

# **Sustainable Business Council Response to Select Committee on the Modern Slavery Bill**



# Sustainable Business Council



# Executive Summary

1. The Sustainable Business Council (SBC) welcomes the opportunity to provide this submission to the Education and Workforce Committee (Committee) in support of the Modern Slavery Bill (Bill). SBC supports the objective of the Bill, and the purpose as set out in cl 3(1).
  2. SBC acknowledges and commends the bi-partisan approach that supported the introduction of this Bill to the House, and recognises the broad support the Bill has enjoyed, which provides a constructive model for supporting policy certainty and business confidence.
  3. The main focus of SBC and its members in making this submission is to advocate for an **enduring regime** that will be workable for reporting entities and those in their supply chains. To that end, our submission reflects **three main points**:
    - a. Confirming the need for modern slavery legislation in New Zealand, and the support of our members for the Bill in levelling the playing field and keeping New Zealand on par and competitive with key international markets.
    - b. Key design and workability considerations for the proposed reporting regime to ensure it is effective, aligned with market expectations, and informed by relevant overseas regimes. Key recommendations are:
      - i. **Establish civil liabilities for the reporting entity** for reporting failures, rather than criminal liabilities set at the Director or Officer level;
      - ii. **Allow entities already reporting under comparable overseas regimes to consolidate reporting**, to reduce duplication.
    - c. Specific input on concepts and definitions in the Bill to ensure reporting entities have clarity on expectations. Key recommendations are:
      - i. **Clarify definitions of operations and supply chains, due diligence, and incidents and indicators**;
      - ii. **Provide early guidance** on due diligence, supply chains and incidents and indicators.
- For the avoidance of doubt, issues raised should not be taken to be critical of the overall policy objectives but rather are raised in the interests of supporting the development of a durable and workable regime.
4. There are lessons to be learned from the evolution and implementation of the climate-related disclosures (CRD) regime, a comparable corporate reporting mechanism to identify and manage risks. Namely:
    - a. New Zealand was the first country to introduce CRD. Other, larger jurisdictions, like the UK, EU and Australia subsequently introduced similar reporting requirements, creating misalignments between what New Zealand companies reported on domestically, and what parent companies and/or customers needed. This created practical challenges for New Zealand companies also reporting to offshore parent entities, investors and customers. This suggests that international alignment with existing reporting regimes will be an important design feature of this legislation.

- b. Many reporting entities took a highly risk-averse, compliance-based approach to reporting, resulting in high costs and a perception of regulatory burden, largely in response to the director liability settings. This suggests that civil liabilities settings on the reporting entity may be more effective in delivering on the policy intent of the legislation.

These lessons are elaborated on below.

- 5. SBC also recognises the relevance of Te Tiriti o Waitangi to this legislation. Embedding Te Tiriti principles - particularly partnership, protection, and participation - will help ensure the regime responds to these risks and delivers equitable outcomes in the Aotearoa New Zealand context.

# 1. The need for modern slavery legislation

6. In our engagement with the business community, we have heard that New Zealand businesses continue to find indicators and incidents of modern slavery within New Zealand and in their offshore supply chains. Action is warranted and needed, and SBC considers this legislation provides a helpful framework to direct companies' efforts to address modern slavery.
7. Whilst we expect many other submissions will rightly focus on the important human rights arguments for increasing transparency on modern slavery, there is also an important economic dimension: New Zealand's trade agreements with the United Kingdom and European Union include consideration of human rights and modern slavery, and some of our other key trading partners, notably Australia and Canada, have comparable legislation.
8. Passing modern slavery legislation which establishes a durable and effective reporting regime will enhance New Zealand's international reputation as a sustainable, high-integrity and high-transparency market, supporting sustainable economic growth and maintaining New Zealand's international competitiveness.
9. Moreover, a large number of New Zealand businesses are already subject to modern slavery reporting, for example because they are dual listed in Australia and/or have significant operations in jurisdictions with modern slavery reporting requirements. New Zealand-specific legislation is therefore valuable in levelling the playing field between businesses in New Zealand.

