



NEW ZEALAND

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Common Law Statutory Law	Unwritten	Yes	Single State	Monarchy

1. INTRODUCTION

1.1. New Zealand and Modern Slavery (Human Trafficking)

Because modern slavery and human trafficking are hidden, it is difficult to obtain evidence of its nature and prevalence. In 2009, the New Zealand Government stated that human trafficking was not an active issue in New Zealand.¹ Since 2009, however, the New Zealand Government has identified 51 victims of human trafficking and has undertaken four prosecutions. Further, independent research has found that exploitation of migrant workers is widespread. In 2020, the New Zealand Police reported a 300% increase in referrals about immigration crimes, of which more than one third related to exploited migrants.² In 2018 and 2019, 64% of the New Zealand Labour Inspectorate’s investigations involved migrants.³ These statistics are unlikely to reflect the full spectrum of people who are trafficked or exploited in New Zealand.

New Zealand’s economy and immigration system are susceptible to worker exploitation and human trafficking. Approximately 235,000 temporary migrant workers are in New Zealand at any time, and the use of migrant labour has been increasing: in November 2018, temporary visa holders held more than 7% of all jobs (up from 3% in 2005). Migrant workers filled 23% of all jobs in the accommodation and food service industry, 18% of all jobs in the administration and support service industry, and 17% of all jobs in New Zealand’s primary industries (including agriculture, forestry, and fishing). According to a recent publication of the Ministry of Business, Innovation and Employment, employers had violated the employment rights of one in five migrants working in the primary and retail industries. Of the 177 migrant exploitation investigations completed during 2018 and 2019, 42% were in the construction industry, 22% were in the food and services sector, and 14% were in the retail sector.⁴

1.2. New Zealand’s Policy and Legal Position

New Zealand has a legal framework targeting modern slavery and has secured a number of successful criminal prosecutions in recent years. In accordance with its international obligations, New Zealand has made human trafficking a crime, and victims have the right to bring civil actions for breaches of employment law and tort law. However, New Zealand has no overarching modern slavery or supply chain legislation.

That being said, New Zealand’s legislative and policy landscape is shifting. The findings resulting from the New Zealand Government’s research into migrant exploitation and human trafficking have informed a number of recent modern slavery developments. The 2020–2025 “Combatting Modern Forms of Slavery: Plan of Action Against Forced Labour, People Trafficking and Slavery” (**2020 Plan of Action**) drives national

¹ Department of Labour, “Plan of Action to Prevent People Trafficking” (2009).

² New Zealand Government, “Transnational Organised Crime in New Zealand: Our Strategy 2020 – 2025” (2020) 9.

³ *Id.*

⁴ Ministry of Business, Innovation and Employment, “Temporary Migrant Worker Exploitation Review – Final Proposals” (2020) 23, 27, 28, and 29.

policy, legislation changes, and government activities. In 2020, the Government also announced a package of legislative, policy, and operational changes to reduce the exploitation of temporary migrant workers.

In the 2020 Plan of Action, the New Zealand Government has also confirmed that it will monitor and consider international approaches to address the prevalence of forced labour, human trafficking, and slavery in international supply chains, including considering whether legislation akin to the United Kingdom’s Modern Slavery Act 2015 (UK) and Australia’s Modern Slavery Act 2018 (Cth) would be appropriate. There have been no further indications about the form or timing of any such legislation (including whether the legislation will be introduced at all).

To coincide with the launch of the 2020 Plan of Action, 85 members of the New Zealand business community, including Countdown, Kathmandu, Noel Leeming, Datacom, and The Warehouse, signed a joint letter urging the Government to instigate an inquiry into whether New Zealand needs a Modern Slavery Act. Trade Aid (New Zealand) and World Vision (New Zealand) also will present a petition requesting the Government to enact modern slavery legislation that requires public and private entities to report their actions to address risks of modern slavery in their operations and supply chains.⁵ At this stage, it remains unclear how the Government will respond.

2. OVERVIEW OF NEW ZEALAND’S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

2.1. New Zealand’s International Law Obligations

2.1.1. *Fundamental human rights*

New Zealand was one of the 48 countries that voted in favour of the Universal Declaration of Human Rights in 1948. It has since ratified the International Covenant on Civil and Political Rights (ratified in New Zealand in 1978), the International Covenant on Economic, Social and Cultural Rights (ratified in New Zealand in 1966), and the Convention on the Elimination of all Forms of Discrimination Against Women (ratified in New Zealand in 1979).

2.1.2. *Slavery and trafficking*

New Zealand is a party to several treaties relevant to the prohibition of modern slavery. New Zealand’s principal international law obligations are derived from the Slavery Convention (as amended and supplemented by the Protocol amending the Slavery Convention and the Supplementary Convention on the Abolition of Slavery) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁶ (as supplemented by additional instruments addressing various forms of modern slavery, including the Worst Forms of Child Labour Convention (1999)).⁷

New Zealand has also signed the Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime (2016). This accord commits its parties to identifying and providing safety and protection to migrants, victims of human trafficking, smuggled persons, asylum seekers, and refugees. It also aims for inclusive economic growth and social justice through decent work. Every two years, the International Labour Organisation must report on the progress made by party members on priority areas

⁵ Trade Aid and World Vision, “Sign For Freedom” (Web page, 2021), available at: www.signforfreedom.nz.

⁶ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 2237 UNTS 319 (12 December 2000, entered into force 25 December 2003).

⁷ *Worst Forms of Child Labour Convention*, 38 ILM 1207 (17 June 1999, entered into force 19 November 2000).

for national policy and action. The “Bali Declaration Policy Briefs” highlight those priority areas, which include developing policies for decent work, accelerating action to eliminate child labour and forced labour, protecting fair migration, and promoting decent work in global supply chains.

In 2009, the (now) Ministry of Business, Innovation and Employment (**MBIE**) released its Plan of Action to Prevent Trafficking (**2009 Plan of Action**) to meet New Zealand’s international obligations to prevent and combat people trafficking under the United Nations Convention against Transnational Organized Crime 2000. On 17 March 2021, MBIE released the 2020 Plan of Action. It provides an update to the 2009 Plan of Action, identifies human trafficking cases in New Zealand since 2009, reports the recent inclusion of domestic and international trafficking offences in the Crimes Act,⁸ and discusses New Zealand’s international obligations under the Protocol to the Forced Labour Convention, which New Zealand ratified in December 2019.⁹

Plans of action in New Zealand are not legally binding. They set out high-level frameworks for a “whole of government” approach (at legislative, policy, and governmental organizational levels) over a specified timeframe. They include how the Government and government agencies will work with non-government organisations, unions, businesses, local government, and international and regional bodies to accomplish policy goals. Each government agency often will supplement plans of action with its more detailed implementation plans. In addition, plans of action can lead to the creation of legislation, as well as formal policies for government and business.

The initiatives under the 2020 Plan of Action focus on human trafficking, slavery, and slavery-like practices, including forced labour, debt bondage, and serfdom. Similar to the 2009 Plan of Action, the 2020 Plan of Action focuses on prevention, protection, and enforcement against modern slavery.

The 2020 Plan of Action introduces a “Reference Group” to support the plan’s implementation. This Group consists of senior leaders across key government agencies and representatives from civil society, business, union, and academic groups.

At a high level, the 2020 Plan of Action focuses on several action items:

Goal	Purpose	Government agency requirements
Prevention	Government agencies need to prevent forced labour, human trafficking, and slavery from occurring in New Zealand. The Government needs to build capacity so that New Zealand businesses, government agencies, and consumers do not inadvertently support forced labour, people trafficking, and slavery through the purchase of goods or services across global supply chains.	Front-line police, customs, and Ministry of Foreign Affairs and Trade officers need advice and training on how to recognize and respond to human trafficking, forced labour, and slavery.
		Government agencies need to increase public education of human trafficking to ensure those who identify it know how to report it.
Protection	Actions are needed to identify, assist, and support victims of forced labour, people trafficking,	Government agencies need to facilitate processes for the efficient delivery of support services to victims of human trafficking.

⁸ Combatting Modern Slavery: Draft Plan of Action 2020–25 – September 2020, page 2.

⁹ *Id.*, page 3.

Goal	Purpose	Government agency requirements
	and slavery, and ensure the efficient and effective enforcement of the law to disrupt and prosecute the people involved in forced labour, human trafficking, and slavery in a way that keeps victims at the centre of the response and deters future exploitation.	Government agencies need to undertake and monitor activity to better understand the nature and extent of forced labour, human trafficking, and slavery in New Zealand.
Enforcement	Government needs to build greater coordination and cooperation between key government staff, nationally and internationally, to ensure effective prevention and enforcement against exploitation and the delivery of targeted services that protect victims.	The 2020 Plan of Action requires government agencies to work in partnership with stakeholders outside of government to build awareness and actions to address forced labour, human trafficking, and slavery within New Zealand and the wider Asia-Pacific region, including by sharing and learning from best practice approaches. In conjunction with this coordinated approach, the New Zealand government advised it will review and amend policy and legislative settings to ensure they are sufficient to disrupt, prosecute, and confiscate income derived from exploitation. It will also strengthen cooperation between enforcement agencies to support efficient and effective responses to enquiries relating to forced labour, human trafficking, and slavery.

The 2020 Plan of Action does not explicitly include action items to prevent the trafficking or slavery of women and children. In fact, this absence of references to women and children drew strong criticism of and media attention to the draft 2020 Plan of Action.¹⁰ The 2020 Plan of Action (in its final form) notes that New Zealand’s Transnational Organised Crime Strategy and Action Plan addresses family and sexual violence. This Plan will work in conjunction with the 2020 Plan of Action to reduce the vulnerability of people, and particularly women and children, to trafficking.

2.1.3. Effect under New Zealand’s law

The New Zealand Parliament must enact domestic legislation to give enforceable legal effect to an international instrument. The status of New Zealand’s enactment of legislation giving domestic effect to international treaties relating to modern slavery and human trafficking is set out in Appendix A.

2.2. Human Rights Protections Under New Zealand’s Law

The New Zealand Bill of Rights Act 1990 (**NZ BORA**) protects and promotes human rights and fundamental freedoms. While New Zealand does not have a written constitution, the NZ BORA is considered to be one of New Zealand’s constitutional documents. A government body scrutinizes all proposed legislation to ensure it is not inconsistent with the NZ BORA. When that body determines that proposed legislation is

¹⁰ <https://womensrefuge.org.nz/wp-content/uploads/2021/01/NCIWR-submission-draft-plan-of-action-Oct-2020.pdf>.

inconsistent with the NZ BORA, it must notify New Zealand’s House of Representatives (the legislative arm of the New Zealand government).

The NZ BORA does not explicitly refer to slavery. However, the NZ BORA provides that “Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.”¹¹

Individuals have sued alleging infringements of the NZ BORA. Many of those lawsuits concern police searches (*i.e.*, freedom from unreasonable search and seizure) and detention (*i.e.*, freedom from arbitrary detention). Although nothing precludes the prosecution of an individual under the NZ BORA for modern slavery offences, no cases relating to modern slavery have been brought under the NZ BORA.

The NZ BORA does not provide for the payment of damages to victims of breaches of the NZ BORA. However, New Zealand courts have interpreted such absence as a delegation of authority to the judiciary to develop remedies in cases of contraventions, including monetary compensation and, on rare occasions, exemplary damages (although the courts prefer to avoid extravagant awards).¹² The Human Rights Review Tribunal has typically awarded NZD 25,000 as damages for emotional harm, humiliation, loss of dignity, and injury to feelings,¹³ in addition to “making right” any lost wages or legal costs. However, the court has awarded damages as low as NZD 4,000¹⁴ and as high as NZD 120,000¹⁵ for humiliation, loss of dignity, and injury to feelings.

2.3. Criminalization of Modern Slavery

The Crimes Act 1961 (**Crimes Act**) sets out criminal prohibitions against various forms of modern slavery. The Crimes Act has entrenched in domestic law several international treaties, including the Forced Labour Convention and the Abolition of Forced Labour Convention.

The Crimes Act is based on English and Canadian law and replaced the Crimes Act 1908 (which was also based on English law). The Government has indicated it may need to amend the Crimes Act in relation to trafficking in children to better align its offences with the ratified Convention Against Transnational Organised Crime and the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.¹⁶

New Zealand has also implemented the International Crimes and International Criminal Court Act 2000 (**ICICC Act**). The ICICC Act makes criminal those offences that fall under the jurisdiction of the International Criminal Court and ensures that New Zealand can cooperate with the International Criminal Court by way of surrendering a suspect or assisting in an investigation. One such criminal offence is “enslavement,”¹⁷ defined as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and

¹¹ New Zealand Bill of Rights Act 1990, s 9.

¹² *Francisc Catalin Deliu v. New Zealand Police* [2020] NZHC 2506 and *Simpson v. Attorney-General* [1994] 3 NZLR 667.

¹³ See *DML v. Montgomery* [2014] NZHRRT 6; *Meulenbroek v. Vinon Antenna Systems Ltd.* [2014] NZHRRT 51; *McClelland v. Schindler Lifts NZ Ltd.* [2015] NZHRRT 45; and *Satnam Singh v. Shane Singh and Scorpion Liquor (2006) Ltd.* [2015] NZHRRT 8.

¹⁴ *Godfrey v. Harvey* [2019] NZHRRT 6.

¹⁵ *MacGregor v. Craig* [2016] NZHRRT 6.

¹⁶ Ministry of Business, Innovation and Employment, “Combating Modern Forms of Slavery: Plan of Action against Forced Labour, People Trafficking and Slavery” 20.

¹⁷ International Crimes and International Criminal Court Act 2000, s 7(1)(c).

children.”¹⁸ However, as the purpose of the ICICC Act is to enable prosecution by the International Criminal Court, the ICICC Act does not apply to *isolated* incidents of slavery.¹⁹ New Zealand has not used the ICICC Act to prosecute anyone.

2.4. Supply Chain Reporting

Unlike Australia and the United Kingdom, New Zealand does not have any legislation mandating supply chain reporting by businesses. However, the 2020 Plan of Action confirms that the Government will follow international developments in addressing forced labour, people trafficking, and slavery in international supply chains and consider supply chain legislation similar to that introduced by the United Kingdom and Australia.

