



A Legislative Response to Modern Slavery and Worker Exploitation

Submission to the Ministry of Business Innovation and Employment (MBIE)

7th June 2022

1. Summary

- 1.1. The Salvation Army *Te Ope Whakaora* strongly supports the objective of the legislative proposal to “reduce modern slavery and worker exploitation in New Zealand and elsewhere, helping to build practices based on fairness and respect”.
- 1.2. We support legislation that covers international and domestic supply chains in this country and includes all businesses, organisations and other entities regardless of size and inclusive of both private sector and public sector bodies.
- 1.3. We support legal requirements for active due diligence by entities that requires them to identify risks and cases of modern slavery and exploitation and takes action to address them. This should also include public reporting on actions taken and their impact.
- 1.4. We support active work to ensure compliance with legislation with meaningful penalties for non-compliance and active enforcement process from government regulators. This is essential to ensure fairness towards businesses who take action to comply and ensure a ‘level playing field’

2. Background

- 2.1. The mission of The Salvation Army *Te Ope Whakaora* is to care for people, transform lives and reform society by God’s power. The Salvation Army is a Christian church and social services organisation that has worked in New Zealand for over one hundred and thirty years. It provides a wide range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.
- 2.2. The Salvation Army in this country is part of a territory that includes the countries of Fiji, Tonga and Samoa and our work plan on modern slavery is being developed together with people in those countries. The combined services of The Salvation Army in support around 140,000 people annually. In the year to June 2021, these services included food assistance, transitional housing, social housing, supporting families with whanau support/social work, help with addiction services, prison reintegration services, and financial mentoring.
- 2.3. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army together with Captain Samantha Millar, Territorial Coordinator for Fight for Freedom campaign. The SPPU works towards the eradication of poverty by advocating for policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army’s Aotearoa New Zealand Fiji Tonga and Samoa Territory.

- 2.4. The Salvation Army works for a fair and just society founded on faith in God’s compassionate love and justice. This includes seeking change to the national level policy and structural issues that cause poverty and exclusion. Our response to the injustice of modern slavery and human trafficking embodies the heart of our mission statement, we care for those who have experienced injustice, we seek to see their lives transformed and we work towards the reformation of society so that modern slavery and human trafficking is no longer experienced. The Salvation Army actively supported the petition in 2021 led by World Vision and Trade Aid that has led to the Government’s decision to consult on modern slavery legislation in this country.
- 2.5. *Fight For Freedom* is the international campaign of The Salvation Army worldwide and this is underpinned by an *International Positional Statement on Modern Slavery and Human Trafficking*ⁱ. This campaign brings together the work of The Salvation Army in 125 countries in the attempt to end modern slavery and human trafficking. The Salvation Army has been active in shaping the development of modern slavery legislation in other countries and experience in countries such as the United Kingdom and Australia is of particular value in developing legislation in this country. We would welcome the opportunity to connect New Zealand officials with Salvation Army experts in those countries to share more of their experience.

3. Objectives (Question 1)

- 3.1. The discussion document sets out the objective of the proposals is to “reduce modern slavery and worker exploitation in New Zealand and elsewhere, helping to build practices based on fairness and respect”. This is an objective that The Salvation Army strongly supports. Driving culture and behaviour changes in entities towards more responsible and sustainable practices should also be seen as a crucial secondary objective.

4. Definition of modern slavery and exploitation

- 4.1. We support a broad definition of modern slavery as set out in the consultation document that covers the legal concepts of forced labour, debt bondage, forced marriage, slavery, and slavery-like practices (p.13 Discussion Document). The inclusion of forced marriage in this definition is important and it is also important that the legislation provide effective means to address the distinctive aspects of forced marriage that do not easily fit within other categories of slavery and exploitation.
- 4.2. We also support the definition of worker exploitation as set out so that it includes non-minor breaches of New Zealand employment standards as defined in the Employment Relations Act 2000. In this country that means making sure the situation of temporary migrant workers including those on employer-sponsored visas is addressed in the coverage of the legislationⁱⁱ.
- 4.3. It is crucial that the legislated definitions are comprehensive enough to provide protection against emerging or not yet identified human rights abuses that would be forms of exploitations and slavery. We recommend considering adding a ‘catch-all’ phrase along the lines of ‘internationally recognised’ types of slavery and exploitation.
- 4.4. Analysis of corporate disclosure legislation shows that to be more effective, disclosure must come with prescriptive guidance that drives companies to focus on measurable improvements in labour conditions and meaningful consequences for not doing soⁱⁱⁱ. Experience with UK legislation shows that what is needed to drive more meaningful action by business to detect,

remediate and prevent modern slavery in supply chains, is clear indicators for success^{iv}. Without this it leaves businesses to decide what is acceptable, often with no engagement with victim-survivors or workers experiencing risk^v.

