Submission

by

THE NEW ZEALAND INITIATIVE

to the

Education and Workforce Committee

on the

Modern Slavery Bill

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1. INTRODUCTION

1.1 The New Zealand Initiative (the Initiative) welcomes the opportunity to submit on the Modern Slavery Bill.

1.2 The Initiative is a Wellington-based think tank supported primarily by major New Zealand businesses. In combination, our members employ more than 150,000 people. We undertake research that contributes to the development of sound public policies in New Zealand, and we advocate for a competitive, open and dynamic economy, as well as a free, prosperous, fair and cohesive society.

1.3 The views expressed in this submission are those of the author rather than the New Zealand Initiative's members. We note that several of the recommendations we make below, including significant additional resourcing for the Labour Inspectorate, Immigration New Zealand and the New Zealand Police, would impose costs on, rather than provide relief to, our member firms. The submission's recommendations track the McMillan Review of the comparable Australian Act, an independent statutory review.

1.4 Modern slavery is a grave violation of human dignity. The Initiative shares the concern of every party that supported this Bill at first reading that decisive action is required to address it. We endorse the international and domestic legal commitments that already prohibit slavery, servitude, forced and exploitative labour, trafficking in persons and related conduct. We support proper resourcing of the agencies that enforce those prohibitions. We agree with the proposition, expressed clearly in the Australian government's 2023 statutory review of its own modern slavery legislation, that "all levels of society bear a collective responsibility to combat slavery".[1]

1.5 The question before the Committee is not whether action is needed. It is whether the mechanism this Bill proposes will deliver it. On the evidence of the comparable jurisdictions that have run a similar experiment for between five and eleven years, and on the evidence of the recent academic literature reviewing their performance, the answer is that it will not. In Germany, the operating due-diligence regime has not yet produced documented reductions in the conditions it was designed to prevent. Germany pressed for the EU's Corporate Sustainability Due Diligence Directive (CSDDD) to be adopted in a substantially narrower form than originally proposed and has moved to replace its own domestic Act, with the EU Council giving final approval to a substantially narrowed CSDDD in February 2026. That regulatory model has also been found wanting by government reviews in the United Kingdom and Australia. The Bill imposes substantial compliance costs, creates significant legal uncertainty, departs from established principles of corporate liability and rests on prevalence figures whose methodological foundations are contested.

1.6 We respect the work the joint sponsors of the Bill and the many advocates over many years have done to bring this issue to Parliament. Our disagreement is not with the cause. It is with the chosen instrument which, based on evidence, will not work.

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[1] John McMillan, *Report of the statutory review of the Modern Slavery Act 2018 (Cth): The first three years* (Commonwealth of Australia, Attorney-General's Department, 2023) ("McMillan Review"), Executive Summary, p 7. Available at https://www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth.

1.7 Section 3 sets out the substantive case that modern slavery is a serious problem. Section 4 reviews the international evidence. Section 5 identifies eight design defects in the Bill. Section 6 offers an alternative approach grounded in proven New Zealand practice. Section 7 concludes. Annex A provides drafting amendments for the Committee's use should it nonetheless decide to proceed with the Bill.

2. SUMMARY AND RECOMMENDATIONS

2.1 The Initiative does not support the Modern Slavery Bill as drafted. The defects identified in section 5 reflect a regulatory model that has been tested in the United Kingdom, Australia, Germany and the European Union. On the assessment of those jurisdictions' own government reviews and the peer-reviewed academic literature, that model falls short of its stated objectives. The Committee will need to consider carefully whether an amendment at the select committee can repair the defects, or whether a fundamentally different approach is required.

2.2 Our recommendations are as follows.

2.3 *First*, the Committee should not recommend that the Bill proceed without a comprehensive redesign to address each of the defects identified in section 5. The Initiative considers that the cumulative weight of those defects is such that the Committee will need to consider carefully whether the Bill, as it stands, can be brought to a workable form through amendment at the select committee stage or whether a different approach is required.

2.4 *Second*, the Committee should request that the Ministry for Regulation, with input from Treasury's Regulatory Quality Team, conduct an independent regulatory impact assessment. That assessment should quantify the costs of compliance for the reporting population, evaluate the international evidence on the effectiveness of comparable regimes and consider whether the Bill's stated objectives could be better served by alternative measures. Annex A.12 sets out the proposed statutory framework for this assessment.

2.5 *Third*, the Committee should consider directing additional resources to the Labour Inspectorate, the New Zealand Police and Immigration New Zealand for the enforcement of existing prohibitions in the Crimes Act 1961 and the employment standards legislation. The 2014 reform of foreign charter vessel arrangements provides a New Zealand-specific demonstration that targeted statutory intervention against actual perpetrators is both possible and effective.

2.6 *Fourth*, if Parliament does proceed with a transparency-based regime, the Committee should require that the legislation provide for mutual recognition with the Australian Modern Slavery Act 2018 (Cth), so that New Zealand reporting entities are not subjected to duplicative and inconsistent obligations across the Tasman.