The 2020 Plan of Action also confirms that the Government will develop and adopt a National Action Plan to implement the United Nations Guiding Principles on Business and Human Rights. The guiding principles provide a global standard for preventing and addressing the adverse human rights impacts linked to business activities. Although the principles do not expressly refer to forced labour or human trafficking, New Zealand’s national Plan of Action will likely touch on these issues.

In September 2018, at a meeting of the UN General Assembly, New Zealand, Australia, the UK, the USA, and Canada jointly launched the Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains. Under that framework, governments should:

- take steps to prevent and address human trafficking in government procurement practices;
- encourage the private sector to prevent and address human trafficking in its supply chains;
- advance responsible recruitment policies and practices; and
- strive for harmonization.

2.5. Investigation, Prosecution, and Enforcement

2.5.1. Investigation and prosecution of criminal offenses

The New Zealand Police are responsible for investigating crimes, including slavery, slavery-like crimes, and human trafficking offences. The Police also run a National Intelligence Centre that facilitates the national sharing of intelligence on criminal matters, including human trafficking.²⁰ The Police have formed a specialist Police unit: the Online Child Exploitation Across New Zealand (**OCEANZ**) team. It partners with agencies within New Zealand and internationally to coordinate investigations into online pedophile networks and to identify child sexual offenders by targeting websites producing images of abuse and offering them for financial gain.

The Attorney General of New Zealand has overall responsibility for deciding which offences to prosecute and for conducting prosecutions. In practice, the Police Prosecution Service, the prosecution arm of the New Zealand Police, prosecutes all category 1–3 criminal and traffic offences (which include slavery, human

¹⁸ *Id.*, s 7(2)(c).

¹⁹ *Id.*, s 3.

²⁰ Department of Labour, “Plan of Action to Prevent People Trafficking” (2009) 11.

trafficking, and forced labour offences)²¹ for which the defendant does not seek a jury trial. Private legal practitioners appointed by the Attorney General by way of a crown warrant prosecute all civil trials, category 4 criminal and traffic offences, and criminal and traffic jury trials. The warrant is issued to specific private legal practitioners each year, and is usually limited to a particular district of New Zealand and, in some cases, a specific court in that district.

The New Zealand Government has also established the Trafficking in Persons Operations Group, which supports lawful information sharing and collaborative and coordinated investigations and prosecutions to combat trafficking in persons and forced labour. The group has representatives from the Ministry of Business, Innovation and Employment (MBIE), New Zealand Police, Oranga Tamariki Ministry for Children, New Zealand Customs Service, and the Department of Internal Affairs.

New Zealand’s Transnational Organised Crime Strategy and Action Plan

In September 2020, the New Zealand Police published the Government’s “Transnational Organised Crime in New Zealand: Our Strategy 2020–2025” (**TNOC Strategy**). A transnational organised crime (**TNOC**) is a crime that operates across national borders or a crime that is carried out in one country but has strong links to other countries.²² The TNOC Strategy identifies “migrant exploitation,” defined as the forced labour of migrants, illegal working conditions for migrants, immigration fraud, and human trafficking.²³

The TNOC Strategy will be the basis of a plan of action. New Zealand’s TNOC strategy comprises three key objectives: minimise social, economic, and reputational harm from TNOCs; build capability and awareness to prevent and dismantle crimes that underlie TNOCs; and stop the supply of illicit commodities and organised crime at the source.²⁴ To achieve these objectives, the strategy calls for a proactive and prevention-oriented response, coordination across the entire government, actionable intelligence to prevent crimes and enforce the law, and an agile response to priority risks and threats.²⁵

Investigation and prosecution of employment and migration offences

The MBIE handles investigatory and prosecutorial functions for employment and migration offences through Labour Inspectors.²⁶ Labour Inspectors monitor and enforce employers’ compliance with

²¹ A Category 1 offence is: an offence punishable with a maximum penalty of a fine only; an infringement which is commenced by filing a charging document under the Criminal Procedure Act 2011 rather than by issuing an infringement notice; an offence not punishable by a term of imprisonment but punishable by a community-based sentence (for example, an offence under section 11B of the Summary Offences Act 1981, which is punishable by a sentence of community work, a fine of NZD 500, or both); and a Judge-alone trial in a District Court. A Category 2 offence is: an offence punishable by a term of imprisonment of less than two years; Judge-alone trial in a District Court; and The High Court may make an order that the proceeding be transferred to that court, in which case the type of trial will be a Judge-alone trial in the High Court. A Category 3 offence is: an offence that is punishable by imprisonment for life or by imprisonment for two years or more, except those offences listed in Schedule 1 to the Criminal Procedure Act 2011 (category 4 offences); and Judge-alone trial in a District Court. The defendant may elect a jury trial, in which case the type of trial will be a jury trial in the District Court. The High Court may make a Protocol order that the proceeding be transferred to that court, in which case the type of trial will be either a Judge-alone trial or a jury trial in the High Court (depending on whether the defendant had elected a jury trial). In some instances, despite a defendant electing a jury trial, the court may order that a judge conduct the trial without a jury (long and complex cases or juror intimidation).

²² New Zealand Government, “Transnational Organised Crime in New Zealand: Our Strategy 2020 – 2025” (2020) 3.

²³ *Id.*, 11.

²⁴ *Id.*, 4.

²⁵ *Id.*

²⁶ Employment New Zealand “Labour Inspectors” (Web page, 9 October 2020), available at: <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate/labour->

employment standards, discussed in detail in Section 5. Labour Inspectors have broad powers to investigate, enforce, and prosecute breaches of New Zealand’s employment standards. They can enter workplaces, interview employees, and issue fines for non-compliance with employment standards. Labour Inspectors also have the power to take non-compliant employers to the Employment Relations Authority and the Employment Court.

In addition, New Zealand works with international agencies, such as the International Organisation for Migration, the United Nations High Commissioner for Refugees, and the United Nations Office on Drugs and Crime, to investigate and prosecute modern slavery-related offences.

2.5.2. *Mutual assistance/international cooperation*

New Zealand’s Extradition Act 1999 and Mutual Assistance in Criminal Matters Act 1992 (**MACMA**) implement its obligations under bilateral treaties, multilateral treaties, agreements amongst commonwealth countries, and inherited treaties.

As the name suggests, the MACMA authorizes mutual assistance only in criminal matters. That assistance may include administrative assistance (enabling the central authority to arrange assistance, for example, locating or identifying persons, serving documents, or arranging attendance of a person in a foreign country) and court assistance (judicial intervention). The MACMA contains a number of safeguards that the Attorney General must consider before agreeing to a request. In practice, the responsibilities under the MACMA are largely delegated to the Solicitor General and carried out by Crown Law.

3. NEW ZEALAND’S FEDERAL CRIMINAL OFFENSES RELATING TO SLAVERY, SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

3.1. Overview of Criminal Offenses

New Zealand’s criminal offences are embodied in the Crimes Act. The Crimes Act has a number of offences relating to slavery, slavery-like conditions (such as servitude, forced labour, and debt bondage), and human trafficking, including a broad “dealing in slaves” offence.²⁷ Many of New Zealand’s criminal slavery and human trafficking offences only require proof of the physical act itself.²⁸ Slavery and human trafficking offences are punishable by maximum penalties of imprisonment, as well as fines.

[inspectors/#:~:text=Labour%20Inspectors%20make%20sure%20workplaces,the%20following%20employment%2Drelated%20A&text=The%20role%20of%20Labour%20Inspectors,holiday%20pay.](#)

²⁷ The scope of the offences largely mirrors the criminal offences in Australia, although the Crimes Act includes a broad “dealing in slaves” offence, the scope of which does not appear to have an equivalent in Australian criminal laws. There are a few minor differences in the relevant criminal laws in New Zealand and Australia—for example, “slavery” in the Crimes Act is the equivalent of “servitude” in Australia’s criminal laws, and although the definition of “slavery” does not require the presence of coercion, threat, or deception as the cause of the slavery (as it does in Australia’s Criminal Code), it requires the presence of a “law, agreement or custom” which, in most circumstances, would involve coercion, threat, or deception; and the “people trafficking” offences in the Crimes Act do not distinguish between general trafficking and trafficking for sexual services (unlike in Australia’s criminal laws, which have such a distinction).

²⁸ This is unlike in Australia, where the concept of “servitude” (the New Zealand equivalent of which is “slavery”) includes a “reasonable person” test that requires proof of the state of mind of the accused to be satisfied for a successful prosecution.



3.2. Slavery Offences Under the Criminal Code

3.2.1. General

New Zealand’s criminal law contains a range of provisions that criminalise slavery and slavery-like conduct, as well as both domestic and international human trafficking. The Crimes Act prohibits conduct constituting slavery, dealing in slaves, forced labour, forced marriage, human trafficking, and people smuggling. A number of the prohibitions apply regardless of the location of the offending conduct, provided certain tests are met. Each of the slavery, slavery-like, and human trafficking offences set out in the Crimes Act are punishable by a term of imprisonment, with maximum penalties of up to 20 years of imprisonment.

Case Study – *R v. Kasmeeer Lata* [2018] NZHC 707 (Lata Case)

The Lata Case is one of the most recent cases in New Zealand evidencing a family member’s sexual exploitation of a child. Ms. Lata delivered her then-15-year-old daughter to men to provide commercial sexual services. Ms. Lata organised the appointments for sexual services between her daughter and other persons, not only in the administrative and practical sense (*i.e.*, scheduling and driving her daughter to appointments), but also placed adverts in the national newspaper and facilitated uploading her daughter’s photos onto a website advertising the services.

Ms. Lata was found guilty of both sexual exploitation and slavery offences and sentenced to six years and 11 months of imprisonment.

3.2.2. Extraterritorial application

The Crimes Act makes it an offence (punishable by a maximum penalty of 14 years of imprisonment)²⁹ for any person to sexually exploit, within or outside New Zealand, a person under the age of 18 years.³⁰ “Sexual exploitation” is defined in the Crimes Act as acts which involve:

²⁹ *Id.*, s 98AA.

³⁰ The prohibited actions are: (a) sell, buy, transfer, barter, rent, hire, or in any other way enter into a dealing involving a person under the age of 18 years old; (b) detain, confine, imprison, or carry away; (c) remove, receive, transport, import, or bring into

- the taking by any means, or transmission by any means, of still or moving images of the person engaged in explicit sexual activities;
- the taking by any means or transmission by any means, for a material benefit, of still or moving images of the person’s genitalia, anus, or breasts; or
- participation in a performance or display that is undertaken for a material benefit; and involves the exposure of the person’s genitalia, anus, or breasts.

These sexual exploitation offences are all strict liability offences.

3.3. Slavery-Like Offences in New Zealand’s Legal Order

3.3.1. *Servitude*

The Crimes Act makes slavery a criminal offence. “Slave” is defined in the Crimes Act as a person who is subject to debt bondage or serfdom.³¹ “Debt bondage” is defined in the Crimes Act as the status or condition arising from a pledge of a person’s services as security for a debt where:

- the value of those services, as reasonably assessed, is not applied towards the liquidation of the debt; or
- the length and nature of those services are not limited and defined.³²

“Serfdom” is defined in the Crimes Act as the status or condition of a person who, under a law, custom, or agreement, is bound to live and labour on land belonging to a third party and to provide certain services to that third party, whether or not for wages or another reward, and who cannot change that status or condition.³³

The Crimes Act makes it an offence (punishable by a maximum penalty of 14 years of imprisonment)³⁴ for any person to engage in conduct, within or outside New Zealand, that involves:

- (1) dealing with any person as a slave (including selling, purchasing, transferring, bartering, letting, and hiring);
- (2) employing slaves;
- (3) detaining, confining, imprisoning, carrying away, removing, receiving, or transporting slaves;
- (4) inducing a person to sell, let, or give themselves as a slave;
- (5) inducing a person to sell, let, or give a person into debt bondage or serfdom;

any place; (d) induce such person to sell, rent, or give himself or herself; (e) induce a person to sell, rent, or give another person (being a person who is under the age of 18 years and who is dependent on him or her or in his or her charge); (f) build, fit out, sell, buy, transfer, rent, hire, use, provide with personnel, navigate, or serve on board a ship, aircraft, or other vehicle for the purpose of doing an act stated in clauses (a) to (e); or (g) agree or offer to do an act stated in clauses (a) to (f).

³¹ Crimes Act 1961, s 98(2).

³² *Id.*

³³ *Id.*

³⁴ *Id.*, s 98.

(6) building, fitting out, selling, purchasing, transferring, letting, hiring, using, providing with personnel, navigating, or serving on board a ship or aircraft for activities related to slavery;

(7) being a parent or guardian of any child under the age of 18 years, delivering that child to another person with the intent that the child, or the child’s labour, shall be exploited; and

(8) agreeing or offering to do any slavery-related conduct.

These slavery offences are strict liability offences, meaning that the prosecution must only prove that the relevant action occurred and is not required to prove that an offender intended to commit the offence, except that the prosecution must prove, for the seventh offence, the parent or guardian’s intention that the child or the child’s labour be exploited.

Case Study – Matamata Case – *R v. Matamata* [2020] NZHC 1829 (Matamata Case)

The Matamata Case was one of the most recent, and widely publicized, cases in New Zealand. It was also the first case in which a person was convicted of both human trafficking and slavery at the same time.

In this case, Mr. Matamata was convicted of 10 counts of human trafficking and 13 counts of dealing in slaves for inviting Samoan nationals to his property to illegally work for him without payment. Mr. Matamata restricted their movements and communications and was physically abusive. Mr. Matamata represented to the victims that he would pay them a significant income to pay off the costs of their visas and airfare, and then he would pay their incomes with their living costs deducted.

Mr. Matamata was sentenced to 11 years in jail and ordered to pay NZD 183,000 in reparations to his 13 victims to partly compensate them for the estimated NZD 300,000 that Mr. Matamata’s family gained from his criminal acts.

