaluate company progress. Government and multi-stakeholder monitoring.
	Stringency and transparency in verification	<ul style="list-style-type: none"> Greater stringency and transparency regarding verification procedures such as auditing, and their effectiveness. 	<ul style="list-style-type: none"> International guidelines on reporting (specifying the need to report on the audit company and methodology, tier of the supply chain, the types of labour issues detected and reported through audits, and corrective action). Audit reports made available to public. Government and multi-stakeholder verification.

Level	Types of effectiveness	Measures of effectiveness	Possible tools
Supplier	Stringency and transparency in policy	<ul style="list-style-type: none"> Greater stringency and transparency regarding policies and procedures related to labour issues in their sub-contracted supply chains, and their effectiveness. 	<ul style="list-style-type: none"> Government and multi-stakeholder monitoring.
	Stringency and transparency in verification	<ul style="list-style-type: none"> Greater stringency and transparency regarding verification procedures for sub-contracted labour and product supply chains, such as auditing, and their effectiveness. 	<ul style="list-style-type: none"> International guidelines on reporting (specifying the need to report on the audit company and methodology, tier of the supply chain, the types of labour issues detected and reported through audits, and corrective action). Audit reports made available to public.
	Compliance	<ul style="list-style-type: none"> Increased supplier compliance with company policies relating to labour standards. 	
Stakeholder	Awareness	<ul style="list-style-type: none"> Increased stakeholder awareness of disclosure legislation and company response. 	<ul style="list-style-type: none"> Database allowing stakeholders to evaluate company progress.
	Action by consumers	<ul style="list-style-type: none"> Increased consumer action to promote company compliance with disclosure legislation. 	<ul style="list-style-type: none"> Database allowing stakeholders to evaluate company response and progress. Law suits, actions, purchasing patterns and decisions. Survey to measure consumer attitudes towards company responses to disclosure legislation.
	Action by NGOs	<ul style="list-style-type: none"> Increase in NGO attention towards 'laggards' who have not complied with disclosure legislation. 	<ul style="list-style-type: none"> NGO tools to raise awareness about company responses.

Source: Recommendations from Phillips et al. (2018)

Disclaimers and about this report

Background

The Ministry of Business, Innovation and Employment (MBIE) commissioned this review to provide a consolidated evidence base setting out the impact and effectiveness of modern slavery legislation internationally.

It is intended to:

- inform the government's commitment to consider introduction of modern slavery legislation in New Zealand to address exploitation in supply chains, and provide a robust basis for the development of legislative design options to address modern slavery in supply chains.
- support the government's progress on the Trade for All goals, in particular the Trade for All Advisory Board (2019) recommendation to assess whether the Cabinet Framework for Trade and Labour and New Zealand's legislation to address modern slavery are sufficient given international trends.
- support MBIE's engagement with businesses, civil society and the general public on this type of legislation and potential activities to support its effective implementation.

Authors

This report was authored by:

- EeMun Chen, Principal Consultant, MartinJenkins
- Ben Craven, Senior Consultant, MartinJenkins
- Sarah Baddeley, Executive Director, MartinJenkins, provided oversight and quality assurance.

Disclaimer

The views and interpretations in this report are those of the authors and are not the official position of MBIE.

This rapid literature review is a time-limited examination that draws on a limited research base. Legislative regimes targeting modern slavery have developed mainly over the past decade, with most in force only for a few years. For many jurisdictions, legislation is undergoing change or has only recently been introduced. As such, evidence on effectiveness is limited.

Method

The review was informed by literature search via academic databases and other grey literature sources, such as, OECD, ILO, and government websites, as well as material provided by MBIE.

Search terms included: modern slavery, supply chain, worker exploitation, migrant exploitation, human trafficking, forced labour, human rights, international trade, disclosure, legislation.

Where possible, meta-analyses and available literature reviews were relied on. The authors had a bias towards peer reviewed, journal articles and reports, but intelligence from blogs and websites were required.