5. Domestic and International Supply Chains

5.1. The interwoven nature of our domestic and international supply chains requires that any legislation passed must be able to ensure both aspects are covered. We agree that it is not realistic to apply New Zealand employment standards across international supply chains when it comes to worker exploitation. Excluding specific reference to worker exploitation in the international supply chain we consider should not be perceived as accepting labour practices in international supply chains that are in breach of internationally accepted labour standards (such as ILO guidelines).

6. Due diligence

- 6.1. (Questions 2- 3) It is essential that the new legislation require active efforts by all entities to try to ensure they minimise the risks of slavery and exploitation in their supply chains as well as taking action to manage risks and to respond to identified cases. We support a broad coverage of all entities in this country including overseas entities operating here incorporating both disclosure and due diligence.
- 6.2. (Questions 4 -9) The requirement must be framed as organisations/entities showing that they have done “what can be reasonably expected of an enterprise of its size, industry and dominant business model”^{vi}. The proposed approach goes beyond what has been implemented in the UK or Australia with requirements on all entities but limiting due diligence and disclosure to larger entities. With all entities over \$20million revenue required to disclose their actions to prevent, limit and remedy modern slavery, that is estimated to cover around 3,650 entities, or about 0.7% of the estimated 500,000 enterprises in this country.
- 6.3. (Questions 10 - 13) The proposed thresholds for size of entity and associated disclosure requirements seem reasonable. It is not clear how the definition of small, medium and large entities based on annual revenue that is used in the discussion document is arrived at. Other measures of entity size are based on number of people employed, such as StatsNZ defining small business less than 20 employed, or the Financial Reporting Act defining them as total assets less than \$60m or revenue less than \$30m^{vii}. Using revenue to set the threshold is consistent with the approach used in other countries but where the threshold should be set is more difficult. Entities covered by the Financial Reporting Act would likely be better set up to meet reporting requirements and considering aligning the threshold with this Act might achieve more consistency.
- 6.4. It is also important to consider some consistency with international definitions and whether New Zealand businesses might find themselves facing higher (or lower) compliance standard as similar-sized competitors from other countries. Australia requires compulsory reporting from entities with revenue over AUD100million and given the interrelated nature of the Australian and New Zealand economies it may make sense to consider aligning our thresholds for large entities with those of Australia.

7. Active enforcement

- 7.1. (Questions 17 – 22) Any legislation will only be as effective if it is supported by an active enforcement process. There is widespread support in the business sector and wider community for action to end slavery and trafficking, but there will be businesses and organisations that are reluctant to take action or do not wish to prioritise this issue in their work. To ensure fairness for all those engaged in supply chains will require meaningful penalties for non-compliance as well as active enforcement by government agencies.
- 7.2. Keeping victims safe and at the centre of the aims of enforcement is crucial. We believe most exploitation and potential slavery goes unreported and is not identified because of the extreme vulnerability of the people affected (see paragraph 9.1).
- 7.3. In Australia, the experience with legislation with a more limited scope has been positive in so far as there are enough government resources to adequately monitor and assess Modern Slavery statements and do the necessary follow up on non-reporters. The need for a clear sense of who has to report has been identified as important and doing this through a certified list of reporting entities is one way of approaching this^{viii}. Enforcement of legislation will have to strike a balance in the allocation of limited government resources between slavery in global supply chains and our domestic response to victims in in this country. In Australia it is estimated only one in five victims are being identified and we believe the situation is likely to be similar here. With only one successful prosecution for slavery in this country despite evidence of potentially widespread worker exploitation, especially of migrant workers, in horticulture, hospitality and fishing, legislation will have to be accompanied well-resourced and effective enforcement work.
- 7.4. Penalties for non-compliance are important and using financial penalties that are consistent with other similar New Zealand regulation regimes such as Financial Markets Conduct Act 2013 or Health and Safety Act 2015 should guide decisions on this. We also agree that criminal penalties are not appropriate for this kind of legislation that is based on a due diligence and disclosure, and criminal offences are already covered under other legislation such as the Crimes Act.

8. Pacific link and the wider Pacific and Asia region

- 8.1. The focus of this submission is on legislation in this country, but our concerns are informed by the many deep links cultural, family and economically with Pacific countries. Almost 25 million people were estimated in be in some of form of modern slavery and trafficking across the Asia and Pacific region in the 2018 Asia and Pacific Report of the Global Slavery Index^{ix}. Migrant workers, RSE workers and former refugees are identified in the discussion document as most at risk of worker exploitation. It is vital that we in this country seek to ensure that the interwoven relationships of are not tainted by the dark side of exploitation and trafficking.