3.3.2. *Forced labor*

The Crimes Act makes it an offence (punishable by a maximum penalty of 14 years of imprisonment)³⁵ for any person to undertake a broad range of actions, within or outside New Zealand, in relation to a person under the age of 18 years for the purpose of forced labour.³⁶ While the Crimes Act does not define forced labour, the International Labour Organisation’s Forced Labour Protocol defines “forced labour” as “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.”

The forced labour offences are also strict liability offences. No case has been brought under the forced labour provisions of the Crimes Act.

³⁵ Crimes Act 1961, s 98AA.

³⁶ The prohibited actions are: (a) sell, buy, transfer, barter, rent, hire, or in any other way enter into a dealing involving a person under the age of 18 years old; (b) detain, confine, imprison, or carry away; (c) remove, receive, transport, import, or bring into any place; (d) engage or permit a person to be engaged in; (e) induce such person to sell, rent, or give himself or herself; (f) induce a person to sell, rent, or give another person (being a person who is under the age of 18 years and who is dependent on him or her or in his or her charge); (g) build, fit out, sell, buy, transfer, rent, hire, use, provide with personnel, navigate, or serve on board a ship, aircraft, or other vehicle for the purpose of doing an act stated in the above; or (h) agree or offer to do an act stated in the above.

3.3.3. *Deceptive recruiting for labor or services*

New Zealand has no applicable laws.

3.3.4. *Early and forced marriage*

The Crimes Act makes it an offence (punishable by a maximum penalty of 14 years of imprisonment) for any person, within or outside New Zealand, to give in marriage or transfer any woman to any person, without the woman’s consent, for gain or reward.³⁷ This offence is a strict liability offence.

The Crimes Act also makes it an offence (punishable by a maximum penalty of five years of imprisonment) for any person to use coercion (for example, intimidation, threats, or violence) against a person with the intent to cause another person to enter into a marriage or a civil union.³⁸ This offence requires proof of both the act of coercion and the offender’s intention to coerce the victim. A prosecution for this offence can be brought in New Zealand under the Crimes Act, even if the marriage or civil union:

- is not governed by New Zealand law;
- is an arrangement or a relationship (however described, and even if not legally binding) in the form of a marriage or civil union;
- is not solemnised or otherwise completed; or
- is, or if solemnised or otherwise completed would be, void or not legally binding (for example, for lack of consent, absence of formality, or non-compliance with a legal requirement).

In addition, the Marriage Act 1955 (**Marriage Act**) prohibits the solemnizing of any marriage where one or both persons intending to be married is under the age of 16 years on the date of the proposed wedding. Where one or both persons intending to be married is aged 16 or 17 years, the Marriage Act requires such a person to apply to, and receive the consent of, the Family Court to the marriage.

3.3.5. *Debt bondage*

Refer to Section 3.3.1.

3.3.6. *Any other relevant offenses*

New Zealand has no other relevant slavery-like offences.

3.3.7. *Extraterritorial application of the offenses*

The slavery-like offences under the Crimes Act have extraterritorial application beyond New Zealand’s borders. The Crimes Act provides that New Zealand can prosecute slavery-like offences, other than the “dealing in slaves” offence, regardless of where the offending conduct took place, if:

- the person charged is a New Zealand citizen or ordinary resident, has been found in New Zealand and has not been extradited, or is a body corporate or corporation solely incorporated in New Zealand;

³⁷ Crimes Act 1961, s 98.

³⁸ *Id.*, s 207A.

- the acts occurred on board a ship either registered to New Zealand or used by the New Zealand Defence Force, a New Zealand aircraft, or an aircraft that is leased to a lessee whose principal place of business is in New Zealand or who is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- the victim of the offence is a New Zealand citizen or is ordinarily resident in New Zealand.

The “dealing in slaves” offence does not fall within the extraterritorial provisions in the Crimes Act. However, the “dealing in slaves” offence applies to “[e]very one . . . within or outside New Zealand.”³⁹ This broad application recognizes that slavery is an offence of universal jurisdiction that any country can prosecute, irrespective of where the conduct constituting the offence, or the offender, was located. However, as a general rule, the primary responsibility for investigating and prosecuting serious international crimes rests with the nation in which that conduct occurred, as that nation is in the best position to see justice done, given its access to evidence, witnesses, and victims. Consequently, the criteria for extraterritorial application do not constrain the prosecution of the “dealing in slaves” offence.

Prosecutions making use of the extraterritorial application of slavery-like offences under the Crimes Act in a New Zealand court require the Attorney General’s consent.⁴⁰

3.4. Human Trafficking/Smuggling-Related Criminal Offenses

The New Zealand Government distinguishes human trafficking from people smuggling. This Chart explains the key distinguishing features between these two offences:

Definition	Purpose	Consent	Victim	Transnationality
Human trafficking	Exploitation, which can occur over an indefinite period of time	The consent of a trafficked person is not relevant to the crime because of the trafficker’s coercive, deceptive, or abusive actions	Crimes against a person	Both across and within borders
People smuggling	Obtain a financial or other benefit from helping a person enter a country illegally	Migrants have generally consented to smuggling, though they may become a victim of other crimes	Crimes against a state	Always cross border

The distinction between human trafficking and human smuggling enables the Government to appropriately tailor specific legislation to prevent and prosecute each activity. The Crimes Act prohibits human trafficking, which is done without the individual’s consent or involves coercion, deception, or abuse. The Immigration Act addresses people smuggling. New Zealand was once considered too isolated to be a serious destination for people smuggling, and consequently, the Immigration Act previously only addressed human trafficking

³⁹ Crimes Act 1961, s 98(1).

⁴⁰ *Id.*, s 7B(1).

in relation to the exploitation that occurs in New Zealand as a result of the crime. In 2013, the Immigration Act was updated to help deter people smugglers and manage a mass arrival if one occurs.⁴¹

3.4.1. *International and domestic trafficking/smuggling of people*

The Crimes Act prohibits trafficking, into or from New Zealand or another country, that involves exploitation, coercion, or deception. The Crimes Act makes it an offence (punishable by a maximum penalty of 20 years of imprisonment) to arrange, organise, or procure the entry, exit, reception, recruitment, transport, transfer, concealment, or harbouring of a person into New Zealand or another country:

- for the purpose of exploiting or facilitating the exploitation of a person; or
- knowing that the entry or exit of the person involves one or more acts of coercion or deception against that person.⁴²

The human trafficking offence applies even if some parts of the process were accomplished without exploitation, coercion, or deception.⁴³

In addition, it is an offence (punishable by a maximum penalty of 20 years of imprisonment) for anyone to arrange for an unauthorized migrant to enter New Zealand if that person:

- acts for a material benefit; and
- either knows or is reckless as to whether the person is an unauthorised migrant.⁴⁴

3.4.2. *International and domestic trafficking in children*

The Crimes Act makes it an offence (punishable by a maximum penalty of 14 years of imprisonment)⁴⁵ for any person to sexually exploit, within or outside New Zealand, a person under the age of 18 years.⁴⁶ The Crimes Act defines “sexual exploitation” as:

- the taking by any means, or transmission by any means, of still or moving images of the person engaged in explicit sexual activities;
- the taking by any means or transmission by any means, for a material benefit, of still or moving images of the person’s genitalia, anus, or breasts; or

⁴¹ New Zealand Foreign Affairs & Trade, “People smuggling and human trafficking,” available at: <https://www.mfat.govt.nz/en/peace-rights-and-security/international-security/people-smuggling-and-human-trafficking/#:~:text=In%202013%2C%20Parliament%20passed%20legislation,up%20to%2020%20years%20imprisonment.>

⁴² Crimes Act 1961, s 98D(1)(a).

⁴³ *Id.*, s 98D(3).

⁴⁴ *Id.*, s 98C.

⁴⁵ *Id.*, s 98AA.

⁴⁶ The prohibited actions are: (a) sell, buy, transfer, barter, rent, hire, or in any other way enter into a dealing involving a person under the age of 18 years old; (b) detain, confine, imprison, or carry away; (c) remove, receive, transport, import, or bring into any place; (d) induce such person to sell, rent, or give himself or herself; (e) induce a person to sell, rent, or give another person (being a person who is under the age of 18 years and who is dependent on him or her or in his or her charge); (f) build, fit out, sell, buy, transfer, rent, hire, use, provide with personnel, navigate, or serve on board a ship, aircraft, or other vehicle for the purpose of doing an act stated in clauses (a) to (e); or (g) agree or offer to do an act stated in clauses (a) to (f).

- participation in a performance or display that is undertaken for a material benefit; and involves the exposure of the person’s genitalia, anus, or breasts.

These sexual exploitation offences are all strict liability offences.

Refer also to the Lata Case, Section 3.2.1.

3.4.3. *Victim harboring*

New Zealand has no applicable laws.

3.4.4. *Extraterritorial application of human trafficking and smuggling offenses*

The human trafficking offences under the Crimes Act have extraterritorial application. As such, New Zealand can prosecute those offences regardless of the location of the offending conduct, if:

- the person charged is a New Zealand citizen or ordinary resident, has been found in New Zealand and has not been extradited, or is a body corporate or corporation solely incorporated in New Zealand;
- the acts occurred on board a ship either registered to New Zealand or used by the New Zealand Defence Force, a New Zealand aircraft, or an aircraft that is leased to a lessee whose principal place of business is New Zealand or who is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- the victim of the offence is a New Zealand citizen or is ordinarily a resident in New Zealand.

3.5. Online Exploitation of Children Offenses

3.5.1. *Overview*

It is an offence to produce an “objectionable publication” under the Films, Videos and Publications Classification Act 1993 (**Classification Act**). It is also an offence under the Classification Act to make a copy of, possess, or import an “objectionable publication” for the purpose of supply, distribution, display, or exhibition to any other person. While the offences prohibiting the online exploitation of children do not require that the children are exploited or trafficked, exploitation or trafficking is often involved in the creation of such publications.

3.5.2. *Sexual conduct with children outside of New Zealand*

The Classification Act defines an “objectionable publication” as a publication that “describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.”⁴⁷ It includes any “publication that promotes or supports, or tends to promote or support, the exploitation of children, or young persons, or both, for sexual purposes.”⁴⁸ The Classification Act further clarifies that a publication “deals with a matter such as sex” if:

- the publication is or contains one or more visual images of one or more children or young persons who are nude or partially nude; and

⁴⁷ Films, Videos, and Publications Classification Act 1993, s 3(1).

⁴⁸ *Id.*, s 3(2)(a).

- those one or more visual images are, alone or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.⁴⁹

A person accused of violating these provisions of the Classification Act cannot plead a defence of “no knowledge” or “no reasonable cause” to believe that the publication in question was “objectionable.”

It is an offence (punishable by a maximum penalty of NZD 10,000 (for an individual) and NZD 30,000 (for a body corporate)) to produce an objectionable publication or make a copy of, possess, or import an objectionable publication for the purpose of supply, distribution, display, or exhibition to any other person. In 2020, 73 people were charged with child exploitation material offences, 54 of whom were convicted.

Sexual offences with children under the Crimes Act

The Crimes Act prohibits sexual conduct with children outside of New Zealand by a New Zealander, whether as an isolated incident or as part of a sex tour.

The Crimes Act makes it an offence for a New Zealander to engage in sexual conduct with children outside New Zealand. This offence applies to any person who is a New Zealand citizen or is ordinarily a resident in New Zealand. The offence penalizes:⁵⁰

- a sexual connection with a child under 12 years (punishable by a maximum penalty of 14 years of imprisonment)⁵¹ or a young person under 16 years (punishable by a maximum penalty of 10 years of imprisonment);⁵²
- an attempt to have a sexual connection with a child under 12 years (punishable by a maximum penalty of 10 years of imprisonment)⁵³ or a young person under 16 years (punishable by a maximum penalty of 10 years of imprisonment);⁵⁴
- an indecent act (which includes indecent assault) on a child under 12 years (punishable by a maximum penalty of 10 years of imprisonment)⁵⁵ or a young person under 16 years (punishable by a maximum penalty of seven years of imprisonment);⁵⁶ or
- in relation to a person under 18 years old (punishable by a maximum penalty of seven years of imprisonment):⁵⁷
 - causing, assisting, facilitating, or encouraging a person under 18 years old to provide commercial sexual services to any person;

⁴⁹ *Id.*, s 3(1A).

⁵⁰ Crimes Act 1961, s 144A.

⁵¹ *Id.*, ss 144A(1)(a) and (2)(a).

⁵² *Id.*, ss 144A(1)(b) and (3)(a).

⁵³ *Id.*, ss 144A(1)(a) and (2)(b).

⁵⁴ *Id.*, ss 144A(1)(b) and (3)(b).

⁵⁵ *Id.*, ss 144A(1)(a) and (2)(c).

⁵⁶ *Id.*, ss 144A(1)(b) and (3)(c).

⁵⁷ *Id.*, ss 144A(1)(c) and (4).

- receiving a payment or other reward that the offender knows, or ought reasonably to know, is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years old;
- entering into a contract or other arrangement under which a person under 18 years of age is to provide commercial sexual services to or for that person or another person; or
- receiving commercial sexual services from a person under 18 years of age,

(each, a **Sexual Offence with a Child**).

In relation to offences with children under 12 years of age, it is not a defence that the child consented, or that the person charged believed the child was over 12 years old.

The Crimes Act also provides that a New Zealander is a party, an accessory after the fact, or both, to a sexual offence with a child or young person (as applicable) if:

- a sexual act with a child or young person is done or to be done, outside New Zealand, by one or more principal parties who are foreigners; and
- the New Zealander does, outside New Zealand, an act with, or in respect of, the act done or to be done by the one or more foreigners; and
- had both acts been done in New Zealand, the New Zealander would be a party under section 66 of the Crimes Act,⁵⁸ an accessory after the fact, or both, to a sexual offence with a child or young person.⁵⁹

3.6. Child Sex Tourism Offenses

Under the Crimes Act, it is an offence (punishable by a maximum penalty of seven years of imprisonment) for any person to:⁶⁰

- make or organise any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person of a Sexual Offence with a Child, whether or not that other person actually commits such an offence;
- transport any other person to a place outside New Zealand with the intention of facilitating the commission by that other person of a Sexual Offence with a Child, whether or not that other person actually commits such an offence; or
- print or publish any information that is intended to promote conduct that would constitute a Sexual Offence with a Child, or to assist any other person to engage in such conduct. The Crimes Act defines “publication of information” to be the publication of information by any means, whether by written, electronic, or other form of communication, including the distribution of information.

