

**Submission on Petition of World  
Vision New Zealand and Trade Aid:  
Take Action Against Modern Slavery**



**NZ  
Human  
Rights.**

Human Rights Commission  
Te Kāhui Tika Tangata

8 October 2021

**Submission of the  
Human Rights Commission**

## Submission of the Human Rights Commission on the Petition of World Vision New Zealand and Trade Aid

**October 2021**

The New Zealand Human Rights Commission (the Commission) is established and operates under the Crown Entities Act 2004 and the Human Rights Act 1993. The Commission is accredited as an 'A status' national human rights institution under the Paris Principles. Information about the Commission's activities can be found on our website: [www.hrc.co.nz](http://www.hrc.co.nz)



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## Introduction

1. We thank the Petitions Select Committee for inviting a written submission from the Human Rights Commission (“The Commission”) in relation to the petition of Trade Aid and World Vision New Zealand (“WVNZ”) on ‘Take Action against Modern Slavery’.
2. The Commission is an independent Crown Entity with a purpose to promote and protect the human rights of all people in Aotearoa New Zealand. The Commission works toward a free, fair, safe and just Aotearoa, where diversity is valued, and human dignity and rights are respected. As such, we are contributing in support of this petition
3. The Commission supports the petition delivered by WVNZ and Trade Aid calling for the urgent enactment of modern slavery legislation in Aotearoa New Zealand. By enacting legislation addressing modern slavery, the government would be fulfilling part of its international obligations towards progressively realising fundamental and core human rights. The Commission also wishes to bring to the Committee’s attention that the Government accepted a recommendation made to New Zealand in the 2019 Universal Periodic Review, that it consider introducing legislation requiring businesses to report publicly on transparency in supply chains, to eliminate practices of modern slavery in New Zealand and beyond its borders.<sup>1</sup>
4. The petitioner specifically requests that, as a matter of urgency, the House of Representatives enacts Modern Slavery legislation that requires public and private entities to report on the risks of modern slavery in their operations and supply chains, and on the actions that they are taking to address those risks. They note over 37,000 people have signed the online petition in support of this.
5. This submission outlines existing laws related to modern slavery in Aotearoa New Zealand and refers to relevant international human rights law principles and provides case studies and supplementary information on the evident issue of modern slavery in the country and the urgent need to introduce new legislation to tackle modern slavery.
6. Everyone has the right to work, the right to social security, the right to equality and freedom from discrimination. Work plays a central role in people’s quality and enjoyment of life. It provides people with a livelihood to support themselves and their families as well as supports economic growth. Employment is also a source of personal dignity, family stability, community well-being and economic growth.

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<sup>1</sup> Rec 122.76, Report of the Working Group on the Universal Period Review New Zealand (1 April 2019) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/087/77/PDF/G1908777.pdf?OpenElement>

7. The prohibition of slavery and slavery-related practices have achieved the level of customary international law and *jus cogens* status. Jus cogens norms are found to be universally accepted standards that “guard the most fundamental and highly-valued interests of international society”. The practice of slavery has been universally accepted as a crime against humanity and sexual slavery has been outlined as a war crime in the Rome Statute.<sup>2</sup>

### The prevalence of modern slavery in Aotearoa New Zealand

8. Despite various laws stipulating the illegality of slavery in all its forms, modern day slavery continues to exist across the world including Aotearoa New Zealand at alarming proportions. As the committee is aware, modern slavery takes place in many forms, including:<sup>3</sup>

Crimes of human trafficking, debt bondage, serfdom, forced marriage, slavery, forced labour, and child labour, abuses enabled by conditions on temporary visas, etc.

