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ICNZ SUBMISSION ON THE MODERN SLAVERY BILL

Thank you for the opportunity to comment on the Modern Slavery Bill.

Te Kāhui Inihua o Aotearoa | The Insurance Council of New Zealand (**ICNZ**) represents general insurers. Our members accept the risks of over NZ$2 trillion of New Zealand's assets and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, cyber insurance, forestry and horticulture insurance, livestock insurance, commercial property insurance, and directors and officers insurance).

ICNZ supports the objective of the Bill to help address modern slavery through a statutory reporting framework.

Our submission focusses on ensuring the reporting regime is clear, proportionate, and practical to implement, while avoiding unnecessary cost and complexity. Strong alignment with international disclosure regimes, particularly the Australian modern slavery reporting requirements, may support efficiency for many New Zealand companies with complex international supply chains, trans-Tasman operations or which are already complying with international regimes. We set out our comments on that basis below.

Executive Summary

ICNZ supports the objective of the Modern Slavery Bill to improve transparency through a statutory reporting regime. However, ICNZ considers that the Bill, as currently drafted, would impose obligations that are uncertain in scope, more onerous than comparable overseas regimes, and in some respects impractical for large entities with complex supply chains, including general insurers.

We consider the Bill should align more closely with the Australian modern slavery framework. As currently drafted, the Bill's reporting regime encompasses a broad framing of supply chains which is not compatible with requirements or expectations that require a clear delineation of levels of control along that supply chain (e.g. incident and complaints reporting). We consider that these requirements should be removed from the Bill.

We also consider that the reporting period should be aligned with entities' financial years, that the first reporting period should begin only after commencement, and that equivalent overseas

statements and group statements should be recognised to avoid unnecessary duplication and compliance cost.

We are also concerned that the Bill's proposed civil and criminal penalties, including personal liability for directors and managers and the prohibition on Crown payments, are disproportionate for what is fundamentally a corporate reporting regime.

Alignment with Australia

We note the Bill is modelled on but goes significantly further than the equivalent Australian legislation. This includes by requiring disclosure of actual incidents of modern slavery, complaints received, and training provided to employees and supply chain workers, and by imposing significant penalties. These differences and the absence of provisions for mutual recognition in the Bill will create additional costs, reduce synergies and make initial implementation and ongoing administration more complex and costly.

Where a reporting entity's supply chain spans both Australia and New Zealand, alignment of the regimes would ensure that engagement with suppliers can be conducted on a consistent basis trans-Tasman, with a single set of expectations and a single set of reporting metrics. This would reduce complexity and confusion for suppliers in both jurisdictions, improve the quality and consistency of the information gathered, and recognise supply chains are regional / global, not solely country specific. Entities already experienced with the Australian regime should display more mature reporting practices from the outset and Australian experience and learnings can be utilised in New Zealand. This accelerates the development of meaningful, substantive modern slavery statements and reduces the "learning curve".

Greater alignment with reporting requirements in Australia would reduce compliance costs. New Zealand subsidiaries would be able to adopt and build on the compliance systems, templates, and internal governance processes already developed for Australian reporting purposes. This would avoid the need to develop bespoke New Zealand processes from scratch for entities and suppliers that are already meeting materially similar requirements under Australian law. The most efficient approach would be to allow the multiple New Zealand insurers operating through subsidiaries or branches to rely on the reporting by their Australian parent, reducing costs from duplicate preparation and assurance-related costs and avoiding the need for companies to report against different sets of requirements.

The Australian regime is likely to evolve over time, and it would be logical for New Zealand regime to align with it initially and then evolve in step and in line with international practice. This approach is already enabled with the drafting of the Bill as clause 9(2)(i) allows additional reporting requirements to be prescribed through regulations. Some other elements of the Bill already anticipate changes that have been recommended but not yet adopted in Australia (e.g. penalties for entities for non-compliance or including Article 3 of the Worst Forms of Child Labour Convention within the scope of modern slavery).

Context – General insurers have extensive supply chains

Given the focus of the proposed reporting regime will be on larger entities' supply chains, it is useful to set out the nature of general insurers' supply chains. General insurers will commonly have hundreds of contracted local suppliers relevant to resolving customers' claims (e.g. car repairers, home repairers, flood restoration, and contracted suppliers of contents items for repair

or replacement) and may also have thousands of companies they pay cash to on behalf of customers, but which are not contracted suppliers. Insurers like other entities will also have a range of suppliers for technology, service provision or other corporate purposes. Any of these suppliers will in turn have their own suppliers, for example car repairers sourcing parts from specialist parts companies who import these from overseas manufacturers.