⁵⁸ *Id.*, ss 66.

⁵⁹ Crimes Act 1961, s 66 provides that: (1) Every one is a party to and guilty of an offence who: (a) actually commits the offence; (b) does or omits an act for the purpose of aiding any person to commit the offence; (c) abets any person in the commission of the offence; or (d) incites, counsels, or procures any person to commit the offence; and (2) Where two or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

⁶⁰ Crimes Act 1961, s 144C.

The Crimes Act defines the making or organising of travel arrangements as including, but is not limited to, the purchase or reservation of tickets for travel to, or accommodation in, a country outside New Zealand.

Prosecution

The Attorney General must consent to a prosecution of a Sexual Offence with a Child.⁶¹

Case Study – Child Sex Tourism– *R v. W HC Auckland CRI-2010-092-12897, 11 November 2011; Wales v. R [2013] NZCA 233*

The defendant, Mr. Wales, was the organiser of sex tours in Thailand. Mr. Wales was approached by, unbeknownst to him, an undercover police officer who expressed interest in a tour of Thailand organised by Mr. Wales. Following discussions relating to the details of the private tour, Mr. Wales organised for a boy between 15 and 18 years old to be available to the undercover officer for sexual acts. On several occasions, Mr. Wales indicated to the undercover officer that he did not wish to be involved in anything illegal. However, he nevertheless continued to take steps to facilitate underage sex and to advance the travel plans.

Mr. Wales was convicted under the Crimes Act for sexual conduct with children. His facilitation to make available the boy under 18 years old to the undercover police officer for commercial sexual services violated the child sex prohibitions under the Crimes Act, because his conduct was to “cause, assist, facilitate, or encourage a person under 18 years to provide commercial sexual services to any person.”

Mr. Wales was also convicted under the Crimes Act for sexual tourism with children. He violated the provision making it an offence to “make or organise any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person of a Sexual Offence with a Child, whether or not such an offence is actually committed by that other person.”

Mr. Wales was sentenced to three years in prison.

3.7. Anti-Money Laundering and Counter-Terrorism Financing Law

3.7.1. Overview

Money laundering and terrorism financing (ML/TF) are significant problems for New Zealand. The Ministry of Justice estimates that approximately NZD 1.35 billion is laundered from fraud and illegal drugs through legitimate businesses in New Zealand each year.⁶² Slavery and human trafficking generate part of this “dirty” money, as perpetrators seek to exploit financial institutions to launder their profits or move them internationally to low or no-enforcement jurisdictions.

In 1991, New Zealand joined the Financial Action Task Force (FATF),⁶³ which has 39 members. From 2001, the FATF began issuing standards in the fight against terrorist financing. FATF’s 40 recommendations

⁶¹ *Id.*, s 144B.

⁶² Ministry of Justice, “What is Money Laundering and Terrorist Financing?” (Web page, 17 December 2020), available at: <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/aml-cft/what-is-aml-cft/#:~:text=Money%20laundering%20is%20happening%20every,in%20New%20Zealand%20each%20year.&text=Crimes%20like%20fraud%20and%20illegal,families%20and%20the%20wider%20community>.

⁶³ Financial Action Task Force, “New Zealand” (Web page, 30 March 2021), available at: <https://www.fatf-gafi.org/countries/#New%20Zealand>.

(further revised in 2012) now are the global standards for anti-money laundering and countering the financing of terrorism (**AML/CTF**), including how to monitor and evaluate a country's control systems.

The Anti-Money Laundering and Counter-Financing of Terrorism Act 2009 (**AML/CFT Act**) and the Criminal Proceeds (Recovery) Act 2009 seek to bring New Zealand in line with international standards by detecting and deterring ML/TF and then recovering property obtained through these criminal acts.

3.7.2. *Anti-money laundering and counter-terrorism financing legislation*

The AML/CFT Act aims to:⁶⁴

- detect and deter money laundering and the financing of terrorism;
- maintain and enhance New Zealand's international reputation by adopting, where appropriate, recommendations issued by the FATF; and
- contribute to public confidence in the financial system.

The Reserve Bank of New Zealand, the New Zealand Financial Markets Authority, and the New Zealand Department of Internal Affairs are responsible for monitoring and supervising ML/TF risks and enforcing the law.

The AML/CFT Act imposes obligations on certain businesses and professions deemed to be "reporting entities,"⁶⁵ including financial institutions, casinos, real estate agencies, accountants, lawyers, conveyancers, and high-value dealers. "Reporting entities" are required to:

- meet "know your client" requirements before carrying out a transaction for a customer;⁶⁶
- have an AML/CFT program in place to detect and mitigate the risk of money laundering and the financing of terrorism;⁶⁷
- monitor customer accounts with due diligence;⁶⁸
- maintain detailed records of all transactions for at least five years;⁶⁹
- provide New Zealand's Police Financial Intelligence Unit (**FIU**) with information about clients making cash transactions over NZD 10,000 and international monetary wire transfers from NZ exceeding NZD 1,000 (**threshold value**);⁷⁰ and

⁶⁴ Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 3(1).

⁶⁵ *Department of Internal Affairs v. Ping An Finance (Group) New Zealand Company Ltd.* [2017] NZHC 2263, [2018] 2 NZLR 552 at 21.

⁶⁶ Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 14.

⁶⁷ *Id.*, s 56.

⁶⁸ *Id.*, s 31.

⁶⁹ *Id.*, s 49.

⁷⁰ Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011, ss 5A and 5AB.

- report suspicious activity that may involve money laundering or that may be relevant to the enforcement of the Misuse of Drugs Act 1975, the Terrorism Suppression Act 2002, the Proceeds of Crime Act 1991, or the Criminal Proceeds (Recovery) Act 2009.⁷¹

3.7.3. *Proceeds of crime in New Zealand*

The Criminal Proceeds (Recovery) Act 2009 establishes a regime for the forfeiture of property derived from significant criminal activity. “Significant criminal activity” is any activity punishable by five years or more, or any activity from which NZD 30,000 or more has been derived.

New Zealand has created parallel civil forfeiture and conviction-based confiscation regimes. In addition to the Criminal Proceeds (Recovery) Act 2009, aspects of the conviction-based forfeiture regime are included in the Sentencing Act 2002.

Civil forfeiture does not require a conviction before a court may order the confiscation of property. When asked to make a civil forfeiture order, the High Court must determine whether, on the balance of probabilities, specific property is “tainted property,”⁷² which is property acquired as a result of or derived from significant criminal activity.⁷³

3.7.4. *Impact of the regime on modern slavery*

While the AML/CFT Act does not mention modern slavery, reporting entities are likely to report any suspected slavery offences or participation in modern slavery that involves ML/TF.

The proceeds of crime regime also aims to eliminate the chance of profiting from ML/TF linked to modern slavery, while simultaneously helping to deter these activities.

4. NEW ZEALAND’S SUPPLY CHAIN REPORTING LEGISLATION

4.1. Overview

New Zealand has not yet enacted any supply chain reporting legislation, unlike Australia and the United Kingdom, both of which have historically influenced New Zealand’s legislation and common law developments. The Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains, launched by New Zealand, Australia, Canada, the UK, and the USA in September 2018, also recommend that governments encourage the private sector to prevent and address human trafficking in supply chains.

A number of factors suggest New Zealand may introduce such legislation in the near future. The 2020 Plan of Action sets out policy and procedural steps for local and government agencies to take in relation to modern slavery and supply chain reporting. This Plan of Action confirms that the Government will consider whether supply chain reporting legislation would be effective. Further, non-government organisations have focused on the need for supply chain reporting in New Zealand, and some have published their own reports ranking the supply chains of New Zealand businesses.⁷⁴

⁷¹ Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 92.

⁷² Criminal Proceeds (Recovery) Act 2009, s 50.

⁷³ *Id.*, s 6.

⁷⁴ Not-for-profit Tearfund focuses on supply chain reporting issues through its publication of an ethical report on supply chain matters for clothing brands. Since 2017, Tearfund has released an Ethical Fashion Report, ranking the systems of most

4.2. Compliance by New Zealand Companies With Other Modern Slavery Standards

Many New Zealand businesses are subject to the reporting regimes imposed by other jurisdictions, including Australia and the United Kingdom. Both jurisdictions require foreign entities that conduct business within their borders to file reports, provided they meet threshold requirements.⁷⁵ Australia’s supply chain reporting regime is expected to apply to at least 500 New Zealand businesses.⁷⁶

5. FORCED LABOR: OVERVIEW OF NEW ZEALAND’S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

New Zealand’s employment laws are incorporated in 10 different statutes,⁷⁷ many of which allow victims of forced labour and human trafficking to seek civil remedies. An individual who meets the definition of an “employee” is legally entitled to receive the benefits and protections (including access to remedies) set out in New Zealand’s employment laws. However, the definition of “employee” requires work “for hire or reward” pursuant to a “contract of services.”⁷⁸ Victims of forced labour and human trafficking are unlikely to have an employment agreement with those who have trafficked or exploited them. In some cases, the relationship between a victim and the employer may fall within the definition of “employment,” as the arrangements include a written agreement to work for remuneration (notwithstanding that remuneration might be withheld or is manifestly inadequate). In other cases, the relationship between the victim and the employer may not be formal, or may not include reference to reward, such as when the victim is forced to work through threat, coercion, or deception. In this case, the New Zealand courts will determine the real nature of the relationship, considering all relevant matters.

companies that sell clothes in New Zealand in relation to such systems’ ability to mitigate against the risks of forced labour, child labour, and supply chain exploitation. Companies are given an overall grade from A+ to F, as well as specific rankings on socially responsible policies, transparency and traceability in the supply chain, auditing and supplier relationships, worker empowerment and living wage, and environmental management. The report also includes general comments about the social challenges facing the fashion industry prevalent in the year of the report. Other examples are the research grants issued by the New Zealand law society on the merit of supply chain reporting legislation in New Zealand.

⁷⁵ Ministry of Business, Innovation and Employment, “Combatting Modern Forms of Slavery: Plan of Action against Forced Labour, People Trafficking and Slavery” 2.

⁷⁶ NZ Herald, “Rebekah Armstrong: What the Australian Modern Slavery Act will mean for big Kiwi businesses” (Web page, 12 December 2018), available at: <https://www.nzherald.co.nz/business/rebekah-armstrong-what-the-australian-modern-slavery-act-will-mean-for-big-kiwi-businesses/A4C6XNUHGPUAYFAYKOZNJCCJHM/>.

⁷⁷ Employment Relations Act 2000, Holidays Act 2003, Wages Protection Act 1983, Minimum Wage Act 1983, Parental Leave and Employment Protection Act 1987, Equal Pay Act 1972, Health and Safety at Work Act 2015, Human Rights Act 1993, Privacy Act 1993, and Protected Disclosures Act 2000.

⁷⁸ Employment Relations Act 2000, s 6.

Case Study – Whether Illegal Workers Are “Employees” – *Labour Inspector of the Ministry of Business, Innovation and Employment v. New Zealand Fusion International Ltd. (2019) 17 NZELR 208*

In this recent case, the court considered individuals working illegally in New Zealand to be “employees” under New Zealand’s employment law.

Mr. Meng, Ms. Xueli Wang, and Ms. Min Wang, all Chinese nationals, responded to an advertisement to work at a holiday park in New Zealand owned by the defendant company. The individuals signed an employment agreement in China and then moved to New Zealand to work. The individuals carried out the work and, in accordance with instructions, reported to the company daily on the tasks completed. The individuals received no payment for their work, and the company did not repay the individuals’ bond as promised.

The company claimed the individuals were not “employees,” as the company did not keep wage and time records for them, and the company understood the individuals could not work in New Zealand lawfully without valid visas. Notwithstanding this claim, the court found the individuals to be “employees” as they undertook work for the company’s benefit under the close direction and control of the director of the company and reported daily on their work. The advertisement placed in China and the terms of the employment agreements reinforced this finding.

The court ruled that the company breached the minimum entitlement provisions under the Minimum Wage Act and the Holidays Act. It ordered the company to pay penalties, prohibited it from entering into an employment contract as an employer for 18 months, and ordered it to pay compensation to the individuals.

5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

The Employment Relations Act 2000 (**Employment Relations Act**) governs employment relationships in New Zealand. This Act defines an “employment relationship” as the relationship between an “employer”⁷⁹ and an “employee”⁸⁰ employed by the employer.

Where victims of forced labour or trafficking have no formal contractual relationship with those who have trafficked or exploited them, the court or the Employment Relations Authority (**Employment Authority**) (as the case may be) must determine “the real nature of the relationship between them” when deciding whether a person is “employed” by another person under a contract of service. In making this determination, the Employment Relations Act requires the court or the Employment Authority to:⁸¹

- consider all relevant matters, including any matters that indicate the intention of the persons; and
- not treat as a determining matter any statement by the persons that describes the nature of their relationship.

⁷⁹ *Id.*, s 5.

⁸⁰ *Id.*, s 6.

⁸¹ *Id.*, s 6.

5.3. Statutory Rights

5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

New Zealand’s employment law statutes give every person determined to be an “employee” in New Zealand the right to, among other things:⁸²

- receive pay at the rate of at least minimum wage (which, for an individual 16 years or over, is NZD 18.90 per hour), and equal pay between all genders and all ethnicities;
- holiday leave of a minimum of 20 days per year (accrued after completing one year of work);
- a minimum of five days of sick leave (soon to be 10 days of sick leave) each year. Employees are entitled to their five (soon to be 10) days of sick leave after the employee has worked for the same employer for six months;
- paid 10-minute rest breaks and unpaid 30-minute meal breaks, the number of rest and meal breaks dependent on the length of time worked;
- the health and safety of each individual while working, including by providing a work environment without risk to health and safety; and
- compensation for any injuries incurred at work.

Those engaged in human trafficking or forced labour frequently contravene these guaranteed employment rights. Violators are subject to prosecution in New Zealand courts.