2.7 *Fifth*, the Committee should not endorse the personal liability provisions for directors in clause 17 of the Bill in their current form. The "reasonably expected to have known" standard for conduct in supply chains that directors cannot directly observe departs from the fault-based principles of New Zealand company law. It is more demanding than the CSDDD's civil-liability conditions as adopted in 2024, which included fault and causation safeguards; the 2026 Omnibus package has since narrowed the regime further.

2.8 *Sixth*, the Committee should not endorse ministerial discretion in clause 24(1)(c) to prescribe a different threshold revenue amount by Order in Council. The threshold determines the scope of criminal and pecuniary liability. That is a matter for Parliament, not the executive.

2.9 *Seventh*, the Committee should require that any reporting regime adopted in New Zealand define "supply chain" with statutory precision, so that reporting entities and their directors know what is being required of them.

2.10 *Eighth*, the Committee should require any reporting regime to be accompanied by an evaluation framework with measurable outcome indicators capable of demonstrating whether the regime is achieving its stated purpose. Without such a framework, the regime cannot be reviewed against its objectives at the first review at three years under clause 25(2).

2.11 *Ninth*, the Bill in its current form should not amend the Public Finance Act 1989. The procurement consequences in proposed section 73A compound the perverse incentive against discovery that the reporting regime creates.

2.12 *Tenth*, if Parliament proceeds with the Bill, the Committee should provide for a staged commencement and for the publication of standard-form templates and guidance before the first mandatory reporting period. Annex A.19 and A.20 set out the proposed drafting. Reporting entities should not be required to develop compliance approaches in the absence of guidance that took years to produce in the United Kingdom and Australia.

3. MODERN SLAVERY IS A SERIOUS PROBLEM

3.1 Modern slavery includes human trafficking, servitude, forced and exploitative labour, debt bondage, the worst forms of child labour, forced marriage and sexual exploitation. The administrative record on the prosecution of trafficking and slavery offences, empirical fieldwork on labour conditions and the documented case-law of comparable jurisdictions all confirm that the conduct is widespread, severe and persistent. Even so, headline prevalence figures (such as the 49.6 million global estimate produced jointly by the International Labour Organization, Walk Free and the International Organization for Migration[2]) are derived from methodologies with limitations discussed in section 5. Our position is that the precise number is contested but the underlying conduct is not.

3.2 The evidence of modern slavery in the Asia-Pacific region is disturbing. The cotton produced in Xinjiang province in the People's Republic of China, which accounts for a major share of global supply, has been the subject of detailed documentary research and reporting linking large-scale labour transfer programmes to coercive practices that meet international definitions of forced labour.[3] South-east Asian fishing has been documented repeatedly in international reporting and academic literature, with accounts of bonded labour, document confiscation and confinement at sea. In South Asia, debt bondage and bonded labour persist on a very large scale, including in jurisdictions with which New Zealand maintains substantial trade relationships.

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[2] International Labour Organization, Walk Free Foundation and International Organization for Migration, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva: ILO, 2022). Cited in McMillan Review (above n 1), p 7.

[3] See Vicky Xiuzhong Xu and others, *Uyghurs for Sale: 'Re-education', Forced Labour and Surveillance Beyond Xinjiang* (Australian Strategic Policy Institute, Policy Brief Report No 26, 2020); United States Department of State, *2024 Trafficking in Persons Report* (Washington DC, 2024), Country Narratives, People's Republic of China. See also the discussion at (29 April 2026) NZPD Hansard, *Modern Slavery Bill – First Reading* (Phil Twyford MP).

3.3 In New Zealand itself, evidence is limited but not absent. Christina Stringer and her colleagues at the University of Auckland have documented in painstaking empirical detail the conditions endured by Indonesian crew members on South Korean foreign charter vessels operating in New Zealand waters between the early 1990s and 2011. Their work draws on interviews with more than 160 Indonesian crew between 2011 and 2017. In June 2011, 32 Indonesian crewmen of the Oyang 75 walked off their vessel in Lyttelton, exposing conditions that included unpaid wages, document confiscation, physical abuse and confinement.[4] Anderson and Kenner document ongoing exploitation in fishing, hospitality and tourism and traverse the regulatory responses that New Zealand has progressively put in place.[5] New Zealand recorded a landmark slavery and trafficking conviction in 2020 (R v Matamata).[6]

3.4 The international legal framework addressing this conduct is substantial. Negotiations conducted between 1998 and 2000, in which Dr Anne Gallagher represented the United Nations High Commissioner for Human Rights, produced the United Nations Convention against Transnational Organized Crime, including supplementary protocols on trafficking in persons and migrant smuggling.[7] As Gallagher records in her authoritative treatise, the framework that emerged "proved to be sufficiently broad to embrace all but a very small range of situations in which women, men, and children are severely exploited for private profit".[8]