9. Due to Aotearoa New Zealand’s geographical location and size, it may be seen as disconnected and isolated from the rest of the world and therefore immune to forms of slavery and exploitation, however, this is a myth. Some employers continue to break laws. Trafficking for exploitation continues to exist (although recently affected with the COVID-19 pandemic), and gaps in the current laws allow for exploitative practices to occur. It is also equally important to note here that for trafficking to occur, it need not require movement across international borders, trafficking can also occur through domestic movement<sup>4</sup>.
10. Whilst there are still no official statistics in Aotearoa New Zealand identifying full and complete incidences of modern slavery or a platform where collected data is publicly available, the data that is available presents a clear pattern of slavery existing in the country, with the majority of those suffering being migrants with temporary immigration status, including employer-bound work visas and student visas.
11. [In a 2019 report](#) by Francis Collins and Christina Stringer<sup>5</sup>, significant findings include (but are not limited to):

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<sup>2</sup> Article 7, Crimes Against Humanity, the Rome Statute

<sup>3</sup> Christina Stringer, Brent Burmester, and Snejina Michailova *Toward a Modern Slavery Act in New Zealand – Legislative landscape and steps forward* (The University of Auckland Business School and Thomas Harre LawAid International, September 2021) available at <<https://cdn.auckland.ac.nz/assets/business/about/our-research/research-institutes-and-centres/CRMS/CRMS%20Toward%20a%20Modern%20Slavery%20Act%2005.pdf>>

<sup>4</sup> “A domestic work situation becomes trafficking when the employer uses force, fraud, or coercion to maintain control over the worker and to cause the worker to believe that he or she has no other choice but to continue with the work.” Available at [Human Trafficking Hotline.org](https://www.humantraffickinghotline.org/)

<sup>5</sup> Francis Collins and Christina Stringer *Temporary Migrant Worker Exploitation in New Zealand* (July 2019). Available at <<https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>>

- 71.8% of those interviewed reported severe underpayment of wages, including for employees under the minimum age ranging from \$3/ hour to \$12/ hour.
- Employers demanding cash back from employees.
- Threats of termination of work if employees refuse to provide cashback to employers.
- Employees working excessive hours with no remuneration for extra hours worked.
- Salary withheld for lengthy durations.
- Assault of employees by employers.
- Refusal by employer to pay salary into employee's preferred method (i.e. into banks as opposed to by cash).
- No employment contract provided (with many migrants unaware there is a legal requirement of a contract).
- Denial of leave and non-payment of holiday pay.
- Migrant workers sometimes forced to pay employers money for working in Aotearoa New Zealand and the false promises of receiving assistance with immigration related issues.

12. The findings in the report are further evidenced by various cases which have included severe human rights breaches by employers' exploitative practices, such as:

- [New Zealand Police v Balajadia \[2018\] NZDC 2173](#): The victims were made to work very long hours and were severely unpaid or had payments withheld by employer. The first defendant was sentenced to two years and two months' imprisonment and ordered to pay a total of \$7200 in reparation. The second defendant was sentenced to eight months' home detention and ordered to pay \$7200 in reparation.
- [R v Matamata \[2020\] NZHC 1829](#): Employer took part in human trafficking from Samoa into New Zealand. This continued for around two decades. Victims worked long hours, sometimes for full weeks with no days off, were underpaid or had salaries withheld and were threatened by the employer. The victims also suffered from violence and abuse by the employer. The defendant was sentenced to 11 years imprisonment.
- [Sai Bliss Limited and Bhupinder Bhardwaj \[2019\]](#): Employer failed to adequately pay their employee and failed to observe the employees holiday pay entitlements for over almost 18 months. The investigation concluded the victim was owed \$73,000 in arrears. This resulted in 12-months home detention for the employer, Bhardwaj, and a fine of \$250,000 for his company, Sai Bliss Limited.
- [Davideer Singh \[2018\]](#): Employer convicted of exploitation 12 Indian nationals by paying them less than minimum wage

13. [The Immigration and Protection Tribunal](#) has also heard several slavery and migrant exploitation matters, however with a lack of strict and centralised set of laws, the majority of those cases are not in favour of victims and rarely offer support to survivors of modern slavery and exploitation.

14. However current laws are somewhat decentralised and do not offer strict and tough laws to counter modern slavery in Aotearoa New Zealand and therefore, there is an urgency to develop and enact an independent Modern Slavery Act.

### Enabling factors to modern slavery

15. There are various enablers and drivers of modern slavery in the context of Aotearoa New Zealand, these include (but are not limited to):

- I. Immigration process:

- a. Visa bondage: Most work visas have conditions attaching the employee to the employer. The visa would detail the employer's name and location. This means the employee must solely work under those conditions and if employment conditions change, a new visa or a variation to condition must be applied for. This bond acts somewhat like [the 'Kafala' system](#) found in many Middle Eastern countries. If employees are being exploited or subject to enslavement by the employer, it becomes increasingly difficult for the victim to escape and work elsewhere due to the stricter conditions tying them to one employer and location.