Insurers will have controls and processes in place for contracted claims suppliers, but they will not have the same level of control over non-contracted suppliers to whom they make cash payments for claims or over entities further along their supply chains.

Many of the insurers' suppliers (e.g. car repairers) will in turn be contracted to or regularly paid by multiple insurers. This makes it important that the obligations under the Bill are proportionate and workable as otherwise there is a risk of creating an undue regulatory burden on what are largely SMEs, particularly as they may have to respond to many insurers in relation to their reporting obligations under the Bill.

Clarifying the scope of a reporting entity's relevant supply chains

The Bill requires a reporting entity to prepare an annual modern slavery statement describing its operations and supply chains and any modern slavery incident or risk occurring within its operations or supply chains (clause 9). The Bill however contains no definition of "supply chain", and the extent of the supply chain that a reporting entity is required to report on is therefore unclear.

This uncertainty is particularly problematic as unlike overseas regimes the Bill contains obligations to specifically report on, e.g. incidents (clause 9(2)(b)), and contains criminal and civil penalties for contraventions of reporting obligations. The combination of an uncertain scope but with specific requirements and penalties is a material and problematic distinction. While for example the scope of a supply chain under the Australian regime is not clearly defined, the nature of the reporting obligations allow entities to take a comprehensive and risk-based approach and do not require entities to define suppliers that are, or are not in scope, while implicitly recognising the degree of oversight and control will differ as you extend further along an entity's supply chain.

Large organisations often have extensive, layered supply chains and group-wide procurement arrangements. As outlined above insurers will commonly have large numbers of contracted suppliers and many more they pay cash to on behalf of customers, but which are not contracted suppliers.

An entity may not have meaningful oversight of, or influence over, suppliers that are three or four tiers removed. Clarity about the extent of the supply chains that a modern slavery statement must cover is particularly important given the Bill currently imposes civil and criminal penalties for contraventions and has elements that require a level of clarity (e.g. incident reporting). It will also be difficult for directors and managers to give appropriate sign-offs if there is no clear limit to the depth of the supply chains the statement is expected to address. A reporting regime encompassing a broad framing of supply chains with a risk-based approach is possible (as per the Australian and UK regimes) and appears consistent with the objectives of the regime here. However, such a broad framing is not compatible with requirements or expectations that require a clear delineation of levels of control along that supply chain, or expectations of control or information that are impractical across such a broad framing.

We recommend the Bill be amended to remove reporting requirements that are inconsistent with a broad framing of supply chains, specifically "incident reporting". We also recommend that guidance be issued clarifying that the reporting obligations apply proportionally to the extent to which a reporting entity has control or meaningful influence over the relevant part of the supply chain.

It would also be helpful to provide guidance on what should be consider reasonable steps to identify and assess modern slavery risks to support more consistent and practical implementation of the Bill.

The alternative is to provide a much more specific and narrower scope of the supply chain over which an entity has control, however, this would differ from most international approaches.

Definition of 'reporting period' needs to align with entities existing reporting cycles

Consistent with the need for a clear and practical regime, we recommend clause 6 be amended so that the reporting period for a non-government reporting entity is its financial year. This is the approach taken in Australia's modern slavery legislation and in New Zealand's climate-related disclosure regime. It would allow reporting entities to prepare their modern slavery statements for the same period as their other reporting obligations, including financial statements, annual reports, and climate statements.

Commencement of first reporting period

Reporting entities may be required to put in place new systems and contractual arrangements prior to the beginning of the first reporting period in order to capture the information required to inform their modern slavery statements. It is important that reporting entities have sufficient time to build reporting frameworks and mechanisms to capture the required information before the reporting period commences. We therefore recommend that the first reporting period should commence 12 months after the Bill is enacted. This will be particularly important for reporting entities that do not have overseas parents or existing overseas reporting obligations and will therefore be building these processes from scratch.