3.5 The New Zealand Parliament has implemented these obligations. Sections 98, 98AA, 98D and 207A of the Crimes Act 1961 criminalise dealing in slaves, dealing in people under 18 for sexual exploitation, removal of body parts or forced labour, trafficking in persons and coerced marriage or civil union, respectively. The maximum penalties for the principal slavery and trafficking offences are imprisonment for periods of up to fourteen and twenty years; s 207A carries a maximum of five years. The Bill itself, in clause 4, defines "modern slavery" by reference to these provisions of the Crimes Act, to the United Nations Trafficking Protocol and to the International Labour Organization Convention 182. The substantive criminal conduct the Bill aims to address is already prohibited in New Zealand law. We acknowledge that prohibition on the statute book is not the same as enforcement in practice; the fact that the landmark slavery conviction in R v Matamata came only in 2020 demonstrates that the existing enforcement architecture is not yet adequate to the conduct it addresses. However, conviction counts alone cannot establish prevalence. Low conviction numbers may reflect rarity, but they may also reflect detection difficulty, victim reluctance to report, evidential barriers or under-resourced enforcement. Our argument in section 6 below is that the right response to that

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4 Christina Stringer, Steve Hughes, D Hugh Whittaker, Nigel Haworth and Glenn Simmons, Labour standards and regulation in global value chains: The case of the New Zealand Fishing Industry (2016) 48(10) *Environment and Planning* A 1910, DOI: 10.1177/0308518X16652397; Ani Kartikasari, Christina Stringer and Guye Henderson, Co-creating changes to achieve decent work conditions in the New Zealand fishing industry (2022) 22(2) *Global Social Policy* 281, DOI: 10.1177/14680181211026182.

5 Gordon Anderson and Lucy Kenner, "Enhancing the effectiveness of minimum employment standards in New Zealand" (2019) 30(3) *The Economic and Labour Relations Review* 345. DOI: 10.1177/1035304619862699.

6 Referenced by the Hon Casey Costello at first reading: (29 April 2026) NZPD Hansard.

7 United Nations Convention against Transnational Organized Crime, 2225 UNTS 209, opened for signature 15 November 2000, entered into force 29 September 2003; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, opened for signature 15 November 2000, entered into force 25 December 2003.

8 Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010), Introduction, p 2.

enforcement gap is to strengthen the agencies that have jurisdiction and capacity to act, not to create a new compliance regime targeting firms that are not the locus of the conduct.

3.6 The Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014 illustrates that New Zealand can act decisively when it so chooses. The 2014 reform required all foreign charter fishing vessels operating in New Zealand waters to be reflagged to New Zealand registration. Crews on those vessels were thereby brought fully within New Zealand labour law, removing the regulatory ambiguity that had previously sheltered the conditions documented in the Oyang 75 case. Stringer and her colleagues, evaluating the reform some years later, documented substantial improvements in conditions for crew on what had previously been the most problematic vessels.[9]

3.7 The Initiative takes seriously the moral argument that effectively responding to the scourge of modern slavery is not the only consideration. Advocates of modern slavery reporting regimes have argued, persuasively, that society owes a duty of transparency to those caught in modern slavery, regardless of whether such transparency can be shown to alter their conditions. The Initiative respects that argument. Our position is that the existing criminal and employment law architecture set out at 3.4 to 3.6 above is, in substance, an expression of that moral duty. The Crimes Act 1961 expresses a societal and legal commitment that slavery, trafficking, servitude and child labour will not be tolerated in this country. The question is whether a further reporting regime on top of that commitment will deliver to victims of modern slavery a benefit commensurate with its cost. Sections 4 and 5 below set out the evidence on that question. Section 6 sets out what we believe is the more effective expression of the duty.

3.8 The argument for prioritising enforcement of existing law is reinforced by the Crown's active protection duty under Te Tiriti o Waitangi. That duty, developed in New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641 (CA) and subsequent jurisprudence, requires the Crown to protect the most vulnerable, which in this context includes Māori workers and the migrant workforce on temporary visas exposed to exploitation in fishing, hospitality, tourism and seasonal horticulture.

3.9 The cases on which the existing prohibitions have actually been enforced bear this out. The victims in R v Matamata were Samoan. The victims in R v Ali and Kurisi were Fijian. The Indonesian crew of the Oyang 75 had no recourse to New Zealand labour law until the 2014 foreign charter vessel reforms brought them within it. The exploitation that has been documented in New Zealand has been concentrated in workforces whose vulnerability the Crown has a particular duty to address.

3.10 A reporting regime that targets large publicly listed firms while leaving exploitation by smaller operators to an under-resourced inspectorate gives less weight to that duty rather than more. The alternative set out in section 6, namely the resourcing of the agencies that have jurisdiction over the conduct, engages the duty directly. The Bill's design does not.