## 2. Legislative and regulatory design considerations

10. Any modern slavery legislation should be designed to ensure that it:
  - a. drives reporting entities to meaningfully identify and address modern slavery risks, not to hide them or disincentivise identification; and
  - b. supports alignment with international reporting.
11. Alignment with international reporting rules is important, particularly where companies are dual-listed, have an offshore parent, or have significant overseas operations, to enable like-for-like comparisons by investors and customers. Alignment with the Australian regime is particularly helpful given the number of dual-listed companies operating across New Zealand and Australia.
12. It is also helpful for the Committee to be cognisant of other reporting regimes, including CRD and other potential upcoming regimes. SBC submits that reporting and transparency can be powerful drivers for risk management. However, reporting is time and resource intensive. Streamlining reporting efforts where possible is desirable.
13. SBC encourages the Committee to consider the below points in relation to the design of the Bill with a view to enhancing the efficacy of the proposed regime.
14. **Liability and penalty regime:** The penalty regime should be workable and proportionate to the harm caused by failure to comply with the Bill's obligations. A lesson can be drawn here from the CRD regime, under which there was a clear trend of reporting entities taking a highly compliance-based approach, partially in response to the regime's liability settings.
15. While SBC acknowledges that a regulated regime is likely to drive a compliance mindset to some extent, a durable regime should not incentivise a defensive, compliance-focused approach to reporting. There are practical limitations in visibility across complex, multi-tier supply chains. Excessively stringent or punitive liability may counter-productively discourage identification and reporting of risks and incidents, particularly where entities rely on third-party information and indirect supplier relationships.
16. We recommend the Committee reconsider the liability settings within the Bill:
  - a. We support that liability sits with the reporting entity itself, as the Bill proposes.
  - b. However, civil liability is more appropriate than criminal liability for the contraventions listed in the Bill, for the following reasons:
    - i. tendency for the risk of criminal liability to result in defensive, boilerplate reporting;
    - ii. criminal liability is disproportionate for a reporting failure, particularly at the outset of a new piece of legislation;
    - iii. this would be more in keeping with proposed changes to UK and Australian reporting requirements, which consider introducing civil liabilities for reporting failures.
  - c. We do not support liability for directors and officers involved in a contravention, particularly in light of the lack of director liability in comparable regimes such as Australia and the recent changes to director liability settings under the CRD regime.

- d. If liability for directors and officers is retained, ‘safe harbour’ provisions should apply to some of the more novel or uncertain aspects of reporting. For example, reporting on due diligence undertaken and modern slavery incidents, the latter of which is not currently found in any comparable regime (see further [27] below).
  - e. Protection for good-faith disclosures being used as the basis for complaints or enforcement, where entities have undertaken reasonable, good faith and proportionate due diligence (as set out in guidance) would also be valuable.
  - f. Revisiting the rationale for exclusion of public sector entities from the penalty regime, which appears to create an uneven approach between the private and public sectors.
17. **Reducing duplication of effort for entities already reporting overseas:** SBC considers the regime would benefit from allowing for entities already reporting under comparable regimes overseas to consolidate their reporting, to avoid duplication of work and streamline reporting obligations of offshore parent entities operating under different regulatory frameworks.
18. This could be achieved in the following ways:
- a. The Bill could provide for the possibility of unilateral recognition with Australia and other approved comparable jurisdictions.<sup>1</sup> This would enable an Australian-compliant statement to be treated as compliant in New Zealand. Note, this could also be achieved through a regulator exemption, as is the case with Climate-Related Disclosures reporting.<sup>2</sup>
  - b. Additionally, group level reporting for approved jurisdictions with comparable legislation could be permitted alongside unilateral recognition - provided that group level reporting covers New Zealand activities and meets the expectations in New Zealand legislation. This would require the addition of a clause to the legislation to allow for group-level reporting, replicating ss 14 and 16(2) of the Australian regime, which allows for single-entity and joint statements. We also recommend the removal of separate parent company reporting by removing cl 7(2)(a) of the Bill, for the same reason.
  - c. Noting that laws in comparable reporting jurisdictions will evolve over time, the practical detail may be better dealt with in secondary instruments, rather than primary legislation. Guidance could clarify how entities may leverage existing reports prepared for other jurisdictions while ensuring that all New Zealand-specific requirements are met. This would be broadly consistent with the approaches taken by Australia, the UK and Canada, who have not addressed cross-recognition of statements through legislation. Instead, they rely on guidance, and more recently, a shared optional reporting template, to help entities prepare a report that can be adapted to meet the distinct requirements of each regime.<sup>3</sup>
19. **Scope of reporting entities:** We support the inclusion of the public sector as major buying organisations; and recommend consideration of offshore e-commerce platforms operating in New Zealand, given modern slavery risks may be high, and exclusion creates an uneven playing field for New Zealand-based businesses who are subject to higher levels of scrutiny.

