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Modern Slavery Bill

Implications for business

The introduction into Parliament of the Modern Slavery Bill has brought awareness of how modern slavery has manifested itself into New Zealand businesses. Modern slavery can rear its ugly head in a range of ways from forced labour in supply chains, exploitation (or coercion) of workers and various forms of trafficking.

The Bill has also made history as it is the first time a bill has been introduced through Standing Order 288. This allows a Private Member's Bill to bypass the random ballot (or 'biscuit tin') process if it is supported by two-thirds of non-executive MPs.

This Bill was co-sponsored by Labour MP Camilla Belich and National MP Greg Fleming. This bi-partisan effort shows the importance of the Bill not only to our parliamentarians, but also to New Zealand society.

What is modern slavery?

Modern slavery is often seen as a global matter and, for many New Zealanders, it probably feels like an issue away from our shores. Unfortunately, this is far from the truth. World Vision currently estimates that the average Kiwi spends around $77 a week on goods linked to various forms of modern slavery.[1] Walk Free's 2023 Global Slavery Index estimated that in 2021, there were 8,000 individuals on any given day, living in modern slavery in New Zealand.[2]

In a high-profile case in the modern history of slavery in New Zealand, Joseph Matamata was convicted of 13 charges of slavery and 10 charges of human trafficking involving labourers working in orchards. After bringing the labourers to New Zealand with promises of a better life, Matamata retained their income, restricted communication and movement, and used threats of violence to ensure the labourers stayed in their jobs.[3]

1 https://www.worldvision.org.nz/about/media/parliamentary-rule-modern-slavery-act-for-nz/
2 https://www.walkfree.org/global-slavery-index/country-studies/new-zealand/
3 *Joseph Auga Matamata v R* [2020] NZHC 1829.

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The Bill

The Bill is both broad and extensive in defining modern slavery. It is defined as:

+ Crimes already understood in the Crimes Act 1961:
  - Dealing in slaves, as well as debt-bondage or serfdom
  - Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour
  - People trafficking, and
  - Coerced marriage or civil union
+ The 'worst forms of child labour' under Article 3 of the International Labour Organisation Convention No. 182
+ Trafficking as defined by Article 3 of the United Nations Protocol
+ Forced or exploitative labour
+ Servitude, and
+ Sexual exploitation.[4]

Outside of the definition of modern slavery, the Bill requires the Minister to report annually on modern slavery matters, to publish guidance and to direct the Chief Human Rights Commissioner to designate modern slavery as a 'priority area' if necessary. The Bill will lead to the creation of a Modern Slavery Statement Register to be publicly accessible. All this will be overseen by the proposed independent Anti-Slavery Commissioner.

What does this mean for business?

The Bill currently states that 'reporting entities' are required to:

+ Prepare and publish annual modern slavery statements that describe their structure and supply chains
+ Identify modern slavery risks (both real and potential)
+ Outline what steps the entity is taking to deal with the identified risks, and
+ Lodge these statements on the Modern Slavery Statement Register.

A 'reporting entity' in the Bill is defined as a business with a consolidated annual revenue that exceeds $100 million. These entities not only refer to New Zealand entities, but also any overseas company carrying on business in New Zealand. These entities can be both public and private organisations, with government agencies also being captured under this regime.

How this affects New Zealand businesses

If your business is considered a reporting entity under the Bill, non-compliance with the regime could carry a strong penalty. Offences will be committed if entities fail to comply with their reporting obligations, or if they knowingly make false or misleading statements in their reports. These offences could amount to reporting entities being liable on conviction to a fine of up to $200,000.

From a civil point of view, the maximum pecuniary penalty for a contravening reporting entity is $600,000.

This also imposes personal liability for directors and individuals involved in management. If an offence occurs with the permission, knowledge or presumed knowledge of these individuals, they will be found guilty. This is particularly important if the director or management should have known it was occurring but failed to take reasonable steps to prevent it from happening.