5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

New Zealand employment law does not protect against misrepresentations relating to employment or employment-related benefits (for example, representations that induce victims to migrate to New Zealand for the promise of work). That being said, an employer’s representations made in New Zealand, whether verbal or in writing, regarding the terms of employment would form the terms of the employment agreement between the parties. As such, if the terms or conditions of the eventual employment differed from those representations, the victims could bring a claim against the employer under the Employment Relations Act for breach of the employment agreement.

5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

Under the Wages Protection Act 1983 (**Wages Protection Act**), an employer cannot deduct any amount from wages due to an employee, but for limited exceptions, such as where the employer receives the worker’s written consent or the employer receives the employee’s written request to make such deduction,⁸³ provided the deduction is not “unreasonable.”⁸⁴ The employer may also make a deduction to remedy an overpayment to an employee.⁸⁵

⁸² New Zealand Immigration, “Migrant exploitation” (Web page), available at: <https://www.immigration.govt.nz/about-us/policy-and-law/integrity-of-the-immigration-system/migrant-exploitation>.

⁸³ Wages Protection Act 1983, ss 5(1) and 5(1A).

⁸⁴ *Id.*, s 5A.

⁸⁵ Provided such overpayment falls within the Wages Protection Act 1983, s 6(3).

The Wages Protection Act does not define an “unreasonable” deduction. Courts have found deductions to be “unreasonable” where a deduction represents the employer’s own costs of doing business,⁸⁶ where the employer fails to consult the employee and provides less than one day’s notice of the deduction,⁸⁷ and where the employer makes a general deduction on the basis of an invalid cause of action, such as an employee’s alleged negligence at work.⁸⁸

Case Study – Migrant Worker Exploitation – *Balajadia v. R* [2018] NZCA 483

In this case, a New Zealand court determined that the employers had exploited migrant workers in violation of New Zealand’s employment laws.

Mrs. Virgil Balajadia and Mr. Luisito Balajadia (together, **Employers**) devised a scheme to bring workers into New Zealand, exercise control over the workers, and subject the workers to inhumane and substandard working and living conditions. The Employers arranged for Filipino nationals to come to New Zealand to work in a restaurant business. They sent to New Zealand Immigration misleading employment agreements supporting the workers’ immigration. Once the workers arrived, the Employers collected the workers at the airport and immediately took the workers to the restaurant to start work.

The Employers also required the workers to assist in the Employers’ home (in some cases arranging that the workers live at the Employers’ home and abide by house rules). The Employers forced some workers to work six days a week for at least 10 hours a day with no breaks, while only paying the workers for 40 hours a week. Sometimes the Employers withheld the workers’ wages, particularly after workers indicated their desire to leave.

The court found the Employers’ actions to be serious breaches of the Holidays Act and the Minimum Wage Act. In addition to paying the unpaid wages, the Employers were ordered to pay reparation of NZD 14,400 to be divided among the three victims.

5.3.4. Remedies

Where victims of human trafficking or forced labour have not received one or more of their basic entitlements under New Zealand employment laws and meet the definition of “employee” (refer to Section 5.1), they may bring a claim against the employer for either a breach of the specific employment law or a breach of the employment agreement. Section 7 sets out the opportunities for restitution and compensation available to victims who successfully prove breaches by an “employer.”

5.4. Rights to a Safe Workplace and Compensation Associated With Injuries or Illness

The Health and Safety at Work Act 2015 (**HSW Act**) provides for a balanced framework to secure the health and safety of workers and workplaces.⁸⁹ The HSW Act defines “worker” broadly,⁹⁰ including an employee. Refer to Section 5.2. for information about whether a victim of human trafficking or forced labour might

⁸⁶ *A Labour Inspector v. Tiger Construction NZ Ltd. (t/a Tiger Scaffolding)* [2021] NZERA 86 at [21] and [27].

⁸⁷ *Kalera v. Simply Security Limited* [2018] NZERA Auckland 20.

⁸⁸ *Ferreira v. Tooley Holdings Ltd. First* [2017] 2017 Christchurch MB 113.

⁸⁹ Health and Safety at Work Act 2015, s 3(1).

⁹⁰ *Id.*, s 19.

meet the definition of an “employee” and enjoy the protection of this legislation. “Workplace” is also broadly defined as:⁹¹

- a place where work is being carried out, or is customarily carried out, for a business or undertaking; and
- includes any place where a worker goes, or is likely to be, while at work.

A central purpose of the HSW Act is to protect workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work.⁹² This principle filters throughout the HSW Act by requiring employers to give the highest level of protection to an employee’s health, safety, and welfare from workplace hazards and risks.⁹³

Injuries arising from the workplace fall within New Zealand’s government-run accident compensation scheme. Refer to Section 7.2.3. for further details.

5.5. Access to Justice and Practical Issues Associated With Enforcing Social Legislation

Victims of forced labour and human trafficking face significant barriers when seeking access to justice. Many victims are unaware of their legal entitlements and how the law applies to their circumstances.⁹⁴ Lack of awareness of employment rights is a significant barrier to bringing employment-based claims to the Employment Relations Authority or the courts.⁹⁵ The New Zealand Law Society has identified five categories of barriers to access to justice:⁹⁶

- geographical, as forced labour and exploitation often occur in isolated geographic regions, with limited access to both physical and digital social and legal services;⁹⁷
- cultural and social, as institutional racism and a lack of understanding or appreciation of cultural needs and language inhibit recourse to legal and non-legal services;⁹⁸
- cost, as accessing legal advice is perceived as a high-cost exercise;⁹⁹

⁹¹ *Id.*, s 20.

⁹² *Id.*, s 3(1)(a).

⁹³ *Id.*, s 3(2).

⁹⁴ New Zealand Law Society, “Access to Justice: stocktake of initiatives” (Draft research report, 8 May 2020), 7.

⁹⁵ New Zealand Law Society, “Access to Justice: stocktake of initiatives” (Draft research report, stakeholder consultation, 8 May 2020), 3.

⁹⁶ New Zealand Law Society, “Access to Justice: stocktake of initiatives” (Draft research report, stakeholder consultation, 8 May 2020), 10.

⁹⁷ New Zealand Law Society, “Access to Justice: stocktake of initiatives” (Draft research report, stakeholder consultation, 8 May 2020), 10, 36–37.

⁹⁸ New Zealand Law Society, “Access to Justice: stocktake of initiatives” (Draft research report, stakeholder consultation, 8 May 2020), 10, 38–40.

⁹⁹ New Zealand Law Society, “Access to Justice: stocktake of initiatives” (Draft research report, stakeholder consultation, 8 May 2020), 10, 41–45.

- service delivery, as provider shortages in regional and remote areas, resource constraints, and bureaucratic requirements prevent wide-reaching and efficient service delivery, whether through legal aid, community legal services, or government intervention;¹⁰⁰ and
- information barriers, as inconsistencies in the availability and quality of information create confusion among victims¹⁰¹ and discourage victims from seeking help.¹⁰²

In response to the Temporary Migrant Worker Exploitation Review, the Government will introduce a dedicated phone line and online reporting system that connects to a specialised migrant exploitation reporting and triaging function. Refer to Section 5.6.3. for further details.

A lack of capacity in the justice system has also contributed to the low enforcement of employment rights.¹⁰³ In January 2020, the Government signalled an intention to increase the use of the District Court for civil cases by appointing 10 new District Court Judges.¹⁰⁴ Changes to the District Court rules and procedures are expected to make the system accessible and cost-effective.

Fear of deportation is a major hurdle to overcome for victims of forced labour and human trafficking before seeking access to justice. In response to the Temporary Migrant Worker Exploitation Review, the Government will introduce a new visa for exploited migrants to enable them to lawfully stay and work in New Zealand (refer to Section 5.6.3. for further detail).¹⁰⁵ It is hoped that this visa will encourage migrants to leave abusive employment situations early (without adversely affecting the status of their visas) and increase the rate of reporting exploitative employers.¹⁰⁶

5.6. Interaction Between Employment Law and Migration

Migration to New Zealand is often for the purpose of employment. The Government estimates there to be 235,000 temporary migrant workers in New Zealand at any one time.¹⁰⁷ The Government also estimates that 20,000 of these migrant workers are being exploited.¹⁰⁸ Migrants are particularly vulnerable to

¹⁰⁰ New Zealand Law Society, “Access to Justice: stocktake of initiatives” (Draft research report, stakeholder consultation, 8 May 2020), 10, 46–47.

¹⁰¹ New Zealand Law Society, “Access to Justice: stocktake of initiatives” (Draft research report, stakeholder consultation, 8 May 2020), 10, 48–49.

¹⁰² New Zealand Law Society, “Access to Justice: stocktake of initiatives” (Draft research report, stakeholder consultation, 8 May 2020), 10.

¹⁰³ Steph Lambert, “Protecting the vulnerable: an independent review of NZ’s laws on trafficking, slavery and exploitation” (Final Report, Justice Acts NZ, August 2014), 13.

¹⁰⁴ The New Zealand Government, “21 new judges boost diversity, improve access to justice” (Web page, 21 January 2020), available at: <https://www.beehive.govt.nz/release/21-new-judges-boost-diversity-improve-access-justice>.

¹⁰⁵ Steph Lambert, “Protecting the vulnerable: an independent review of NZ’s laws on trafficking, slavery and exploitation” (Final Report, Justice Acts NZ, August 2014), 28.

¹⁰⁶ Ministry of Business, Innovation and Employment, “Temporary Migrant Worker Exploitation Review – Final Proposals” (2020) at 22, available at: <https://www.mbie.govt.nz/dmsdocument/11801-temporary-migrant-worker-exploitation-review-final-proposals-proactiverelase-pdf> and Ministry of Business, Innovation and Employment, “Combatting Modern Forms of Slavery: Plan of Action against Forced Labour, People Trafficking and Slavery” (December 2020), 13.

¹⁰⁷ Ministry of Business, Innovation and Employment, “Temporary Migrant Worker Exploitation Review – Final Proposals” (2020) 2, available at: <https://www.mbie.govt.nz/dmsdocument/11801-temporary-migrant-worker-exploitation-review-final-proposals-proactiverelase-pdf>.

¹⁰⁸ *Id.*, page 6.

exploitation, including breaches of New Zealand’s employment standards and unscrupulous conduct under the Immigration Act.¹⁰⁹

Research arising from the Government’s review of Temporary Migrant Worker Exploitation identified that international students, essential skills visa holders, and working holiday makers are more vulnerable to exploitation than other migrant workers. Within these groups, lower-skilled workers from a low-income source country, or workers who have significant debt, are further vulnerable to exploitation.¹¹⁰ In addition, exploitation is more common in the agriculture, forestry, fishing, and retail industries than in other industries.¹¹¹ Migrant workers also are more vulnerable if they do not speak English well or do not know New Zealand’s employment laws.¹¹²

The Government has had difficulty measuring the extent of migrants’ exploitation.¹¹³ Despite the limited availability of quality data, it is apparent that the number of complaints by New Zealand-based victims of exploitation is growing.¹¹⁴ In 2011–2012, Immigration New Zealand received complaints of exploitation involving 31 individuals and businesses, while in 2018–2019, Immigration New Zealand received 390 complaints alleging exploitation.¹¹⁵ Of the 599 investigations completed by the Labour Inspectorate in 2018–2019, 384 (or 64%) involved one or more migrant workers, and nearly half of these completed investigations involved migrants who were seriously exploited.¹¹⁶

5.6.1. Employment rights affected where employment is unlawful under migration law

The Immigration Act sets out a number of immigration fraud offences, including that it is an offence (punishable by a maximum penalty of seven years of imprisonment and a fine of NZD 100,000)¹¹⁷ to use a false or altered document to support a visa application (for example, a false or altered passport) or provide false or misleading information to support a visa application.¹¹⁸ Persons who use immigration fraud to become:

- New Zealand residents can be deported; or
- New Zealand citizens can lose their citizenship.¹¹⁹

In addition, it is an offence under the Immigration Act for a person to breach visa conditions (including overstaying the visa) as well as an offence for an employer to employ any person who, under the terms of the migrant’s visa, is not entitled to work in New Zealand or for that employer. An individual found guilty of breaching visa conditions is liable for deportation.¹²⁰ An employer found guilty of employing such a

¹⁰⁹ *Id.*, page 4.

¹¹⁰ *Id.*, page 5.

¹¹¹ *Id.*, page 6.

¹¹² *Id.*, page 2.

¹¹³ *Id.*, page 7.

¹¹⁴ *Id.*, page 2.

¹¹⁵ *Id.*, page 7.

¹¹⁶ *Id.*

¹¹⁷ Immigration Act 2009, s 355(1).

¹¹⁸ *Id.*, s 342.

¹¹⁹ *Id.*, s 156.

¹²⁰ *Id.*, s 154.

person is liable for a NZD 10,000 fine, where the employer did not know of the employee’s breach, and a NZD 50,000 fine where the employer knew of the employee’s breach.¹²¹

Passports

Under the Passports Act 1992, it is an offence (punishable by a maximum penalty of 10 years of imprisonment and a fine of NZD 250,000)¹²² for an individual to:

- forge a New Zealand travel document;
- use, deal with, or act upon, or cause another person to use, deal with, or act upon, a forged or false New Zealand travel document, as if it was genuine;
- possess or control a document that the individual knows, or has reason to suspect, is a forged or false New Zealand travel document;
- sell, hire, lend, give, or otherwise dispose of a document that the person knows, or has reason to suspect, is a forged or false New Zealand travel document to another person; or
- make, use, possess, or dispose of any paper or other material that the person knows is specially provided by the proper authorities for any purpose relating to New Zealand travel documents.¹²³

The Immigration Act 2009 (**Immigration Act**) makes it an offence (punishable by a maximum penalty of seven years of imprisonment) for any person to exploit any unlawful employees and temporary workers.¹²⁴ The Immigration Act defines “exploitation” to include where an employer, while allowing an unlawful employee or temporary worker to work in the employer’s service, is:

- responsible for a serious failure to pay to the employee or worker money payable under the Holidays Act;
- in serious default under the Minimum Wage Act in paying the employee or worker; or
- responsible for a serious contravention of the Wages Protection Act in paying the employee or worker.

