

Crimes (Increased Penalties for Slavery Offences) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

13 February 2025

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Crimes (Increased Penalties for Slavery Offences) Amendment Bill (**Bill**).
- 1.2 This submission has been prepared by the Law Society's Human Rights and Privacy Committees.¹
- 1.3 The Law Society **does not wish to be heard** on this submission.

2 General comments

- 2.1 This member's Bill proposes amendments to the Crimes Act 1961, presumably in response to New Zealand's drop in status from tier one to tier two in the 2021 Traffic in Persons (**TIP**) Report by the United States. The explanatory note to the Bill notes that New Zealand does not meet the minimum standards required by the Trafficking Victims Protection Act 2000 (**TVPA**) to remain a tier-one country. The TVPA is the federal legislation of the United States of America, administered by the United States Department of Justice, that established the American regime to 'eliminate modern forms of slavery domestically and internationally.'²
- 2.2 The Law Society recognises the importance of and supports the Bill's intention to strengthen the prosecutorial response to human trafficking in New Zealand. As the explanatory note to the Bill indicates, there are weaknesses in the present law and New Zealand's response to human trafficking is not yet consistent with international best practice.
- 2.3 However, as currently drafted, the Bill is not sufficient to improve New Zealand's response to human trafficking. The Law Society supports continued work in this important area and considers the development of a more fulsome legislative response is necessary.
- 2.4 This submission raises two concerns:
 - (a) Issues with the Explanatory note.
 - (b) The Bill does not align New Zealand's response with international best practice.

3 The Explanatory note

- 3.1 Explanatory notes are an important component of the legislative process and may help to inform statutory interpretation of an Act's intention and meaning. As such, it is critical that the information and concepts introduced in the Explanatory note are accurate and do not create confusion.
- 3.2 While the Explanatory note in this instance may be unlikely to be used in statutory interpretation, given the Bill proposes only to increase the penalty for an offence, the Law Society observes that the Bill's Explanatory note indicates conceptual confusion over human trafficking and modern slavery. These are two distinct legal concepts, which require separate and different treatment.

¹ More information about the Law Society's law reform sections and committees is available on the Law Society's website: [NZLS | Branches, sections and groups](#).

² United States Department of Justice "Human Trafficking: Key Legislation" (August 23, 2023) <<https://www.justice.gov/humantrafficking/key-legislation>>

- 3.3 The concept of human trafficking is, in a broad sense, *one* of the many varied forms of modern slavery. Importantly, it is a distinctly criminal law concept and is considered an organised crime issue.³ Because it is a criminal law concept, it does not easily fit conceptually into the human rights realm despite its obvious connection. Modern slavery on the other hand is a broad concept (an umbrella term) used in the human rights and business realms, which has an amorphous definition of little legal value.⁴
- 3.4 Further, the Explanatory note goes on to refer to human trafficking as a gross violation of fundamental human rights. While we acknowledge the clear connection to human rights, international law and the efforts to combat human trafficking fundamentally draw from a criminal framework, rather than a human rights framework. The fact of a human rights violation is almost implicit in serious criminal offending of any kind, not just human trafficking. The Law Society emphasises that, if the Bill is advanced, it is important to clarify that the intention is to increase the penalty for a criminal offence rather than respond to a human rights violation.

4 Recommendations

- 4.1 The Law Society recommends that the Bill be withdrawn, and further policy work restarted on the issue of human trafficking so that what is proposed in the Bill is expanded to align our legislation with international best practice. For example, New Zealand does not yet have an offence of forced labour simpliciter, as required by the International Labour Organisation's Convention against Forced Labour. We suggest that consideration could also be given to, for example, decriminalising the actions of victims who offend consequent to exploitation (in line with international best practice).
- 4.2 The Law Society considers continued progress in this area to be important and, as such, is supportive of efforts to improve the legislative response targeting human trafficking. However, the Bill as currently drafted is not adequate.

Nāku noa, nā



Taryn Gudmanz
Vice President

³ For more information on the original definition of human trafficking see: United Nations Office on Drugs and Crime "The Protocol: The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons is the world's primary legal instrument to combat human trafficking" (2023) <<https://www.unodc.org/unodc/en/human-trafficking/protocol.html#:~:text=The%20Protocol%20was%20adopted%20by,MAIN%20PAGE>>

⁴ For more information on the concept of modern slavery see: Christina Stringer, Brent Burmester, Snežina Michailova, Thomas Harre *Toward a Modern Slavery Act in New Zealand – Legislative landscape and steps forward* (Auckland University, White Paper, September 2021).