3.11 New Zealand already possesses substantive criminal and employment law, documented capacity to legislate in targeted fashion when required and empirical knowledge of where exploitation actually occurs within this country. It also has international legal obligations to address modern slavery. The question is whether a reporting regime modelled on overseas

[9] Kartikasari, Stringer and Henderson (above n 4).

precedent will add usefully to this existing architecture. Sections 4 and 5 examine that question.

4. THE EVIDENCE FROM COMPARABLE JURISDICTIONS IS UNFAVOURABLE

4.1 The Modern Slavery Bill is modelled in significant respects on the Modern Slavery Act 2015 of the United Kingdom and the Modern Slavery Act 2018 of Australia. The Bill's joint sponsors both made clear at first reading that they expect the regime to evolve. Mr Fleming, in his closing remarks and in response to Mr Twyford, accepted that mandatory due diligence requirements should be added at select committee stage. Mr Twyford pressed the same point.

4.2 Eleven years of operating experience for the United Kingdom Act and seven years for the Australian Act now allow the Committee to assess that regulatory model against evidence. The evidence, consistent across two government-commissioned reviews and a substantial body of peer-reviewed empirical work, does not support the proposition that disclosure-based modern slavery legislation has reduced modern slavery.

The United Kingdom experience

4.3 The United Kingdom government commissioned an independent review of the Modern Slavery Act 2015 in 2018. The review, conducted by the Rt Hon Frank Field MP, the Rt Hon Maria Miller MP and Baroness Butler-Sloss, reported in May 2019.[10] Its overall finding on the supply chain transparency provisions, which are the model for the Bill before the Committee, was that compliance was patchy, the quality of statements was variable, and many companies were treating the regime as a tick-box exercise.

4.4 The peer-reviewed literature has reached the same conclusion through different methods.

4.5 Mantouvalou's assessment in the *Modern Law Review*, published three years after the United Kingdom Act came into force, concluded that the Act "has failed to increase prosecutions and to provide adequate remedies to victims" and is "too weak in tackling modern slavery by businesses in their supply chains, as existing evidence from business responses to the MSA indicates".[11] Mantouvalou is not a sceptic of strong legal protection for workers. Her conclusion was that the Act needed strengthening, not removal. The point, for present purposes, is that even authors who favour stronger regulation report that the United Kingdom regime has not delivered on its objectives.

4.6 Monciardini, Bernaz and Andhov, in a detailed empirical study of compliance practices in the United Kingdom food and tobacco sector, concluded that "empirical studies indicate that business compliance with the UK Modern Slavery Act is disappointing".[12] Their study developed and applied the concept of "managerialization of modern slavery law", whereby

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[10] Frank Field, Maria Miller and Baroness Butler-Sloss, *Independent Review of the Modern Slavery Act 2015: Final Report* (United Kingdom Home Office, May 2019, CP 100). Available at https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report.

[11] Virginia Mantouvalou, "The UK Modern Slavery Act 2015 Three Years On" (2018) 81(6) *Modern Law Review* 1017, abstract and conclusion. DOI: 10.1111/1468-2230.12377.

[12] David Monciardini, Nadia Bernaz and Alexandra Andhov, "The Organizational Dynamics of Compliance With the UK Modern Slavery Act in the Food and Tobacco Sector" (2019) 60(2) *Business & Society* 288, abstract. DOI: 10.1177/0007650319898195.

"merely symbolic structures come to be associated with legal compliance, even when they are ineffective at tackling modern slavery". The United Kingdom Parliamentary Review of 2019, which they cite, found that "a number of companies are approaching their [transparency] obligations as a mere tick-box exercise".

4.7 Rogerson, Crane and Soundararajan went further. Their study, published in 2020, asked directly whether the United Kingdom regime represented "a failure of experimentalist governance." On the empirical evidence then available, they concluded that the expected experimentalist mechanism had largely failed: disclosure had not generated the competitive pressure required to improve practice.[13]

4.8 Subsequent studies have confirmed and extended these findings rather than challenging them. Mai, Vourvachis and Grubnic studied disclosure by FTSE 100 companies and treated the Rogerson "failure of experimentalist governance" finding as supporting their own analysis.[14] Pinnington, Benstead and Meehan evaluated 95 United Kingdom government suppliers' modern slavery statements against the Ethical Trade Initiative assessment framework. They found "low legitimacy of the reporting governance regime".[15] Allam, Moussa and Elmarzouky, working with FTSE 100 data from 2016 to 2020, concluded that "a significant gap persists in the reporting on the measurement and monitoring of the effectiveness of their policies".[16] Nine years after the United Kingdom Act came into force, the disclosures of the largest United Kingdom-listed companies still did not demonstrate robust measurement and monitoring of policy effectiveness.