The Immigration Act stipulates that, in determining whether a failure, default, or contravention is “serious,” the court should consider the amount of money involved, whether the contravention comprises a single instance or a series of instances (and if it comprises a series of instances, how many instances it comprises and the period over which they occurred), whether the contravention was intentional, whether the employer has complied with the statutory record-keeping obligations, and any other relevant matter.

In addition, the Immigration Act also defines “exploitation” to include circumstances where, while allowing an unlawful employee or temporary worker to work in the employer’s service, the employer acts with the intention of preventing or hindering the employee or worker from leaving the employer’s service, leaving New Zealand, ascertaining or seeking legal entitlements, or disclosing to any person the circumstances of the employee’s work for the employer.

¹²¹ *Id.*, s 350.

¹²² Passports Act 1992, s 29A(3).

¹²³ *Id.*, s 29A(1).

¹²⁴ Immigration Act 2009, s 351.

The Immigration Act provides a few examples of actions that would be considered to be exploitation:

- taking or retaining possession or control of a person’s passport, any other travel or identity document, or travel tickets;
- preventing or hindering a person from having access to a telephone, using a telephone, using a telephone privately, leaving premises, or leaving premises unaccompanied; or
- preventing or hindering a Labour Inspector from entering or having access to any place or premises to which the Inspector is entitled to have access.

5.6.2. Rights/remedies available under applicable migration law and regulations

The Immigration Act does not provide remedies for victims of breaches of the Act. However, victims may be entitled to compensation under the Victims’ Rights Act 2002 (refer to Section 7.3.1.) or for any breach of employment laws (refer to Section 7.2.2.).

5.6.3. Government regulation of the migration industry

Various government agencies inform migrants of, and enforce compliance with, New Zealand’s labour standards.

(a) New Zealand Immigration

New Zealand Immigration (a government department) promotes migrants’ employment rights. New Zealand Immigration’s online webpage for migrant workers has:

- general information on migrants’ employment rights;
- a guide in 13 different languages detailing the signs of migrant exploitation; and
- advice on what migrant workers can do if exploited. This includes contact information for MBIE’s confidential employment advice help-line, the police, and other third-party organisations that may be able to assist migrants.

In addition, New Zealand Immigration automatically sends work and student visa holders welcome emails, containing links to useful information about working and living in New Zealand, including workers’ rights and obligations. Targeted emails are also sent to visa holders employed in the dairy, construction, and aged care sectors.¹²⁵

New Zealand requires a license for any person providing immigration advice to individuals wishing to migrate to New Zealand.

(b) MBIE

Labour Inspectors, on behalf of MBIE, investigate workplaces to monitor and enforce compliance with minimum employment standards and laws, including migration laws. Labour Inspectors also investigate complaints and use targeted investigations and audit programs to find breaches. Labour Inspectors have

¹²⁵ International Labour Organisation, “Country Baseline Under the ILO Declaration Annual Review – New Zealand (2016–2017),” available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_630482.pdf.

broad powers to carry out their investigations and bring enforcement actions, including taking a case to the Employment Relations Authority or the Employment Court.

MBIE also works closely with non-government and community groups to raise awareness of migrant exploitation.

(c) Employment New Zealand

In July 2020, Employment New Zealand began an information series titled “Ethical and Sustainable Work Practices.” The resources focus on employment standards and labour and human rights. It aims to help users understand and apply ethical and sustainable work practices within their organisations and supply chains.

Employment New Zealand has developed a basic e-module in six different languages for employees that highlights their employment rights.

Review of temporary migrant worker exploitation

In 2019 and 2020, MBIE conducted a review of the exploitation of temporary migrant workers in New Zealand and consulted on changes for the New Zealand Government to undertake to address such exploitation. Some changes require Parliament to pass legislation, while other proposed changes that do not require Parliamentary approval are expected during 2021.¹²⁶

The first category of proposed changes focuses on preventing the occurrence of workplace (and other) conditions that might enable temporary migrant worker exploitation. The changes will introduce a duty on third parties with significant control or influence over an employer to take reasonable steps to prevent a breach of employment standards, require franchisees to meet higher accreditation standards under the employer-assisted visa gateway system, and disqualify people convicted of migrant exploitation and people trafficking from managing or directing a company.¹²⁷

The second category of changes focuses on protecting temporary migrant workers and enabling them to leave exploitative employment. The Government plans to establish a dedicated migrant exploitation phone line and online reporting mechanism, establish a specialised migrant worker reporting and triaging function to deal with exploitation, and create a new visa to enable temporary migrant workers to leave exploitative employment situations without losing their right to live and work in New Zealand.¹²⁸

The third category of changes focuses on enforcing immigration and employment laws through the introduction of a fit-for-purpose offence and penalty regime to deter employer non-compliance. The Government will establish three new immigration infringement offences targeting non-compliant employer behaviour, allow the Labour Inspectorate to issue an infringement notice where employers fail to provide requested documents within a reasonable time, expand the list of those employers that are prohibited from supporting visa applications for migrant workers to cover those with existing Immigration Act offences,

¹²⁶ Ministry of Business, Innovation and Employment, “Temporary Migrant Worker Exploitation Review – Summary of Changes” (2020), available at: <https://www.mbie.govt.nz/assets/temporary-migrant-worker-exploitation-review-summary-of-changes.pdf> and <https://www.mbie.govt.nz/immigration-and-tourism/immigration/temporary-migrant-worker-exploitation-review/>.

¹²⁷ Ministry of Business, Innovation and Employment, “Temporary Migrant Worker Exploitation Review – Summary of Changes” (2020), available at: <https://www.mbie.govt.nz/assets/temporary-migrant-worker-exploitation-review-summary-of-changes.pdf>.

¹²⁸ *Id.*

ensure employers with serious immigration convictions cannot support applications for migrant workers, and notify impacted migrant workers that their employer has been stood-down.¹²⁹

A new visa category for exploited workers is expected in 2021. The purpose of this additional visa category is to ensure migrants can quickly leave exploitative situations without fear of compromising their immigration status. This change is intended to encourage migrants to report exploitation. This solution responds to findings that exploited migrants are often reluctant to take formal or informal action in cases of exploitation because of concerns that no action would be taken and their visa status would be affected.¹³⁰ Immigration New Zealand has a discretionary process to decide whether an exploited migrant should be granted a further visa. However, this process is not often used due to lack of knowledge about the process, a high threshold for a finding of “exploitation,” and the requirement for an investigation, which prevents migrants from quickly leaving their exploitative situation and creates an uncertain outcome. The proposal for the new category of visa envisions a more favorable system for migrant workers with work visas:

- Exploited migrants would need to have a current work visa (*i.e.*, the new visa would not be available to holders of student or visitor visas, or unlawful migrants).
- The visa would be granted based on a robust upfront credibility assessment undertaken through the new reporting and triaging function to quickly ensure the complaints are genuine.
- Migrants’ complicity in the circumstances leading to their exploitation would not disqualify them from obtaining the new visa.
- The visa would be an open work visa of up to six months.
- Partners and dependent children already in New Zealand and holding a visa on the basis of their relationship to the exploited migrant would receive a visa of the same duration.
- Exploited migrants and their families would be exempt from paying immigration fees and levies and would not normally need to supply new police and medical certificates.

Exploited migrants would not be able to apply for consecutive visas under the new policy, but could apply for other types of visas (*e.g.*, an employer-assisted work visa).

Penalties under applicable migration law and regulations

Breaches of the Immigration Act’s exploitation provisions are not strict liability offences. Rather, the offender must know that the relevant employee is:¹³¹

- a temporary worker, as the employee holds a temporary entry class visa; or
- an unlawful employee, as the employee is not entitled to do the work in question;

or otherwise be reckless to knowing such fact.

¹²⁹ *Id.*

¹³⁰ Ministry of Business, Innovation and Employment, “Temporary Migrant Worker Exploitation Review – Final Proposals” (2020), 7, available at: <https://www.mbie.govt.nz/dmsdocument/11801-temporary-migrant-worker-exploitation-review-final-proposals-proactiverelease-pdf>.

¹³¹ *Id.*, s 357.

Employers that are found to have actual knowledge of such circumstances are liable for imprisonment for a maximum term of seven years and a maximum fine of NZD 100,000.¹³² Employers that are found to be reckless as to their employees' circumstances are liable for imprisonment for a maximum term of five years and a maximum fine of NZD 100,000.¹³³ Employers who breach employment standards are prohibited from recruiting migrant workers for six to 24 months.

5.7. Employment Laws and Child Labor

Child labour is loosely regulated in New Zealand. There is no minimum age at which children are allowed to enter the work force, and no minimum wage for employees under the age of 16.¹³⁴

However, some protections limit the hours and types of work that children can do:¹³⁵

- children under the age of 16 years must not work between the hours of 10 pm on any day and 6 am on the next day;¹³⁶
- certain restrictions on using tractors or other heavy vehicles apply to employees under 15 years old; and
- age restrictions apply to certain kinds of work, and some industries require a minimum age.

5.8. Regulation of Fisheries in New Zealand

5.8.1. Overview

The commercial fishing industry plays a significant role in New Zealand's economy. As of March 2016, fish were New Zealand's fifth largest export, accounting for 3.2% of total exports.¹³⁷

5.8.2. Fisheries legislation

The fisheries sector has come under international scrutiny for the prevalence of worker exploitation. A number of the fishing industry's structural features have contributed to high rates of exploitation, including that workers are often situated in remote locations for long periods of time. New Zealand's exclusive

¹³² *Id.*, s 357(3).

¹³³ *Id.*, s 357(4).

¹³⁴ Employment New Zealand, "Young Employees" (Web page, 23 February 2021) available at: <https://www.employment.govt.nz/starting-employment/rights-and-responsibilities/young-employees/>.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Julian Williams, Fiona Stokes, Hugh Dixon, and Konrad Hurren, "The economic contribution of commercial fishing to the New Zealand economy" (BERL, August 2017), available at: https://www.seafood.co.nz/fileadmin/Media/BERL_report/BERL_Report_August_2017.pdf.

economic zone waters (EEZ) were historically the background to cases of worker exploitation on fishery vessels.¹³⁸ These tales of abuse garnered significant media attention in New Zealand.^{139,140}

In 2014, New Zealand introduced the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014, requiring all foreign-owned fishing vessels operating in New Zealand’s EEZ to be re-flagged as New Zealand vessels, regardless of the country in which they are registered. Such re-flagging is required for the duration of a vessel’s fishing in New Zealand’s EEZ. The effect of this re-flagging means that ships, and their workers, are subject to New Zealand law, including its employment and health and safety laws, for the duration of time the vessel is fishing in the EEZ.

As well as complying with New Zealand employment and health and safety laws, employers of foreign crews on fishing vessels in New Zealand waters must:

- provide each crew member with a New Zealand bank account so that employers can pay crew members’ wages directly to those accounts;
- explain to crew members their rights and obligations under New Zealand immigration and employment laws; and
- provide each crew member with a copy of the *Important information for Foreign Fishing Crews working in New Zealand Waters* guide, in their own language.

In addition, Fisheries New Zealand Observers (**MPI Observers**), who are trained on New Zealand’s employment laws, are placed on board foreign-owned commercial fishing vessels to collect information relating to labour and health and safety practices.

Prosecution under the re-flagging laws

The Labour Inspectorate has prosecuted two owners of fishing vessels fishing in New Zealand’s EEZ.

(a) Identifying breaches

In both cases, MPI Observers identified breaches of New Zealand employment law due to a shortfall in the wages paid to employees on the fishing vessels.

In the Ikeda Suisan Fishing Vessel Case, an MPI Observer was on board the Ikeda Suisan fishing vessel while it operated in New Zealand waters. While on board, the MPI Observer became concerned that the crew

¹³⁸ Maritime Union of New Zealand, “Plea for help from fishing vessel ‘named and shamed’ in global abuse report” (Web page, 13 June 2006), available at: <http://www.munz.org.nz/2006/06/13/plea-for-help-from-fishing-vessel-named-and-shamed-in-global-abuse-report/> and Christine Stringer, Glen Simmons, and Daren Coulston, “Not in New Zealand’s waters, surely? Labour and human rights abuses aboard foreign fishing vehicles” (New Zealand Asian Institute Working Paper Series, 15 September 2011), available at: <http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf>.

¹³⁹ In 2006, crew members of a New Zealand-owned fishing vessel “Sky 75” fled the vessel when it docked in the Port of Timaru in New Zealand. The Burmese crew said they were owed two months’ wages, were working on average 20 hours a day (their employment agreement specified eight hours per day), had received no overtime money, had the cost of safety and working equipment deducted from their salaries, and had insufficient and irregular meals. They further claimed that the ship’s officers threatened them with abuse and ordered them to work by kicking them with their boots and hitting them with sticks.

¹⁴⁰ In August 2010, the South Korean-owned fishing vessel “Oyang 70” (chartered to a New Zealand company) capsized and quickly sank in New Zealand’s EEZ, killing six crew members. Oyang 70 had been fishing in New Zealand waters since 2002 under a time charter arrangement. Indonesian, Filipino, Korean, and Chinese nationals comprised the crew. Information obtained from the surviving crew detailed labour and human rights abuses.

was working significantly longer hours than those recorded by Ikeda Suisan. The MPI Observer provided to the Labour Inspectorate a copy of his diary and video footage. The Labour Inspectorate determined the Ikeda Suisan had under-recorded the hours of work by 16 crew members by a total of 5,200 hours over the 50 fishing days in New Zealand EEZ waters. This underpayment totalled NZD 87,100 (or NZD 82,252 after permissible deductions for food had been taken into account).

In the Watarai Fishing Vessel Case, the Labour Inspectorate requested the timesheets, pay slips, and wage and work records relating to the employees of the Watarai fishing vessel during the period the vessel was in New Zealand’s EEZ. An MPI Observer also provided information collected while on board the Watarai fishing vessel for two months. The timesheets, pay slips, and wage and work records provided by Watarai did not match the information recorded by the MPI Observer. The court found that Watarai had failed to keep compliant wage and time records pursuant to New Zealand’s employment laws, resulting in an underpayment in wages totalling NZD 97,715.87.