The final important note for businesses is that if they are found to be non-compliant, both the name of the business and the individuals responsible will be published on the Register for three years.

Preparing for the Bill to become law

Many affected by the reporting obligations of this Bill may already be familiar with its obligations, considering there are similar laws in other jurisdictions. However, potential ways to prepare for the implementation of the modern slavery legislation in New Zealand could be in the form of preparing policies and governance, reviewing supply and procurement contracts (and being particularly diligent about who your suppliers are), and potentially establishing internal whistleblowing procedures.

Other steps could involve identifying risk factors that may facilitate the exploitation of workers, and developing management plans to mitigate them. The Ministry of Foreign Affairs and Trade has a range of specific resources all targeted towards combatting modern slavery.[5]

A positive development

This Bill is widely seen as a positive development in New Zealand law. While there may be concerns on the extent of obligations imposed on entities, the benefits to victims undoubtedly outweigh the costs.If you are concerned that this proposed legislation may affect the way you do business, please don't hesitate to contact us. +

4 https://www.legislation.govt.nz/bill/members/2026/242/en/latest/#LMS1569519

5 https://www.mfat.govt.nz/en/trade/nz-trade-policy/combatting-modern-slavery

Consequences of 'accidental directorship'

Caution for investors, startup advisers and board observers

Startup companies often rely on advisers, investors and board observers to help guide their new businesses. This is a good thing, but it carries hidden risk.

If you are in one of these roles, in some circumstances, you can be treated as a director, even if you never formally agreed to the appointment. If this happens, it can expose you to personal liability.

Directors vs advisers: What's the difference?

Directors are responsible for the overall governance and strategic direction of the business.

Directorship also comes with legal compliance under the Companies Act 1993. There are significant consequences for directors if things go wrong.

On the other hand, advisers and board observers typically provide strategic, non-binding guidance for the directors to take into consideration when making decisions.

In theory, this is a clear distinction. The line, however, can become blurred. What matters is what you do in practice, rather than your title.

How do people become accidental directors?

This is common in startups, where governance structures are still evolving and roles are often informal. Having said that, this is still a real risk for any company. Courts tend to focus on how you are fulfilling your role as an adviser or observer in practice. Warning signs include:

+ The board of directors regularly following your instructions or directions
+ Being involved in decision-making on the same level as directors, and/or
+ Exercising authority normally reserved for directors.

If these patterns develop, you may be seen as a deemed director.

Personal liability

Directors' duties are personal. If a company gets into financial trouble, the directors are exposed to personal liability, and in some instances may be required to personally contribute to company debts. This risk doesn't just apply to those formally appointed. If you are treated as a director in substance, you may carry this risk without even realising you've taken it on.

A risk area

Board observers and startup advisers are particularly exposed because their role sits very close to the line. For example, an observer may:

+ Attend meetings and receive board papers
+ Provide input on strategy or decisions, and/or
+ Represent investor interests.

That's fine, but the risk increases where:

+ You participate in decision-making on significant matters
+ The board tends to follow your recommendations
+ Your role is not clearly recorded as 'observer only,' and/or
+ You (or your investor) have significant control or approval rights.

Over time, what starts as 'advice' can start to look like decision-making.

This is one of those areas where things can drift without anyone noticing. Everyone is acting in good faith, wanting the business to succeed, but the legal position gradually shifts. If you are involved in a startup as an adviser, investor or observer, it's worth asking yourself:

+ Am I just advising, or am I influencing decisions?
+ Does the board treat my input as optional or as direction?
+ Is my role clearly documented and understood?

Small changes in how you operate can make a big difference.

Be careful

Being an adviser or board observer is often valuable and rewarding, and is of great benefit to startups. However, there are real risks with these roles that are not always obvious. If your involvement crosses the line into decision-making or control, the law may consider you as a director, exposing you to all the responsibility and possible personal liability that comes with that title.