The Australian experience

4.9 The Australian Modern Slavery Act 2018 (Cth) came into force on 1 January 2019. It requires entities with consolidated revenue of more than AU$100 million to submit annual modern slavery statements. The Australian Act required a statutory review three years after commencement. That review was commissioned by the Attorney-General's Department and conducted by Professor John McMillan AO, a former Commonwealth Ombudsman. Professor McMillan reported in 2023 following consultations that involved 136 submissions, 30 online questionnaire responses, 496 online survey responses, 38 consultation meetings, and a further 65 meetings with government officers.[17]

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[13] Michael Rogerson, Andrew Crane, Vivek Soundararajan, Johanne Grosvold and Charles H Cho, "Organisational responses to mandatory modern slavery disclosure legislation: a failure of experimentalist governance?" (2020) 33(7) *Accounting, Auditing & Accountability Journal* 1505. DOI: 10.1108/AAAJ-12-2019-4297.

[14] Nam Mai, Petros Vourvachis and Suzana Grubnic, "The impact of the UK's Modern Slavery Act (2015) on the disclosure of FTSE 100 companies" (2023) 55(3) *The British Accounting Review* 101115. DOI: 10.1016/j.bar.2022.101115.

[15] Bruce Pinnington, Amy Benstead and Joanne Meehan, "Transparency in Supply Chains (TISC): Assessing and Improving the Quality of Modern Slavery Statements" (2022) 182(3) *Journal of Business Ethics* 619. DOI: 10.1007/s10551-022-05037-w.

[16] Amir Allam, Tantawy Moussa and Mahmoud Elmarzouky, "Examining the relationship between CEO power and modern slavery disclosures: The moderating role of board gender diversity in UK companies" (2024) 33(8) *Business Strategy and the Environment* 8067, abstract. DOI: 10.1002/bse.3910.

[17] McMillan Review (above n 1), Executive Summary, p 7.

4.10 The McMillan Review's central finding is the most authoritative available statement on the performance of a regime closely comparable to that proposed by the Bill. It bears extended quotation:

4.11 "A widely endorsed view in the consultations for this review is that there is no hard evidence that the Modern Slavery Act in its early years has yet caused meaningful change for people living in conditions of modern slavery."[18]

4.12 The Review captured the position of critical participants in the consultation in these terms:

4.13 "Modern slavery reporting is not being taken seriously enough. Independent studies and government evaluation have found a high level of apparent non-compliance, sometimes with basic requirements and at other times with best practice expectations. There has been improvement in the quality of statements from one reporting period to the next, but the change is not significant enough… It resembles a tick-box exercise by a number of entities – a race to the middle!"[19]

4.14 The Review also recorded a deeper critique that has emerged in the literature:

4.15 "Another line of criticism is that the underlying premise of a transparency reporting mechanism is shaky. It will be hard to turn around the business imperative to be commercially competitive, and it is mistaken to think that consumer preferences and loyalties will hinge on the quality of modern slavery reporting."[20]

4.16 Professor McMillan's response to these findings was to recommend thirty changes to the Australian Act, including the introduction of mandatory due diligence obligations, the imposition of penalties for non-compliance and a lower revenue threshold of $50 million rather than $100 million.[21] On 2 December 2024 the Australian Government released its formal response, agreeing in full, in part or in principle to 25 of McMillan's 30 recommendations, and noting five. It did not lower the revenue threshold to AU$50 million at this stage and left civil penalties and mandatory due diligence for further consultation or consideration. None of those substantive reforms has yet been legislated. Reviewing the Act's first three years of operation, McMillan found no evidence of measurable impact and concluded that substantial further regulatory intervention would be required before any could be expected. Seven years on, those substantive reforms remain unenacted.

4.17 The peer-reviewed Australian literature reaches similar conclusions. Rao, Burritt and Christ, analysing the disclosures of top Australian listed companies, found "evidence of poor quality of disclosures and the need for improvement… regulation to improve transparency, through the required publication of a modern slavery statement, is significant but not enough on its own to increase disclosure quality".[22] Rusinova and Korotkov, in a comparative analysis of nine due diligence regimes, concluded that the Australian Act "retains certain common drawbacks. The high income threshold, the lack of mechanism to verify the reported information, and the

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18 McMillan Review (above n 1), p 8.

19 McMillan Review (above n 1), p 8.

20 McMillan Review (above n 1), p 8.

21 McMillan Review (above n 1), pp 8-9.

22 Kathyayini Kathy Rao, Roger Burritt and Katherine L Christ, "Quality of voluntary modern slavery disclosures: top Australian listed companies" (2022) 34(3) *Pacific Accounting Review* 451, abstract. DOI: 10.1108/PAR-07-2021-0117.

absence of penalties degrade the Act's regulatory potential".[23] Marmo and Bandiera examined the Australian regime through the case study of medical glove supply chains. They argued that the Act is "operating as it was designed to", meaning it allows reporting entities to pay lip service to human rights without substantive change to business practices.[24]

The European Union and Germany

4.18 The European experience offers the Committee a particularly instructive case study because it shows what happens when the disclosure regime that proved disappointing in the United Kingdom and Australia is intensified into a mandatory due diligence regime of the kind that several speakers at first reading suggested might be appropriate for New Zealand.