(b) Calculating compensation

To determine the amount of any penalty, the courts apply the four-step criteria set out in *Borsboom v. Preet PVT Ltd.* [2016] NZEmpC 143. These require consideration of the nature and number of breaches, accounting for whether the breaches were against multiple individuals separately or whether one breach affected multiple employees; the severity of breaches, including aggravating and mitigating factors (for example, whether the breaches arose due to negligence as opposed to inadvertence, how easy it was for employees to determine their minimum rights had been breached, and the employer’s intention to fish in the New Zealand EEZ in the future); the means and ability of the employer to pay the penalty; and proportionality by reference to penalties imposed in similar cases.

6. GOVERNMENT PROCUREMENT RULES

6.1. Overview

As at October 2019, the New Zealand Government spent approximately NZD 41 billion a year (around 18% of GDP)¹⁴¹ purchasing a wide range of goods and services from suppliers.¹⁴² The Principles of Government Procurement, the Government Procurement Charter, the Government Procurement Rules, and other “good practice” guidance govern procurement; some of these touch indirectly on forced labour and human trafficking. While all government agencies are encouraged to follow the government procurement guidelines, a government department, the New Zealand Police, the New Zealand Defence Force, or a Crown entity (subject to a few exceptions) must comply with the Government Procurement Rules whenever a particular procurement is worth more than, or is near to, NZD 100,000 (or more than, or is near to, NZD 9 million in relation to new construction works). The Government also expects certain government agencies to comply with the Government Procurement Rules.

The Government acknowledges that government procurement can make a vital contribution to the wellbeing of New Zealanders; promoting inclusivity, transparency, and sustainability in the procurement process has effects that go beyond the immediate purchase of goods, services, and works for government. Although not explicitly addressed in its procurement policies, the Government could use its procurement

¹⁴¹ Simpson Grierson, “New Government Procurement Rules Announced (4th edition)” (Web page, 19 June 2019), available at: <https://www.simpsongrierson.com/articles/2019/new-government-procurement-rules-announced-4th-edition>.

¹⁴² New Zealand Government, “Government Procurement Rules – Rules for sustainable and inclusive procurement” (published June 2019, in force 1 October 2019), 13.

rules to shift company practices by favouring (and rewarding) those companies that take steps to prevent and address forced labour and human trafficking in their supply chains.

Five principles of government procurement

At a high level, the principles are: plan and manage for great results, be fair to all suppliers, get the right supplier, get the best deal for everyone, and play by the rules.

Within the “get the right supplier” principle, the Government’s guideline requires that suppliers comply with the Government’s Supplier Code of Conduct. This code of conduct requires, among other matters, that the supplier comply with employment law and human rights obligations (refer to Section 6.3.).

Government Procurement Charter

Charters are not legally binding—rather, charters set out the Government’s expectations in relation to a particular subject matter. Government agencies are expected to identify their key priorities within the charter and meet as many of the charter expectations as practical. There is not, at this stage, a formal review process to ensure that agencies give due consideration to the expectations set out in the Government Procurement Charter.

The Government Procurement Charter directs government agencies to:

- seek opportunities to include New Zealand businesses;
- undertake initiatives to contribute to a low emissions economy and promote greater environmental responsibility;
- look for new and innovative solutions;
- engage with businesses with good employment practices;
- promote inclusive economic development within New Zealand;
- manage risk appropriately; and
- encourage collaboration for collective impact.

The expectation to engage with businesses having good employment practices encompasses obligations to prevent forced labour and human trafficking. The Government further explains that agencies should ensure that the businesses with which they contract operate with integrity, transparency, and accountability and respect international standards relating to human and labour rights. For businesses operating within New Zealand, government agencies should ensure that businesses comply with all New Zealand employment standards and health and safety requirements. It is unclear the weight that government agencies give to this expectation and the extent to which they evaluate potential suppliers for their compliance with international human and labour rights and, where relevant, New Zealand employment standards and health and safety requirements. The movement in New Zealand towards comprehensive modern slavery legislation may lead to further requirements and expectations for government procurement.

6.2. Government Procurement Rules and Action Plan

The fourth edition of the Government Procurement Rules (**Rules**) was released on 1 October 2019. The Rules aim to support good market engagement, leading to better outcomes for agencies, suppliers, and

taxpayers. The Rules focus mainly on the process of planning the procurement, researching the market, approaching the market, evaluating responses, and negotiating and awarding the contract.

The Rules align with the Government’s expectations to leverage procurement to achieve broader outcomes. “Broader outcomes” are the secondary benefits generated by the way a good, service, or works is produced or delivered. They can be social, environmental, cultural, or economic benefits that will deliver long-term public value. The focus on broader outcomes requires government agencies to consider not only the whole-of-life cost of the procurement, but also the costs and benefits to society, the environment, and the economy, including the societal benefits of preventing forced labour and human trafficking. The priority outcomes of the Rules are to:

- increase New Zealand businesses’ access to government procurement;
- increase the size and skill level of the domestic construction sector workforce;
- improve conditions for workers in government contracts; and
- support the transition to a zero net emissions economy and assist the Government in meeting its goal of significant reduction in waste.

Of these priorities, the priority to improve “conditions of workers in government contracts” directly touches on forced labour and human trafficking by:

- encouraging government agencies to engage with businesses having good employment practices, such as integrity, transparency, accountability, and respect for international labour rights standards; and
- requiring agencies to consider and incorporate broader outcomes when purchasing goods, services, or works.

Adequate reporting is crucial for driving change and ensuring accountability, so the Rules require agencies¹⁴³ to report to the Government on procurement activity, including the achievement of broader outcomes.¹⁴⁴ In addition, the Rules require each agency to submit a Procurement Capability Index to MBIE each year, setting out that agency’s self-assessment of the areas requiring improvement in their procurement capability.

6.3. Other “Good Practice” Guidance

Related to the Government Procurement Principles, Procurement Charter, and the Rules are a number of “good practice” guides for the public sector. One guide focuses on identifying vulnerabilities in the supply chain and recognising when those vulnerabilities could be introduced and exploited.¹⁴⁵

¹⁴³ Agencies expected to comply include the School Boards of Trustees, the Reserve Bank of New Zealand, the Agricultural and Marketing Research and Development Trust, the Asia New Zealand Foundation, the Game Animal Council, the Māori Trustee, the National Pacific Radio Trust, the New Zealand Fish and Game Council and Fish and Game Councils, the New Zealand Game Bird Habitat Trust Board, the New Zealand Government Property Corporation, the New Zealand Lottery Grants Board, the Ngai Tahu Ancillary Claims Trust, the Pacific Co-operation Foundation, the Pacific Island Business Development Trust, Reserves Boards, and the Te Arika trust.

¹⁴⁴ New Zealand Government, “Government Procurement Rules – Rules for sustainable and inclusive procurement” (published June 2019, in force 1 October 2019) 63.

¹⁴⁵ New Zealand Government – Protective Security Requirements, “Why supply chain security matters” (Web page, 31 October 2018), available at: <https://protectivesecurity.govt.nz/governance/supply-chain-security/>.

A Supplier Code of Conduct also outlines the Government’s expectations for its suppliers. The Code of Conduct requires that suppliers:

- behave in an ethical manner;
- adhere to New Zealand’s employment standards and international human rights standards;
- comply with New Zealand’s health and safety laws;
- establish environmentally responsible business practices; and
- be good corporate citizens and contribute positively to their communities.

The Supplier Code of Conduct confirms that the Government expects its suppliers to adhere to employment and human rights standards in their workplaces and to monitor and address those standards within their supply chains. Relevant standards are established in the international treaties or conventions recognised by New Zealand, such as the United Nations Universal Declaration of Human Rights, the Convention on the Rights of the Child, and International Labour Organization Conventions. In addition, the Government requires suppliers to comply with New Zealand’s employment standards and maintain workplaces that are free from unlawful discrimination.

The Government expects its suppliers to adhere to human rights standards within their domestic supply chains, such as eliminating modern slavery. However, the Government acknowledges that some international supply chains can be complex and difficult to monitor, especially for small businesses. Consequently, the Supplier Code of Conduct sets an expectation that suppliers monitor human rights and take reasonable steps to address any breaches that come to their attention in their international supply chains. The Supplier Code of Conduct seeks to set expectations for suppliers to protect human rights while avoiding undue burdens on businesses. This balance arguably departs from the expectations of some governments, such as Australia, and the international modern slavery movement more generally, both of which require entities to actively investigate and rectify modern slavery issues throughout all of their supply chains.

7. RESTITUTION AND VICTIM COMPENSATION

7.1. Overview

New Zealand does not have a national statutory compensation scheme dedicated specifically to victims of forced labour or human trafficking. However, victims of forced labour or human trafficking have rights, and may seek financial compensation and non-financial support, through:

- criminal compensation orders and reparation payments;
- employment compensation orders and reparation payments;
- the state-run accident compensation scheme;
- state-funded compensation; and
- a compensation award through a claim under the law of tort, administered through the court system, government, or non-governmental agencies.

The Government will continue to review the support and assistance available to victims of forced labour and human trafficking to ensure it remains fit-for-purpose and responsive to the trauma and effects of these practices on victims.¹⁴⁶

7.2. Restitution and Reparation Schemes

7.2.1. *Crimes Act and Sentencing Act*

New Zealand has a strong statutory presumption in favour of paying reparation to victims of a crime.¹⁴⁷ Under the Sentencing Act 2002 (**Sentencing Act**), the court may impose a sentence of reparation in favour of a victim (any person against whom an offence is committed by another person)¹⁴⁸ if an offender has, through or by means of an offence of which the offender is convicted, caused the victim to suffer loss of or damage to property, physical or emotional harm, or any consequential loss or damage.¹⁴⁹ The court must determine what amount of reparation is fair and reasonable.¹⁵⁰

A victim is not entitled to reparation for any consequential loss for emotional or physical harm or for any property loss or damage if a no-fault accident compensation scheme (**ACC Scheme**) has compensated or will compensate a victim. The ACC Scheme is New Zealand’s national scheme for rehabilitation and compensation for individuals with injuries. Refer to Section 7.2.3. for further details.¹⁵¹ In addition, the court must also consider whether the victim has other mechanisms to claim for that loss or damage.¹⁵²

In the Matamata Case, Mr. Matamata was ordered to pay NZD 183,000 in reparations to his 13 victims to partly compensate them for the estimated NZD 300,000 that Mr. Matamata’s family gained from his criminal acts.¹⁵³

7.2.2. *Employment legislation*

Where an employer fails:

- to provide the holidays and leave required by the Holidays Act, a Labour Inspector or employee may initiate proceedings to recover arrears of holiday and leave pay from the employer;¹⁵⁴ or
- to pay some or all of an employee’s wages or to pay at least the wages required by the Minimum Wage Act, a Labour Inspector or an employee may initiate proceedings to recover the unpaid wages or to “make whole” the payment of wages at less than minimum wage.¹⁵⁵

¹⁴⁶ Ministry of Business, Innovation and Employment, “Combatting Modern Forms of Slavery: Plan of Action against Forced Labour, People Trafficking and Slavery” (December 2020) 15.

¹⁴⁷ Sentencing Act 2002, s 12.

¹⁴⁸ *Id.*, s 4, paragraph (a), definition of “victim.”

¹⁴⁹ *Id.*, s 32.

¹⁵⁰ *Id.*, ss 106(3)(a), 108(3)(a), and 110(3)(a).

¹⁵¹ *Id.*, s 32(5).

¹⁵² *Id.*, s 32(3).

¹⁵³ *R v. Matamata* [2020] NZHC 1829.

¹⁵⁴ Holidays Act 2003, s 77A(1).

¹⁵⁵ Minimum Wage Act 1983, ss 11(1) and 11(2).

7.2.3. *Accident compensation scheme*

The primary avenue of compensation for physical injuries is the state-funded accident compensation scheme, a no-fault accident compensation scheme (**ACC Scheme**) established under the Accident Compensation Act 2001 (**Accident Compensation Act**). The Accident Compensation Corporation, a government entity, administers the ACC Scheme.

The ACC Scheme governs rehabilitation for personal injuries and the entitlements following personal injuries. It prohibits those who have suffered a personal injury from taking action against an at-fault party, except for exemplary damages. “Personal injury” includes:

- physical injuries arising from an accident or sexual violence;
- work-related injuries or conditions arising from a workplace accident or caused over time by the type of work. The ACC Scheme applies even where the work was undertaken under an illegal contract; and
- mental injuries, including those arising from a physical injury (for example, post-traumatic stress disorder arising from the physical injury) and those arising from sexual offences that are performed in or outside of New Zealand in connection with a person who ordinarily resides in New Zealand when the act is performed. Mental injuries do not include mental injuries arising from forced labour, where the forced labour does not cause a physical injury.

Consequently, the ACC Scheme may compensate victims of forced labour for physical and mental injuries, if the forced labour causes a physical injury, but not if the forced labour causes only mental injuries. The ACC Scheme may compensate a victim of human trafficking for physical and mental injuries if the trafficking causes a physical injury, and for mental injuries caused by a sexual offence.

7.3. Statutory Compensation

7.3.1. *Victims’ Rights Act*

The Victims’ Rights Act 2002 (**Victims’ Rights Act**) may provide compensation and support to victims of modern slavery and supply chain abuses. The Victims’ Rights Act defines “victim” broadly to include:¹⁵⁶

- a person against whom an offence is committed by another person;
- a person who, through or by means of an offence committed by another person, suffers physical injury, or loss of, or damage to, property;
- a parent or legal guardian of a victim who is a child or a young person, unless that parent or guardian is charged with or is guilty of the offence concerned; and
- a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with or is guilty of the offence concerned.

The Victims’ Rights Act will apply to victims of crimes under the Crimes Act and exploited and unlawful or temporary workers.

The rights of recourse under the Victims’ Rights Act include:

¹⁵⁶ Victims’ Rights Act 2002, s 4.

- restorative justice meetings, assisting victims dealing with their non-economic harm;
- victim impact statements, assisting the court and the offender to understand the offence's effect on the victim;
- notification and updates on the progress of the offender's case through the courts and sentencing; and
- the right to claim for the victim's unpaid wages.¹⁵⁷

In 2015, the Ministry of Justice also introduced the Victims' Code of Rights. It explains what victims of crime can expect from government agencies and organisations and the formal complaint procedure.