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<sup>1</sup> Note that mutual recognition would be preferable, but is not within the power of the New Zealand regulators to determine alone. If this is the preferred option, we recommend the New Zealand regulator work with their counterparts to enable mutual recognition.

<sup>2</sup> [Financial Markets Conduct \(Climate-related Disclosures for Overseas Climate Reporting Entities\) Exemption Notice 2026 | Financial Markets Authority](#)

<sup>3</sup> [International reporting template on modern slavery, forced labour and child labour](#)

20. **Aligning reporting periods with the entity's financial year:** SBC recommends the definition of the reporting period is aligned with a reporting entity's financial year, consistent with provisions in the Australian regime. This would support integration with existing disclosure frameworks and governance, and assurance processes.
21. **Establishment of an Anti-Slavery Commissioner should not be deferred:** We support the immediate establishment of an Anti-Slavery Commissioner (either through the Human Rights Commission or some other mechanism, under cl 23 or 26 of the Bill). Both the United Kingdom and Australia have an Anti-Slavery Commissioner, which allows for greater support for the business community at the outset of the regime when this is most needed. As noted throughout, alignment with these comparable regimes is desirable and there is no reason to delay.
22. **Commencement and transition period:** We recommend clarifying a commencement period. SBC recommends that a 12-month transition period to prepare the first report would provide reporting entities with the opportunity to establish appropriate governance, data collection, and assurance processes in a new regulatory environment. In that time the relevant regulator should take a measured, pragmatic and proportionate approach as industry beds in the new model, and the Registrar should provide guidance and clarification, as discussed below (see section 3). This would be in line with how the CRD regime was introduced, including using a phased approach to implementation, recognising it takes time to develop the capability to produce high-quality, compliant reports. If penalties are retained (see paragraph 17), this should be subject to a delayed commencement to give reporting entities sufficient time to establish new processes without fear of getting it wrong.