4.19 Germany enacted the *Lieferkettensorgfaltspflichtengesetz* (Supply Chain Due Diligence Act, the LkSG) in 2021. The Act entered into force on 1 January 2023 and initially applied to companies with 3,000 or more employees. The threshold was reduced to 1,000 employees in 2024. The Act imposes due diligence obligations along German companies' supply chains and provides for administrative penalties.

4.20 Mittwoch and Bremenkamp, German jurists writing in the *Review of European and Comparative Law*, assessed the German legislation in the year it came into force. Their verdict was that the Act "falls short of expectations". The "main weakness of the LkSG lies in its exclusion of civil liability". The Act, they argued, "does not bring the intended relief but conversely leads to legal uncertainties to the detriment of SMEs, which form the backbone of the German and European economy".[25]

4.21 The European Union adopted the Corporate Sustainability Due Diligence Directive (CSDDD) in 2024. The Directive is the world's most ambitious mandatory human rights due diligence framework to date. Mieszkowska's analysis of the Directive's "unintended consequences", published in the *American Journal of International Law Unbound* shortly after adoption, documented two patterns the Committee should consider carefully. The first was "disproportionate compliance costs for downstream business partners," with audit fatigue already evident in surveyed facilities before the CSDDD added further demands.[26] The second pattern was the bureaucratic strain created by the cumulative weight of national and European regimes.

4.22 The most telling evidence of the bureaucratic strain created by the European model is that the Federal Republic of Germany has already moved to reduce the scope of its own Act. As Mieszkowska records:

4.23 "In July 2024, for instance, Germany's governing coalition agreed to reduce the scope of the German Supply Chain Act in order to conform with the CSDDD. Only a third of the companies

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[23] Vera Rusinova and Sergei Korotkov, "Mandatory Corporate Human Rights Due Diligence Models: Shooting Blanks?" (2021) 9(4) *Russian Law Journal* 33. DOI: 10.17589/2309-8678-2021-9-4-33-71.

[24] Marinella Marmo and Rhiannon Bandiera, "Modern Slavery as the New Moral Asset for the Production and Reproduction of State-Corporate Harm" (2021) 3(2) *Journal of White Collar and Corporate Crime* 64. DOI: 10.1177/2631309X211020994.

[25] Anne-Christin Mittwoch and Fernanda Luisa Bremenkamp, "The German Supply Chain Act – A Sustainable Regulatory Framework for Internationally Active Market Players?" (2023) 55(4) *Review of European and Comparative Law*. DOI: 10.31743/recl.16677.

[26] Jowita Mieszkowska, "The Unintended Consequences of the EU Corporate Sustainability Due Diligence Directive" (2024) 118 *AJIL Unbound* 291, 292-293. DOI: 10.1017/aju.2024.48.

currently covered by the German Supply Chain Act will come within the new, reduced scope of German domestic law."[27]

4.24 We do not suggest that this represents German retreat from the project of supply chain regulation. The CSDDD itself is in some respects a more demanding regime than the LkSG. The point we draw from the German experience is more limited but also more significant. The Federal Republic of Germany passed the LkSG in 2021. The Act came into force on 1 January 2023. In May 2024 the European Union adopted the CSDDD in a substantially narrower form than originally proposed, with Germany among the member states pressing for a narrower approach. In February 2025 the Commission proposed an Omnibus simplification package; on 24 February 2026 the Council gave final approval, raising the CSDDD threshold to companies with more than 5,000 employees and €1.5 billion turnover, deferring compliance to mid-2029 and removing the climate transition-plan requirement.[28] In 2025 the CDU/CSU/SPD coalition agreement under Chancellor Merz committed to eliminating the LkSG and replacing it with a reformed CSDDD-aligned regime. In September 2025 the German cabinet approved exemptions from documentation requirements while keeping the LkSG in force pending EU implementation.[29] The compressed regulatory cycle suggests that the precise scope, threshold and reach of mandatory due diligence legislation are still being worked out even in one of the most closely watched jurisdictions with an operating mandatory due-diligence regime. Whether New Zealand should legislate in advance of, or in step with, that ongoing process is a question the Committee will need to weigh.

4.25 As adopted in 2024, the CSDDD's civil-liability architecture was itself revealing. Bueno, Bernaz, Holly and Martin-Ortega, in their analysis of the final Directive, note that the conditions of liability the CSDDD imposes on parent and contracting companies are "quite restrictive." Liability requires damage arising from an adverse impact to a person, a negligent or intentional failure by the parent company and causation between that specific failure and the damage. Damage caused only by business partners is excluded.[30] After years of negotiation, the European Union considered these safeguards necessary to make a mandatory due diligence regime workable. The Bill before the Committee, by contrast, imposes personal liability on individual directors on a "reasonably expected to have known" standard for conduct in supply chains they cannot directly observe, without equivalent causation safeguards.