7.3.2. Ministry of Justice

The Ministry of Justice also provides (through an organisation called Victim Support) financial assistance to victims of serious crimes, such as human trafficking and slavery. The grants available (subject to eligibility criteria) include:

- financial assistance to cover expenses of up to six people for attending court and other hearings and a daily allowance for up to five people to attend high court hearings;
- means-tested last-resort assistance of up to NZD 2,000 to assist with counseling, relocation, and other costs to assist in healing and safety;
- a Crime Scene Grant of up to NZD 2,000 for victims whose home or car is unavailable because it is a crime scene; and
- assistance from ACC to pay for part of any burial, cremation, and funeral costs.

7.3.3. Publicly-funded health and disability services

Victims and suspected victims of human trafficking offences are eligible for publicly-funded health and disability services. Under this scheme, victims may receive:

- free inpatient and outpatient public hospital services;
- subsidies on prescriptions;
- community support services;
- free and subsidised maternity-related services; and
- residential care.

¹⁵⁷ *Jane v. Police HC Christchurch* [1988] AP243/87.

7.4. Tortious Claims and Remedies

The ACC Scheme has substantially replaced tort law as the means for compensating personal injuries in New Zealand.¹⁵⁸ Nonetheless, victims can bring civil tort claims against perpetrators of modern slavery where the perpetrator’s conduct is a breach of a legal duty. Relevant torts include false imprisonment, deceit, mental injury, battery, and assault. To date, victims have not brought in New Zealand courts any tort action relating to forced labour or human trafficking.

In civil actions, defendants are subject to exemplary damages where their conduct is “truly outrageous.” “Outrageous” conduct means “conscious wrongdoing in contumelious disregard of another’s rights.”

7.4.1. Battery and assault

Perpetrators of almost all forms of modern slavery may be liable in tort for battery or assault. An assault is defined as intentionally creating another person’s apprehension of imminent harmful or offensive contact. The tort uses an objective test of “whether a reasonable person in the relevant circumstances would have that fear.”¹⁵⁹

A battery is the act of intentionally applying force to another person without their consent.¹⁶⁰ The test is “whether such physical contact is generally acceptable in the ordinary conduct of everyday life.”¹⁶¹

7.4.2. False imprisonment

A claim of false imprisonment requires proof of a “total deprivation of liberty.” Case law in other Commonwealth countries (which is highly persuasive in New Zealand courts) defines “liberty” to mean “liberty as the individual presently enjoys and not deprivation of total liberty, namely, liberty which is otherwise wholly unrestricted.”¹⁶² The deprivation need not be physical, rather “confinement within [any] defined bounds will satisfy the condition.”¹⁶³

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¹⁵⁸ New Zealand Law Commission, “Compensating Crime Victims” (October 2008) 1.6, available at: <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP11.pdf>.

¹⁵⁹ *T v. H* [1995] 3 NZLR 37 at 51.

¹⁶⁰ *Beals v. Hayward* [1960] NZLR 131 at 141.

¹⁶¹ *Collins v. Wilcock* [1984] 3 All ER 374; and *Stephen Charles La Roche v. Police* (2006) NZHC BC200661161 at [140].

¹⁶² *R v. Deputy Governor of Parkhurst Prison & Others, Ex parte Hague* [1992] 1 AC 58 at 178.

¹⁶³ *Bird v. Jones* (1845) 7 QB 742 at 744.

herein are the personal views of the authors and do not necessarily reflect those of Rotary International/Rotary Action Group Against Slavery or of any contributing entity.

APPENDIX A

PART A. STATUS OF INTERNATIONAL OBLIGATIONS

Key

- ✓ Full participation (ratified/acceded where applicable and incorporated into domestic law if necessary)
- ! Imperfect participation (signed but not ratified/acceded and not incorporated into domestic law)
- × Not a party

Fundamental human rights

	Universal Declaration of Human Rights (1948)	International Covenant on Civil and Political Rights (1966)	International Covenant on Economic, Social and Cultural Rights (1966)	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Convention on the Elimination of all Forms of Discrimination Against Women (1979)	United Nations Convention on the Rights of the Child
New Zealand	✓	✓	✓	✓	!	✓

Slavery and trafficking

	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000)	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)	Worst Forms of Child Labour Convention (1999)
New Zealand	!	×	!	✓	!
	Slavery Convention (1926)	Protocol amending the Slavery Convention (1953)	Forced Labour Convention (1930)	Protocol of 2014 to the Forced Labour Convention (2016)	Abolition of Forced Labour Convention (1957)
New Zealand	!	!	✓	✓	✓

Employment and migration

	Migration for Employment	Labour Inspection Convention	Abolition of Forced Labour Convention	Protocol against the Smuggling of Migrants by Land, Sea and Air	Refugee Convention
New Zealand	!	!	!	!	✓

PART B

OVERVIEW OF INTERNATIONAL INSTRUMENTS

1. *Fundamental human rights*

Universal Declaration of Human Rights (1948) (UDHR)

The UDHR's 30 articles affirm a number of fundamental individual rights, including legal rights; rights to free movement; "constitutional liberties," such as freedom of thought and association; economic, social, and cultural rights, including healthcare; and the prohibition on slavery and torture. The UDHR does not have legal force in and of itself, but it defines the "fundamental freedoms" and "human rights" in the United Nations Charter, which is binding on all member states. Numerous binding international instruments have elaborated on the articles.

The UDHR, ICCPR, and ICESCR make up the International Bill of Human Rights.

International Covenant on Civil and Political Rights (1966) (ICCPR)

The ICCPR commits state parties to respect the civil and political rights of individuals, including freedom from torture or cruel, inhuman, or degrading treatment or punishment; the right to life, a fair trial, privacy, freedom of thought, conscience and religion; freedom of expression; freedom of assembly; and the right to equal protection of the law.

International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)

The ICESCR commits parties to work towards economic, social, and cultural rights for individuals and the Non-Self-Governing and Trust Territories. The ICESCR recognizes the right of all people to self-determination and to not be deprived of subsistence. It obliges parties responsible for non-self-governing and trust territories to encourage and respect their self-determination. The covenant also establishes the principle of "progressive realisation," which includes individual rights to work in just conditions, social security, family life, adequate standard of living, health, education, and participation in cultural life. The articles also provide specific steps needed to realise those rights.

Convention on the Elimination of All Forms of Discrimination against Women (1979) (CEDAW)

CEDAW defines discrimination against women, enumerates the rights of women, and mandates domestic legislation giving effect to those rights. The articles concern non-discrimination; sex stereotypes; sex trafficking; the rights of women to specific public, economic, and social rights; and the right to equality in marriage, family life, and the law.

2. *Slavery and trafficking*

2014 Protocol to the Forced Labour Convention (1930)

The 2014 Protocol to the Forced Labour Convention (1930) requires ratifying states to take effective measures to prevent and eliminate the use of forced labour, to protect victims and provide them with access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour. The protocol also seeks to reinforce the country's obligations to educate, investigate, and prosecute instances of forced labour.¹⁶⁴

¹⁶⁴ Protocol P029 of 2014 to the Forced Labor Convention of 1930, ILO Doc P029 (entered into force 11 June 2014) arts 1–4.

The Forced Labour Convention (1930) is one of the eight fundamental conventions of the International Labour Organisation (ILO). The ILO now is a UN agency, initially formed in 1919, which sets labour standards and develops policies within a unique tripartite structure consisting of government, employer, and employee representatives.

Abolition of Forced Labour Convention (1957)

The Abolition of Forced Labour Convention (1957) is another fundamental convention of the ILO. The convention prohibits certain forms of forced labour allowable under the Forced Labour Convention (1930), including using forced labour for political coercion or discrimination, for economic development, or for punishment for strikes.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) (**Sale and Prostitution of Children Protocol**) requires state parties to pass domestic laws prohibiting the sale of children, child prostitution, and child pornography. The Sale and Prostitution of Children Protocol complements the Convention on the Rights of the Child (1989), which requires parties to take “appropriate measures.” To that end, the Protocol outlines the standards for enforcement, including jurisdictional factors, extradition, mutual assistance, and seizure of assets.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1958)

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1958) aims to abolish slavery in all its forms, including forced marriage and government support for or acquiescence to the trade in slaves. It also requires state parties to make acts of slavery or servitude criminal offences.

Worst Forms of Child Labour Convention (1999)¹⁶⁵

The Worst Forms of Child Labour Convention (1999) (**WFCL Convention**) aims to protect the rights of children by requiring ratifying states to take immediate and effective measures to prohibit, eliminate, and penalize¹⁶⁶ the worst forms of child labour. The worst forms of child labour include the trafficking in, enslavement of, and sexual, physical, or other abuse of children.¹⁶⁷ The convention is a fundamental convention of the ILO.

Convention Against Transnational Organised Crime (2004), including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2005)

The Convention Against Transnational Organised Crime (**CATOC**)¹⁶⁸ (and its two related protocols: the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (**Trafficking Protocol**), and the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air) aims to promote cooperation to prevent and combat transnational organized crime more effectively.¹⁶⁹ It focuses on organised non-

¹⁶⁵ Worst Forms of Child Labour Convention, opened for signature 17 June 1999, 38 ILM 1207 (entered into force 19 November 2000).

¹⁶⁶ *Id.*, art 7(11).

¹⁶⁷ *Id.*, art 3.

¹⁶⁸ United Nations Convention Against Transnational Organised Crime and the Protocols Thereto, opened for signature 14 December 2000, 2225 UNTS 209 (entered into force 29 September 2003).

¹⁶⁹ United Nations Convention Against Transnational Organised Crime and the Protocols Thereto, 2225 UNTS 209 (opened for signature 14 December 2000, entered into force 29 September 2003) art 1.

state actor criminal enterprises and provides criminal offences for money laundering and corruption, as money changing hands provides key evidence of the start and end points of transnational crime.

The CATOC provides for international cooperation in the extradition of suspects,¹⁷⁰ international cooperation and information sharing,¹⁷¹ the transfer of sentenced persons,¹⁷² and mutual legal assistance in investigations, prosecutions, and judicial proceedings.¹⁷³ Articles 27 to 30 provide for law enforcement cooperation and information sharing between member states.

The Trafficking Protocol¹⁷⁴ is to be interpreted together with the CATOC.¹⁷⁵ The purpose of the Trafficking Protocol is to prevent and combat the trafficking in persons, with a particular focus on women and children. The Protocol requires state parties to: aim high; do everything in their power to defeat trafficking in persons; prosecute those responsible; and share information, technology, and know-how amongst member states.¹⁷⁶

The Trafficking Protocol complements the CATOC by recognising that trafficking in persons usually involves transnational criminal syndicates that require inter-state and inter-agency support to detect and prevent.

Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime (2018)

The Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime (2018) encourages cooperation and information and capacity sharing¹⁷⁷ amongst the 49 state members to the Bali Process (a regional forum co-chaired by Indonesia and Australia) in an effort to interdict the trafficking and smuggling of persons in South-East Asia. In the spirit of international cooperation, the Bali Process has developed best practice policy guides and handbooks in relation to information sharing, identification of victims, human trafficking and slavery-like criminal offences, and methods to address irregular migration.¹⁷⁸

The responsible ministers in member states, as well as the annual Senior Officials' Meetings and Ministerial Conferences, oversee the Bali Process.¹⁷⁹ Each year, the Ministerial Conference puts out a statement summarising proceedings. In 2018, the plenary of the Seventh Ministerial Conference of the Bali Process promised continued

¹⁷⁰ *Id.*, art 16.

¹⁷¹ *Id.*, arts 7, 9, 11, 13, 15.

¹⁷² *Id.*, art 17.

¹⁷³ *Id.*, art 18.

¹⁷⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 12 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

¹⁷⁵ *Id.*, art 1(1).

¹⁷⁶ *Id.*, arts 2, 10.

¹⁷⁷ The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, "Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime," The Bali Process (Report, 23 March 2016), available at: <https://bit.ly/2TDsbVb>.

¹⁷⁸ The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, "Regional Support Office Resources," The Bali Process, available at: <https://bit.ly/2FE2Y8j>.

¹⁷⁹ For information relating to all proceedings arising from the Bali Process from 2018, see The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, "Ministerial Conferences & Senior Officials Meetings," The Bali Process, available at: <https://bit.ly/2JO6Okn>.

international collaboration, information and technology sharing, and cooperation to prevent trafficking and smuggling of persons in South-East Asia.¹⁸⁰

Pacific Immigration Development Community

The Pacific Immigration Development Community (**PIDC**) is a forum for Official Immigration Agencies of the Pacific Region.¹⁸¹ There are 21 member countries and territories—New Zealand, Australia, American Samoa, the Cook Islands, the Federated States of Micronesia, Fiji, French Polynesia, Kiribati, the Marshall Islands, Nauru, New Caledonia, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tualu, Vanuatu, and Wallis and Futuna.

The PIDC discusses issues of mutual interest, and aims to foster multilateral cooperation and mutual assistance to strengthen members’ territorial borders and the integrity of members’ entry systems. PIDC advocates its core values of commitment, openness, family and teamwork, trust and respect, integrity, innovation and flexibility, good governance, rule of law, and leadership. Members are at all times expected to uphold the PIDC values and inspire those they serve.

Five Country Conference

The Five Country Conference is a conference of the immigration authorities of Australia, Canada, New Zealand, the United Kingdom, and the United States. The five countries work together to improve border security and services to customers across each country.

The Five Country Conference met on 17 and 18 June 2020. Relevant to modern slavery-related issues, the five countries agreed that, as a result of increased internet use by children during the COVID-19 pandemic, children are at higher risk of online child sexual exploitation and abuse. The five countries agreed to exchange information on this issue and share lessons. The countries also called on the digital industry to take immediate, tangible action to implement the Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse, launched in March 2020.

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¹⁸⁰ The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, “Declaration of the Seventh Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process),” The Bali Process (Report, 7 August 2018), available at: <https://bit.ly/2TGcQTN>.

¹⁸¹ Pacific Immigration Development Community (Webpage), available at: <https://www.pidcsec.org/>.