9. Aotearoa New Zealand

- 9.1. Modern slavery and human trafficking is a reality in this country^x. In the course of The Salvation Army's work promoting the introduction of modern slavery legislation over the past year, awareness-raising work has brought to light people who are experiencing forms of exploitation that would fit under the definition of trafficking and/or modern slavery. We cannot share any details of these situations to protect the identity and safety of those concerned, but this underlines the urgency of the task to legislate to more proactively against these extreme forms

of exploitation. So much of modern slavery is hidden within disenfranchised groups who lack agency, with women and children more likely to be affected. Research conducted on migrant workers in New Zealand has documented what are potentially widespread abusive and exploitative practices affecting migrant workers in this country.^{xi}

- 9.2. Historically New Zealand has acted to attempt to reduce labour exploitation in the fishing industry operating in this country. Legislation was passed in 2014 required fishing boats operating in New Zealand waters to be covered by our labour laws. While this initiative provides some level of protection, the fishing industry continues to be in an international industry blighted by widespread exploitation of vulnerable workers^{xii}. Modern slavery legislation could extend the reach of this protection by requiring New Zealand companies to ensure their operations and supply chains outside of our territorial waters are also free of slavery and trafficking.

10. Kaupapa Māori and Te Tiriti (Questions 14 – 16)

- 10.1. We agree that kaupapa Māori principles such as kaitiakitanga and manaakitanga should inform a Te Tiriti-based approach to developing modern slavery legislation in this country. Further work is needed in developing legislation and regulation to uphold the mana of Māori as the indigenous people of Aotearoa in the legislative process. There is a cultural and spiritual connection between indigenous communities around the world, and internationally indigenous peoples are among most vulnerable to human trafficking and slavery.

11. Safe reporting mechanism

- 11.1. Providing easily accessible, safe and independent service to receive reports of suspected slavery and trafficking is essential to the success of any legislation. Experience in the UK with their National Referral Mechanism where The Salvation Army of one of the first responder agencies shows how crucial it is to have independent and trusted agencies acting on behalf of victims of suspected slavery and trafficking^{xiii}.
- 11.2. The NRM in the UK also plays a role in supporting investigation work that helps to support victims' recovery and the prosecution of perpetrators of modern slavery and worker exploitation.

12. Independent Oversight and Central Register

- 12.1. (Question 23) It is crucial to establishment clearly independent oversight through an independent anti-slavery commissioner. The UK Commissioner role has been seen as successful and crucial to the encouragement of good practice in the prevention of modern slavery as well as protecting the interests of victims in the processes^{xiv} and this is also the case in New South Wales.
- 12.2. (Question 24 – 27) Establishing a public register of compliance statements is another key element to a successful approach to preventing modern slavery. This allows for high transparency about the actions entities are taking and monitoring of compliance with the legislative requirements. It would also serve as a valuable resource for independent research and evaluation of the effectiveness of the legislation and regulatory system as well as helping consumers to make informed decisions about their purchasing.

ⁱ Modern Slavery and Human Trafficking, The Salvation Army International Positional Statement, May 2020 <https://s3.amazonaws.com/cache.salvationarmy.org/ae2261b4-a199-4f60-8289-7310dfeadc57 Modern+Slavery+Human+Trafficking+-+May+2020.pdf>

ⁱⁱ C. Stringer & T. Harré (2021), *Towards a Modern Slavery Act in New Zealand – Legislative landscape and steps forward*, University of Auckland Business School.

ⁱⁱⁱ N. Phillips, G. Lebaron, S. Walker, (2018) *Mapping and measuring the effectiveness of labour-related disclosure requirements for global supply chains*, ILO Working Paper No. 32, June 2018

^{iv} M. Stevenson & R. Cole, (2018) *Modern slavery in supply chains: a secondary data analysis of detection, remediation and disclosure*, *Supply Chain Management: An International Journal*, 23/2 (2018) p.81-99.

^v S. Gold, A. Trautrim, Z. Todd, (2015) *Modern slavery challenges to supply chain management*, *Supply Chain Management: An International Journal*, 20/5 (2015) 485-494

^{vi} C. Stringer & T. Harré, op. cit. , p.25

^{vii} Figures accessed from <https://www.myob.com/nz/blog/what-sized-business-are-you-2/>

^{viii} H. Moore, (Mar 2019), *Good modern slavery policy, more than the sum of the parts*, <https://www.business-humanrights.org/en/blog/good-modern-slavery-policy-more-than-the-sum-of-its-parts/>

^{ix} Walk Free: Global Slavery Index 2018 <https://www.globalslaveryindex.org/>

^x *Are there slaves in New Zealand?* War Cry magazine, October 2017 <https://www.salvationarmy.org.nz/our-community/faith-in-life/soul-food/slavery-in-NZ>

^{xi} *Temporary Migrant Worker Exploitation in New Zealand*, F. Collins and C. Stringer, <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>

^{xii} *Misery at Sea*, (2018) Greenpeace, <https://www.greenpeace.org/aotearoa/publication/misery-at-sea/>

^{xiii} UK National Referral Mechanism <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

^{xiv} *An Opportunity for Impact: Recommendations for regulating modern slavery in supply chains in Aotearoa New Zealand*, May 2022, N. Szablewska, R. Kingi, R. Armstrong, Q. Lake