The mechanism on which reporting regimes depend has been comprehensively criticised

4.26 Disclosure regimes typically lead reporting entities to rely on supplier questionnaires, social audits, certifications and codes of conduct. The effectiveness of the regime therefore depends

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27 Mieszkowska (above n 26), p 294.

28 Council of the European Union, 'Council signs off simplification of sustainability reporting and due diligence requirements to boost EU competitiveness', press release, 24 February 2026; Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026, available at https://www.consilium.europa.eu/en/press/press-releases/2026/02/24/council-signs-off-simplification-of-sustainability-reporting-and-due-diligence-requirements-to-boost-eu-competitiveness/.

29 Table.media, 'Supply Chain Act: German government abolishes reporting requirements', 5 September 2025, available at https://table.media/en/china/news/supply-chain-act-german-government-abolishes-reporting-obligations.

30 Nicolás Bueno, Nadia Bernaz, Gabrielle Holly and Olga Martin-Ortega, "The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise" (2024) 9(2) *Business and Human Rights Journal* 294, 297-298. DOI: 10.1017/bhj.2024.10.

heavily on the quality of those tools. Professor Genevieve LeBaron of Simon Fraser University (formerly of the University of Sheffield) led the Global Business of Forced Labour Project, funded by the United Kingdom Economic and Social Research Council between 2016 and 2019. The project collected primary data on tea and cocoa supply chains feeding the United Kingdom, United States and European markets.

4.27 Its findings on the limitations of audit-based governance are summarised in her synthesis paper in the *Journal of Supply Chain Management*: "Buyer-led form of governance might be particularly ineffective for addressing forced labor in supply chains… if a researcher is using company modern slavery statements as a lens into risk of forced labor in supply chains, they could mistakenly conclude that the risk is minimal since companies report extensive measures like social auditing, ethical certification, and supplier codes of conduct to mitigate against this."[31]

4.28 Wilhelm, Bhakoo and Soundararajan, writing nearly a decade after the United Kingdom Act came into force, summarised the position of the international literature in 2024:

4.29 "Forced labour poses a significant challenge within global supply chains, yet traditional compliance-based governance based on auditing has proven to be ineffective in addressing this issue."[32]

4.30 McCorquodale and Nolan, sympathetic to the human rights due diligence project, were obliged to acknowledge in 2021 that "there is little research as to how effective human rights due diligence is and whether its aim to prevent business activities which have adverse impacts on human rights, has been achieved in state and business practices".[33] The Institute of Development Studies, in its rapid evidence review of approaches to combatting modern slavery, reached a comparable conclusion: "The design of national disclosure legislation is generally judged to be flawed. There is medium compliance in terms of quantity of company reports and low compliance in terms of quality".[34]

4.31 The literature reviewed in this section is consistently sceptical of transparency-only reporting regimes. We have not found any peer-reviewed studies documenting substantive reductions in modern slavery attributable to the United Kingdom or Australian reporting regimes. The most recent work, published in 2024 and 2025, confirms the dominant finding in the literature since the late 2010s. The two official government reviews converge with the academic literature.

4.32 We anticipate that supporters of the Bill will respond by saying that, even if disclosure regimes have not yet reduced prevalence, they create the boardroom attention, supplier mapping and reporting infrastructure that are preconditions for the stronger mandatory due diligence

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[31] Genevieve LeBaron, "The Role of Supply Chains in the Global Business of Forced Labour" (2021) 57(2) *Journal of Supply Chain Management* 29. DOI: 10.1111/jscm.12258.

[32] Miriam Wilhelm, Vikram Bhakoo, Vivek Soundararajan, Andrew Crane and Alin Kadfak, "Beyond Compliance-Based Governance: The Role of Social Intermediaries in Mitigating Forced Labour in Global Supply Chains" (2024) 34(5) *Production and Operations Management* 1094, abstract. DOI: 10.1177/10591478231224922.

[33] Robert McCorquodale and Justine Nolan, "The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses" (2021) 68(3) *Netherlands International Law Review* 455, abstract. DOI: 10.1007/s40802-021-00201-x.

[34] Jacqueline Hicks, "Approaches to Combatting Modern Slavery in Supply Chains" (Institute of Development Studies K4D Helpdesk Report, 2021).

regimes now emerging in Europe; the New Zealand Bill is a necessary first step. We have considered this argument carefully. McMillan considered and rejected the path of repealing the Australian Act. His thirty recommendations are for substantial strengthening, including mandatory due diligence, a lower threshold and civil penalties. Field reached a similar conclusion on the inadequacy of the United Kingdom Act, though Field's specific recommendations were narrower than McMillan's. Mantouvalou's position is that the United Kingdom Act also needs strengthening, not removal. We accept that those authorities support strengthening established disclosure rather than abandoning them. Our position is that these conclusions are not relevant to the question before the New Zealand Committee, which is whether to establish such a regime in the first place. New Zealand can learn from Australian, United Kingdom and European experience without recapitulating their sequencing. The empirical evidence from LeBaron, Wilhelm and colleagues, Hicks and Marmo and Bandiera reviewed above, suggests that the foundational premise, that disclosure by large reporting entities translates into changed conditions in the deep tiers of global supply chains, does not hold. The reform path that McMillan and Field recommend leads to mandatory due diligence and civil liability. Sections 4.21 to 4.25 describe the cost of that path as it has unfolded in the European Union and Germany.