It pays to be clear about your role from the outset and to keep checking that your involvement hasn't crept further than intended. If you're not sure where that line sits in your situation, it's a good time to get legal advice to help avoid unintended consequences. +

'Doomsday' provisions in your will

You may recall the tragic story of English businessman, Richard Cousins, and his family, who all died together in a plane crash in Australia on New Year's Eve 2017.

About a year before his death, Mr Cousins amended his will by adding 'Doomsday' provisions. The provisions stated that if he and his family died simultaneously, the majority of his large estate would pass to his elected charity, Oxfam. Due to Mr Cousins' foresight, Oxfam received their largest donation ever at that time of £41 million.

What are Doomsday provisions?

Doomsday[6] provisions (also referred to as fail safe, common catastrophe or calamity clauses) are back-up provisions in a person's will. They set out what happens to your estate should all your beneficiaries pass away before they are able to receive their share.

This is the situation commonly referred to as Doomsday.

Why have Doomsday provisions?

The purpose of Doomsday provisions is to ensure that your estate passes to someone or somewhere you intend.

If a Doomsday/catastrophic situation occurs, and your will has no Doomsday provisions, uncertainty arises. The gifts in your will may fail and your estate (or the parts affected) may be distributed as if you died without a will (intestate).

In this situation, the intestacy rules set out in the Administration Act 1969 will apply. These rules set out who is entitled to your estate, even though they may not be beneficiaries in your will. Where your spouse or partner, and children have all died, your estate passes to your wider relatives in a set order, which can include:

+ Grandchildren/great-grandchildren
+ Parents
+ Siblings
+ Grandparents
+ Aunts and uncles, or
+ Half-aunts and half-uncles.

Ultimately, if there are no living beneficiaries to receive your estate, parts or all of it may pass to the Crown.

The prospect of such an outcome can be troubling to many people, particularly in the midst of increasingly complex family dynamics. If you have no Doomsday provisions in your will and all your beneficiaries are dead, your estate could be subject to administrative delay and litigation between those making a claim. The costs of these delays may be taken from your estate.

Planning for a 'Doomsday' may feel a remote or upsetting scenario. However, it is important to consider whether to include Doomsday provisions in your will. For example, if your family all travel together or all your beneficiaries are older than you, your estate is at a greater risk of being distributed in a way that does not align with your wishes without a such a clause.

Key considerations

When considering Doomsday provisions, it is important to take legal advice. They should be drafted to work with your family circumstances, the relevant legislation, and any other estate planning documents you have.

There are various ways a person may try to dispute your Doomsday provisions, and we can advise on strategies to reduce that risk. The more we know about your family dynamics and lifestyle, the better we can provide appropriate options.

It is particularly important that you let us know about any contracts, trusts, agreements and other documents which do, or could, affect your estate.

Doomsday provisions and trusts

You should also consider whether a Doomsday provision is appropriate for your family trust.

Without Doomsday provisions, a problem arises if all the trust's beneficiaries die, or if the trust reaches its vesting date with no beneficiaries left to receive trust property. However, some trust deeds do have default beneficiary provisions to address this situation. We can assist you with reviewing your trust deed to advise you on this.

Adding Doomsday provisions

Adding Doomsday provisions to your will (or trust) increases certainty that your wishes will be followed and your property will be distributed to a person, organisation or cause you have chosen.

You may wish to name your siblings, close friends, iwi, religious organisations or charities as final recipients.

A charitable organisation is often a good option because charities usually remain operating long-term. Further, it provides the opportunity to help a cause that is close to your heart. And, if a charity is reliant on donations and bequests (as are most charities in New Zealand), such a donation may be life-changing for those they help. +

6 Doomsday, originating from Old English, usually refers to the end of the world or a day of ultimate or catastrophic reckoning.

Former Port of Auckland CEO loses appeal against health and safety conviction

The former chief executive of Port of Auckland Ltd (POAL), Tony Gibson, lost his appeal against his conviction under the Health and Safety at Work Act 2015 (HSWA) following the night shift death of a port worker, Pala'amo Kalati. Mr Kalati was crushed by a container while helping to unload a container ship. The High Court confirmed the District Court's decision on the duties of an officer of a large organisation under the HSWA.