### 3. Clarifying specific concepts and definitions in the Bill, and guidance for reporting entities

23. SBC encourages the Committee to consider clarifying key definitions and concepts in the Bill to ensure they are workable and clearly understood. This should be supported by guidance on prioritisation. A proportionate and risk-based approach would be helpful, recognising practical limitations in lower-tier supplier visibility, and that there are known higher-risk sectors, regions, labour models, and supplier relationships. Reporting entities should identify general areas where the risk of adverse human rights impacts is most significant and prioritise these for human rights due diligence. This would ensure that reporting entities focus the greatest effort on areas of greatest impact.
24. **Operations and Supply Chains:** There is no definition of operations and supply chains in the Bill. The breadth and depth of supply chains need to be elaborated on. The Australian Federal Guidance provides the following definitions, which could be incorporated directly into the Bill:<sup>4</sup>
- a. Operations: *“activity undertaken by the entity to pursue its business objectives and strategy in [Australia] or overseas”*; and
  - b. Supply chains: *“the products and services (including labour) that contribute to the entity’s own products and services. This includes products and services sourced in [Australia] or overseas and extends beyond direct suppliers”*.
25. **Due Diligence:** Although the Bill is focused on reporting rather than substantive obligations, the requirement to report on due diligence in practice sets a de facto expectation that due diligence will be undertaken. The current definition of due diligence is very broad, which creates uncertainty.
26. The definition of due diligence in the Bill should be clearer and should be supported by comprehensive guidance, addressing what is needed, what is proportional, and how deep into the supply chain due diligence should go. The UN Guiding Principles on Business and Human Rights (UNGPs) should be drawn on to inform this guidance (see paragraph 30b, below). We also recommend removing ‘remediations’ from the definition of ‘due diligence’ in cl 6, as remediation is usually understood as a separate process (as reflected in cl 9(2)(d)).
27. **Incidents and indicators:** We note that the term ‘modern slavery incident’ is novel and does not appear in other comparable regimes or international instruments. The Bill’s requirement to report on modern slavery incidents raises several workability concerns:
- a. First, there is a discontinuity between the requirement to report on incidents and the absence of a corresponding requirement for due diligence that would identify such incidents.
  - b. Second, the breadth of what constitutes an ‘incident’ is unclear. For example, it is not clear whether an allegation, complaint or whistleblower report would be considered an incident, and when reporting is required – ie, once an allegation has been investigated or verified.
  - c. Third, in practice, entities more commonly identify ‘indicators’ of modern slavery (such as recruitment fees or restricted movement) rather than confirmed incidents. The internationally recognised International Labour Organisation (ILO) indicators of forced labour

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<sup>4</sup> Commonwealth Modern Slavery Act 2018, “Guidance for Reporting Entities” (May 2023), p. 33 and 34.

are not reflected in the Crimes Act definitions used by the Bill, creating a disconnect between operational practice and legislative terminology.

28. A focus on ILO recognised indicators along with clarity on what constitutes an incident would be consistent with international and operational best practice and drive more meaningful change.
29. **Guidance:** A key lesson from (i) CRD reporting, where no Government guidance was provided at the outset of the regime, and from (ii) Australian modern slavery legislation, which was accompanied by guidance, is that early and comprehensive guidance for reporting entities will be critical. This should provide clarity on key concepts and definitions in the legislation such as those outlined above.
30. Guidance should be provided in advance of obligations coming into force and should leverage existing overseas materials. For example:
  - a. Australia's regime is supported by practical guidance on supply chain scope and proportionate engagement expectations including by sector.<sup>5</sup> This could be leveraged to provide guidance in the New Zealand context which should be provided well in advance of reporting obligations commencing.
  - b. The UNGPs provide detailed guidance on due diligence, including the principle of proportionality. The UNGPs (Principle 17) offer a globally recognised human rights due diligence framework. The UNGPs stress that due diligence will vary in complexity depending on the size, risk profile, nature and circumstances of the entity.
31. Guidance could usefully include sector-specific examples, including for infrastructure, manufacturing and capital-intensive industries where supply chains are complex, long-term, and often involve multiple tiers of contractors and suppliers. This would support consistent interpretation.

## About the Sustainable Business Council

The Sustainable Business Council (SBC) is a CEO-led membership organisation with more than 125 businesses from all sectors, ambitious for a sustainable New Zealand. Members represent more than \$175 billion of collective turnover, 42 per cent of GDP, and nearly 275,000 full-time jobs. Our network gives members the ability to take large-scale collective action. SBC is part of the BusinessNZ network and is the New Zealand Global Network partner to the World Business Council for Sustainable Development. [www.sbc.org.nz/about/our-members/sbc-members](http://www.sbc.org.nz/about/our-members/sbc-members)

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<sup>5</sup> Commonwealth Modern Slavery Act 2018, "Guidance for Reporting Entities" (May 2023), p. 33 and 34.