- b. Student visa restrictions: Another enabler identified as contributing to exploitation is the restriction for student visa holders to work in the sex industry. The 2020 SEXHUM report<sup>6</sup> highlighted that current laws and policies including the Prostitution Reform Act 2003 and restrictions on student visa which criminalised temporary visa holders to engage in the sex industry were a factor in enabling violence and exploitation for those working illegally in that space. Criminalising also impacted on other social factors such as hesitancy for workers to seek medical attention for fear of deportation.

- II. Power imbalance: One of the critical social aspects that needs to be taken into consideration when looking at what enables modern slavery and exploitation in Aotearoa New Zealand is the significant power imbalance between citizens and migrants on temporary immigration status. The relationship between employer and employee, regardless of immigration status, already holds a distinct separation of power which is further exacerbated when the subordinate does not possess the same residency security as the employer (who is often a New Zealand citizen).

- III. Lack of information: With many migrants finding work in Aotearoa New Zealand, there remains a gap of knowledge when it comes to employment rights and human rights. There is often a false assumption that basic human rights are extended only to residents and

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<sup>6</sup> "Sexual Humanitarianism: Understanding agency and exploitation in the global sex industry Policy Report".

citizens but not those on temporary immigration status. There is also a lack of knowledge when it comes to employment rights, such as the obligation of employer to provide a contract, to remunerate appropriately and to pay minimum wage. Without knowledge, power is significantly reduced which also plays a part in the power imbalance mentioned above.

- IV. Lack of strict/centralised laws: Currently, cases involving slavery and exploitation can be tried under several mechanisms, which include District Court, Immigration and Protection Tribunal, and even the Immigration Advisers Complaints and Disciplinary Tribunal.<sup>7</sup>
- V. Socio-economic drivers: Poverty remains one of the contributors to exploitation in the work force.<sup>8</sup> This includes poverty experienced overseas as well as in the country. For example, it was arguable in the *Matamata* case that the trafficking of the victims from Samoa by the employer was achieved in part due to the promise that workers would have a better standard of living in comparison to the circumstances the victims and survivors were in. This is the same for those exploited in Aotearoa New Zealand.

### **The need for Modern Slavery legislation**

- 16. We endorse Trade Aid and World Vision’s recommendation for Aotearoa New Zealand to enact an inclusive and human rights centered Modern Slavery Legislation to reduce and ultimately eliminate modern slavery and all its extensions in Aotearoa New Zealand as well as through overseas supply chains.
- 17. The development of such an act also requires significant consultation by government with various and diverse communities across the country that hold substantive insight and experiences of modern slavery and exploitation and the gaps within the system that enable such behaviors.
- 18. Through the Commission’s engagement with the private sector, many businesses in Aotearoa New Zealand have agreed that modern slavery practices are happening in their supply chains, especially where they have offshore operations, but sometimes, also in their Aotearoa New Zealand based work.

### **The international framework for business and human rights**

*The United Nations Guiding Principles on Business and Human Rights (“UNGPBHR”)*

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<sup>7</sup> See Decision No: [2019] NZIACDT 59.

<sup>8</sup> Avis, W. *Key Drivers of Modern Slavery* (July 2020). Available at [https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15581/855\\_Modern\\_Slavery.pdf?sequence=1](https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15581/855_Modern_Slavery.pdf?sequence=1).

19. One of the key international human rights documents relating to Business and Human Rights is the United Nations [Guiding Principles on Business and Human Rights](#) (GPBHR). The GPBHR is the underpinning framework and guideline for businesses as well as States to proactively address human rights abuses occurring in businesses as well as a guide on how to prevent such abuses from happening.
20. The UNGPBHR also supports the necessary role of due diligence in businesses which is of particular importance considering corporate human rights due diligence remains non-binding. Due diligence in companies is a necessary pillar to progress our work in eliminating modern slavery. The UNGPBHR should be a key instrument when considering enactment of modern slavery legislation and should significantly incorporate the guiding principles.