Failure to take steps to minimise risk

The High Court[7] confirmed that Mr Gibson had failed to take the steps that a reasonable officer in his position would have taken to minimise the risk of an accident occurring. The court agreed with the District Court that Mr Gibson was personally aware of the risks associated with loading and unloading containers, that the company's documentation containing its rules for handling containers was unclear, and that the company had inadequate systems in place to determine whether its workers were complying with its rules.

The court also agreed that Mr Gibson should have been aware of the serious risks associated with handling containers following the 2018 death of one of the port's workers.

The High Court also upheld the District Court's decision to impose a fine of $130,000 on Mr Gibson and to order him to pay a further $60,000 in court costs.

The court's decision confirms several principles relating to the duties of company officers under the HSWA, which were set down in the District Court's decision. These are:

+ It is not enough for a company officer to ensure that systems are in place to protect workers' safety. They must also ensure that work practices are monitored for compliance. They must ensure that they are aware of how their staff actually carry out their work as opposed to how they are supposed to do so, and
+ A company officer cannot simply delegate their health and safety responsibilities to someone else in their company and rely on that person to ensure compliance with health and safety rules, without proper enquiry that the organisation's systems are adequately addressing health and safety risks. They must critically examine information provided to them by their staff relating to health and safety. They must also create mechanisms to verify the information they are receiving.

Maritime New Zealand, the government body with responsibility for health and safety prosecutions relating to ports, only charged POAL's chief executive officer. The High Court observed that there were a number of different people at the port company, including directors and managers, who had obligations under the HSWA who could also have been charged.

This decision emphasises that both those involved in governance and operational matters in a large organisation may have personal health and safety obligations.

If you have any concerns about your health and safety obligations as a company director or senior employee, please don't hesitate to contact us. +

7 *Gibson v Maritime New Zealand* [2026] NZHC 813.

Postscript

RMA replacement legislation reported back from select committee

On 20 July, the select committee reported back on the Natural Environment Bill and the Planning Bill, that are set to replace the Resource Management Act 1991 (RMA). The committee received 3,204 submissions and heard presentations from 178 submitters.

Whilst key features of the new system have been retained, the select committee recommended some improvements (that the government supports) that will refine and clarify some aspects of the bills.

After feedback from a range of submitters, the timeframe to implement the transition period from the RMA to the two new statutes has been extended from 30 months to 39 months.

The Labour Party has indicated that if it forms a government in November, it will not repeal this new legislation. The party does, however, state that it has some serious misgivings about some aspects, particularly the regulatory relief provisions.

In the meantime, there is some hard work to be done to incorporate the committee's recommendations and present the bills again to Parliament for a second reading – all before the House rises in September for the 7 November election.

For more information on the Environment Committee's report go here.[1] +

1 https://www3.parliament.nz/en/pb/sc/scl/environment/tab report#filterformsearchtarget

Fineprint's 100th edition!

The eagle-eyed amongst you may have noticed we are publishing the 100th edition of *Fineprint*. This is not only a significant milestone for any publication, but also an affirmation to all our readers, that *Fineprint* continues to resonate with you in terms of relevant content.

Established in April 1997, we have moved from two-colour printed hard copy to publishing a full-colour beautifully-designed edition (thank you Mission Hall Creative) as you see today. Over the years, we have shifted from hard copy only, to now mostly publishing electronically. We have moved with the times.

Our biggest thank you goes to you, our readers, who continue to enjoy reading *Fineprint* and have given us valuable feedback in terms of topics to cover. We will continue publishing interesting, useful and sometimes thought-provoking content that not only covers legal issues, but also the wider business and social communities.
If you would like to give us feedback, please email the editor at: **adrienne@adroite.co.nz**.

Thank you and kia ora. +

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