We also recommend the Bill be amended to clarify that a reporting entity is required to prepare a modern slavery statement only for the first reporting period that begins *after* the commencement of the Act. As currently drafted, the Bill appears capable of applying to a reporting period already underway at the time of commencement. That would be inappropriate, as it could require reporting in respect of a period during which the entity was not yet subject to the regime and had no reasonable opportunity to establish the systems, processes, and contractual arrangements necessary to capture the required information.

Recognition of overseas modern slavery reports

Some reporting entities will operate in or have parent companies in other jurisdictions that are already subject to equivalent modern slavery regimes. In those cases, materially equivalent overseas statements should be recognised as satisfying the New Zealand requirements. This would require definition of which international jurisdictions have 'materially equivalent' modern slavery reporting requirements.

As we have discussed above, we recommend the Bill should be amended to specifically recognise materially equivalent overseas statements, including Australian and UK modern slavery statements, as meeting the New Zealand reporting requirements. Specifically, the Bill should provide for recognition of modern slavery statements produced under the Australian Modern Slavery Act, which include adequate coverage of New Zealand entities. Enabling mutual recognition would streamline compliance and reduce duplication while maintaining transparency. The most efficient approach would be to allow entities such as insurers operating locally (through domestic subsidiaries or branches) to rely on the reporting by their Australian parent, reducing costs from duplicate preparation and assurance–related costs and avoiding the need for companies to report against different sets of requirements.

Such an approach has increasingly been progressed through revisions to New Zealand's climate reporting regime to address concerns around duplication and inefficiencies.

Group statements

Currently the Bill would require duplicative statements where multiple related entities and their parent organisation individually meet the reporting threshold. To avoid unnecessary duplication, we recommend the Bill expressly permit joint or group modern slavery statements where, for example, two or more related companies are reporting entities. This would be more efficient for both reporting entities and readers, who would otherwise need to refer to multiple statements within a group structure.

The definition of reporting entity in section 7 appears to capture both a subsidiary and its parent as reporting entities and therefore could be interpreted as requiring both entities to prepare separate statements, even where they operate as part of a consolidated group. We suggest section 7 is amended to provide specifically that one group statement can be prepared.

Additionally, clarification is required on the scope of group reporting. Specifically, it should be made clear whether a group modern slavery statement must cover:

- all entities within the corporate group; or
- only the parent and those entities within the group that independently meet the reporting threshold.

We recommend a practical approach is taken, with explicit reference to materiality, made given that a corporate group can include many subsidiaries of varying sizes and significance.

Enforcement approach (civil and criminal penalties)

These same themes of proportionality and practical implementation also apply to enforcement. The Bill introduces significant civil and criminal penalties for reporting entities, directors and managers who fail to comply with their reporting obligations. This is not a feature of the Australian or the UK modern slavery regimes. Liability settings should be calibrated so they do not incentivise a defensive, compliance–focussed approach to reporting or unnecessarily increase compliance costs. We recommend revisiting those settings and considering whether imposing liability on directors or other persons involved in the management of reporting entities is appropriate and necessary to achieve the purpose of the Act.

Adopting a more punitive approach than these comparable jurisdictions would place New Zealand out of step with international practice and increases the regulatory burden on entities operating across multiple markets.

The proposed penalties in the Bill create several risks:

- The penalties are triggered by reporting failures, which may not reflect any underlying modern slavery risks or incidents within a reporting entity's operations or supply chains. It is difficult to justify criminal liability for what may only amount to administrative or procedural non-compliance, rather than conduct that actually contributes to or facilitates modern slavery.
- The possibility of criminal liability for reporting failures may have the effect of discouraging entities from making detailed disclosures. Entities may default to formulaic, minimalist statements to reduce their legal exposure, which would undermine the Bill's objective of meaningful transparency.
- The imposition of personal criminal liability on directors and managers for a reporting obligation appears disproportionate, particularly in circumstances where the reporting requirements themselves remain unclear. For instance, the Bill contains no definition of "supply chain" and does not clarify the depth of supply chain coverage a statement is expected to address. It will be difficult for directors and managers to give appropriate sign-offs if there is no clear limit to the depth of the supply chains the statement is expected to address. The risks associated with this cannot be avoided and attempts to mitigate them through additional external review and insurance will increase compliance costs.