#### *Universal Periodic Review (“UPR”)*

21. It is worth noting here that in the 2019 Third UPR Cycle, the following recommendation to Aotearoa New Zealand was made which was accepted by the Government:

122.76 **Consider introducing legislation** requiring businesses to report publicly on transparency in supply chains, **to eliminate practices of modern A/HRC/41/4 16 slavery in New Zealand and beyond its borders** (United Kingdom of Great Britain and Northern Ireland).

(emphasis added).

22. The Commission is encouraged to see the Minister for Workplace Relations and Safety, Minister Michael Woods, prioritise the issue of modern slavery and the need for legislation which has been evident through his establishment of the Modern Slavery Leadership Advisory Group to consider Modern Slavery legislation which the Commission, World Vision New Zealand and Trade Aid are all a part of. We are optimistic that the announcement by Government on the enactment of Modern Slavery legislation will be a positive one.

23. The Commission also wishes to point out two further relevant recommendations during the same UPR Cycle:

122.185 Enhance its support to migrants by continuing to combat and deter the exploitation of migrant workers and promote their full participation in and contribution to society (Thailand);

122.186 Further strengthen efforts to protect migrant workers and foreign students against exploitation (Philippines).

24. The two recommendations provided are necessary points endorsed by the Commission as new legislation will require pathways for support to victims and survivors of modern slavery and current laws which contribute to the exploitation of workers should be reviewed.

## The Domestic Context

### *Aotearoa New Zealand's international obligations*

Aotearoa New Zealand has obligations under several international treaties to protect against slavery and actively combat it. This includes but is not limited to:

- a) Forced Labour Convention (No. 29) 1930<sup>9</sup>
- b) Abolition of Forced Labour Convention (No. 105) 1957<sup>10</sup>
- c) The Slavery Convention of 1926 and the Supplementary Convention of 1956
- d) The Universal Declaration of Human Rights 1948
- e) The International Covenant on Economic, Social and Cultural Rights
- f) Convention on the Elimination of All Forms of Discrimination Against Women
- g) International Convention on the Elimination of All Forms of Racial Discrimination
- h) Convention on the Rights of the Child
- i) Convention on the Rights of Personal with Disabilities
- j) The International Covenant on Civil and Political Rights contains a prohibition against slavery and servitude in article 8 similar to that contained in the Universal Declaration. The importance accorded by the Covenant to the slavery provision is emphasised by its status as a non-derogable right under article 4(2). Article 8 also contains a provision which prohibits the use of forced or compulsory labour subject to certain limited exceptions.
- k) Rome Statute of the International Criminal Court: Article 7(2)(c) of the Statute characterises “enslavement” as a crime against humanity falling within the jurisdiction of the Court.
- l) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), supplementing the United Nations Convention against Transnational Organized Crime, which criminalises trafficking in persons “for the purpose of exploitation” including, “at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

25. The Commission also encourages the Government to consider ratifying International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families.

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<sup>9</sup> Ratified by Aotearoa New Zealand in 1957.

<sup>10</sup> Ratified by Aotearoa New Zealand in 1968.

### *Domestic Law*

26. Aotearoa New Zealand's current governing laws relevant to modern slavery is piecemeal and is predominantly focused on criminological and penal issues, as found under:
- Crimes Act 1961;
  - Employment Relations Act 2000; and
  - Immigration Act 2009.
27. Aotearoa New Zealand's current domestic framework lacks any proactive measures to mitigate against the risk of slavery and exploitation, in that there are no reporting requirements, oversight, or legal accountability from businesses to report on their practices. In other words, there is no legislation on supply chain transparency, let alone due diligence.
28. Human trafficking and worker exploitation takes place in Aotearoa New Zealand and in domestic-based supply chains, and yet, we have only had a handful of prosecutions since the 1961 Crimes Act came into force.
29. The Commission acknowledges that there has been an expansion in understanding and usage of modern slavery terminology and rhetoric, particularly in the last decade, including a greater understanding of employer-employee power dynamics, supply chains, and how legislative regimes enable modern slavery practices. As such, it is timely to introduce new legislation specifically on modern slavery using careful definitions and ensuring that obligations placed on businesses and public bodies require reporting transparency in their supply chains.