We are also mindful that the Government is currently in the process of amending the climate reporting duties for directors so that they will no longer have personal responsibility (deemed liability) if their company breaks climate reporting rules and directors and reporting companies will not have to show the same level of evidence for climate disclosures as they do for financial disclosures. It would be out of step to go in the opposite direction in the Bill, particularly given this regime is less clearly defined.

While there could be an argument for civil liability for the entity, and this exists or is being considered for some overseas regimes, we would not support the imposition of civil liability on directors and management would not be appropriate and is unnecessary for a corporate reporting regime of this nature.

If a civil penalty regime is imposed on reporting entities, a "reasonable steps" or "due diligence" defence should be available.

We also recommend that following enactment of the Bill, in the early stages of the regime, the focus be on education and supporting the development of good practice. We note that when the climate-related financial disclosure regime first came into effect, the regulator adopted a supportive, educative approach rather than a punitive, enforcement-first model.

Reporting on training undertaken

The reporting expectations on training are very broad, noting the Australian and Canadian regimes limit the reporting to training to the entity's employees rather than across an undefined "supply chain". The drafting of the Bill creates significant uncertainty as to how far those expectations are intended to extend in practice and it should be limited to what is within the control of the entity, as is the case under these other regimes.

Complaints

We also recommend at the requirement to report complaints (clause 9(2)(b)) should be removed from the regime at least initially. This is not a feature of the Australian regime and will be difficult to comply with in the context of legislation that does not clearly define the relevant parts of the supply chain that the requirement relates to.

Prohibition on Crown payments to entities that have contravened the Modern Slavery Act

We do not support the prohibition on Crown payments in clause 28. Clause 28 of the Bill will insert new section 73A into the Public Finance Act 1989, introducing a statutory prohibition on payments by the Crown to entities convicted or penalised for failing to comply with the Bill's reporting requirements, namely a breach of clause 8(1), which requires an entity to prepare a statement, and clauses 10(1) and 10(2), which require publication of the statement. Clause 28 provides:

> ***28 New section 73A inserted (No payment to entities that have contravened Modern Slavery Act 2026)***
>
> *After section 73, insert:*
>
> ***73A No payment to entities that have contravened Modern Slavery Act 2026***
>
> *(1) Except as expressly authorised by any Act, the Crown must not pay money (directly or indirectly) to an entity that has been convicted of an offence against, or in respect of which a pecuniary penalty has been imposed for contravention of section 8(1) or section 10(1) or (2) of the Modern Slavery Act 2026.*
>
> *(2) The Crown must take all reasonable precautions and exercise due diligence to avoid acting contrary to* ***subsection (1).***

This is a highly unusual prohibition, and we have not been able to identify a close precedent in New Zealand legislation.[1] We understand that this type of prohibition is not a feature of the Australian or UK modern slavery regimes.

A prohibition on Crown payments is a particularly onerous and disproportionate consequence given it would be triggered by reporting failures, which may not in any way reflect any underlying modern slavery risk or incident within a reporting entity's operations or supply chains. The prohibition also appears open-ended and would seemingly apply indefinitely to any reporting entity convicted or penalised for contravening the Bill's reporting provisions. The basis for such a draconian penalty for a reporting failure is unclear and applying it could be completely impractical for the Crown if for example it applied to a key supplier.

We recommend clause 28 be removed. A better approach would be to address modern slavery risks in government supply chains directly through government procurement policy, rather than through a statutory prohibition on Crown payments triggered by reporting failures.

[1] The only precedent we have identified is clause 4 of the member's bill Public Finance (Prohibition on Providing Public Funds to Gangs) Amendment Bill which would prohibit payments by the Crown to gangs.

Regulations

Regulations may prescribe forms and additional information that must be included in a modern slavery statement (clause 24(1)(b) and (e)). If regulations are intended to apply to the first reporting period, then these should be publicly consulted on and finalised as soon as possible. Reporting entities will need certainty about the information they may need to collect to prepare their first statements, particularly given the Bill's short commencement period. Until any additional requirements are finalised, entities cannot properly plan for implementation.

Conversely, if no regulations are planned, then it will be important to confirm this, so entities can progress their implementation with confidence as to the scope of the regulatory requirements that will apply.

Finally, given this is a member's Bill and has not been developed through the usual departmental process, it will also be important to clarify how the regime will be administered, including responsibility for implementation, guidance and oversight.

Thank you again for the opportunity to provide a submission.

Ngā mihi,

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