### *Respecting and honouring Te Tiriti o Waitangi and human rights*

30. The Commission strongly advocates for all legislation to incorporate principles of human rights and Te Tiriti o Waitangi. This means reformation of many current legislations to include those principles and ensuring those values are upheld in newly introduced legislation. Government must guarantee the protection of the rights of all those within its jurisdiction as per their obligations and duties under both domestic laws and international human rights laws.
31. Such is the vision for a Modern Slavery Act in Aotearoa New Zealand. Human rights recognise the inherent worth and individual significance of each person, regardless of background, where we live, what we look like, what we think or what we believe. They are based on principles of dignity, equality and mutual respect.
32. A holistic human rights approach would bring domestic laws in line with Aotearoa New Zealand's international human rights obligations.

## Recommendations

33. The Commission unequivocally supports the introduction of modern slavery legislation in Aotearoa New Zealand. Any such legislation must be supported by capacity-building and awareness-raising of the importance of upholding human rights standards. Clear legislation coupled with guidance on implementing policies will ensure greater impact. Below is a non-exhaustive list of recommendations from the Commission:

- i. **An inclusive Act:** Whilst the Human Rights Commission supports the petition submitted by Trade Aid and World Vision, we strongly recommend Modern Slavery Legislation to go over and beyond reporting requirements as presented in overseas legislation such as the Australian Modern Slavery Act. A Modern Slavery Act in Aotearoa New Zealand must be inclusive and holistic, which means ensuring human rights are at the center of it.

Human rights must be understood as a coherent whole and while guiding principles and legal obligations are clear, the focus in future legislation should be giving particular attention to the realities of this country. These include ensuring the rights and needs of individuals from groups or populations that may be at heightened risks of exploitation are met, such as migrants, asylum-seekers, refugees, undocumented migrants, and ethnic communities.

The Commission also recommends that the legislation include mandatory due diligence requirements to ensure businesses are mitigating human rights abuses and environmental harm as well as enabling transparency in practices.

- ii. **Victim support:** We also support legislation which provides for redress, pathways to remedies and holistic support/ pastoral care for victims and survivors of modern slavery and exploitation. This should also extend to dependents who have suffered and also carry trauma due to the violence and abuse against the exploited worker.
- iii. **Immigration reviewal into current work visa conditions:** We strongly recommend that visa conditions which enable exploitation to take place be reviewed. Conditions which tie employees with employers make it difficult and challenging for victims of exploitation and slavery to leave their workplace safely without fear of deportation and to find employment elsewhere.
- iv. **Lowering the mandatory thresholds for reporting:** The Commission recommends that all entities, both in the private and public sector, regardless of size, should be required to report on their operational practices. All entities should make an effort to combat human rights abuses consistent with the UNGP's and as such be captured in modern slavery legislation. Human rights are human centered and to protect them, businesses must prioritise that their operations are upholding their obligation to protect the human rights of their employees which is irrespective of the business size.

Currently under the Australian Modern Slavery Act, companies with a turnover of AU\$100m are required to report on their operational practices within their businesses and how they are mitigating against slavery and exploitation. The context in Aotearoa is unique however in a sense that majority of businesses are small business enterprises (SMEs). [According to MBIE:](#)

New Zealand is a nation of small and micro business – including self-employed. Defined as those with fewer than 20 employees, there are approximately 530,000 small businesses in New Zealand representing 97% of all firms. They account for 28 per cent of employment and contribute over a quarter of New Zealand’s gross domestic product (GDP).

The Commission therefore also recommends that any reporting requirements ensuring businesses are taking precautions to tackle slavery and exploitation within their operational practices should extend to small businesses, given they make up a significant portion of the sector in Aotearoa New Zealand. The Commission also encourages the turnover threshold for business to be lowered to reflect the domestic economic context.

- v. **Reporting requirements for overseas supply chains:** The Commission supports Trade Aid and World Vision’s recommendation that the legislation should apply to both domestic and international supply chains in order to ensure a clear consistent process for entities.
- vi. **Public consultation:** As with any legislative reformation that requires the feedback and opinion of the public, we strongly recommend that the Government undergo public consultation for Modern Slavery legislation. We also specifically encourage Government to prioritise engagement with tāngata whenua as part of its requirements of partnership under Te Tiriti o Waitangi.