4.33 A related argument advances the case for the Bill on the ground that even if the regime does not measurably reduce slavery, New Zealand should adopt it to signal its values to trading partners and align with international expectations. This is a "norm entrepreneur" case for action. A stronger version of the same argument is that New Zealand exporters and investors face increasing market-access exposure as the European Union, the United Kingdom and Australia condition procurement and trade access on demonstrated supply chain due diligence frameworks. Absence of a New Zealand regime might therefore be a competitive liability irrespective of measurable reduction of slavery. The Initiative is sympathetic to the proposition that New Zealand should be a good international citizen and recognises the market-access concern. But we note three points in response. First, New Zealand has already signalled its commitment through its ratification of the relevant international instruments and through the implementation of those instruments in the Crimes Act 1961, the Plan of Action against Forced Labour, People Trafficking and Slavery (2021) and the Employment Relations Act 2000 regime. Second, signalling values requires that the signal carries meaning. A regime that the Australian government's own review describes as producing "no hard evidence" of meaningful change is at risk of signalling tokenism rather than commitment. Third, the cheapest and most credible signal of alignment with comparable jurisdictions is the trans-Tasman mutual recognition arrangement proposed at A.16 to A.18 of Annex A. Mutual recognition shows trading partners that New Zealand entities are subject to the Australian regime that those partners themselves accept, without New Zealand replicating disclosure-regime architecture that the United Kingdom and Australia are themselves in the process of reconsidering.

4.34 We ask the Committee to consider the implications of legislating in New Zealand on the basis of a regulatory model that two government reviews and a substantial peer-reviewed literature have found inadequate, that the European Union has felt obliged to supplement, and the scope of which Germany has moved to narrow.

5. THE BILL HAS FUNDAMENTAL DESIGN DEFECTS

5.1 In addition to the general empirical evidence reviewed in section 4, the Bill as drafted has eight specific design defects. Each would independently warrant fundamental redesign. Taken together, they constitute a comprehensive case against the regulatory model the Bill proposes.

Defect 1: The Bill does not define "supply chain"

5.2 The Bill imposes obligations on reporting entities to report on the structure of their supply chains, on incidents of modern slavery occurring within those supply chains, on known and anticipated risks of modern slavery within those supply chains and on actions taken to assess, prevent, address, mitigate and remediate modern slavery within those supply chains. These are the obligations in clause 9 that constitute the core of the regime. They are backed by criminal penalties of up to $200,000 under clause 16, pecuniary penalties of up to $600,000 under clause 18 and personal liability for directors under clause 17.

5.3 The Bill does not define "supply chain." The term appears throughout Part 2 but is not included in the interpretation provisions of clause 4 or clause 6. Whether a reporting entity's obligations extend to direct (first-tier) suppliers only, to second- and third-tier suppliers or to all entities anywhere in the chain of production from raw material to delivered goods or services is left to the reporting entity to determine.

5.4 Burmester, Stringer, Michailova and Harré warned of precisely this problem in their 2022 research note in the *New Zealand Journal of Employment Relations*, anticipating the legislation now before the Committee. They wrote:

5.5 "If robust sanctions are attached to due diligence failures, the question of exactly to whom the relevant standard of care is owed becomes critical. If the legislation does not provide explicit guidance as to the extent of a given company's supply chain, obligated companies will face considerable uncertainty concerning how far to go and how much to do."[35]

5.6 They also observed that "neither legislation [the United Kingdom or Australian Act] defines 'supply chains'; further, they do not contain human rights due diligence provisions. There is no obligation that companies report modern slavery practices that they identify in their supply chain to authorities in the jurisdiction where exploitation occurs. This can (and often does) lead to non-engagement and ignorance".[36] The Bill replicates the United Kingdom and Australian defects rather than rectifying them.

5.7 The absence of a definition has consequences. The first is legal uncertainty. Directors facing personal liability are entitled to know what conduct they must avoid. The second is consistency of compliance. Without a statutory definition, two reporting entities in the same industry may take radically different views of their reporting scope, defeating the comparative purpose for which the public register is being established. The third is enforcement. The chief executive of the responsible department, faced with deciding whether to apply to the High Court for a pecuniary penalty under clause 18, will have no statutory guidance on what counts as a "supply chain" for the entity in question.

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[35] Brent Burmester, Christina Stringer, Snejina Michailova and Thomas Harré, "Research Note: How modern slavery legislation might reimagine New Zealand companies' supply chains" (2022) 47(1) *New Zealand Journal of Employment Relations* 17. DOI: 10.24135/nzjer.v47i1.98.

[36] Burmester, Stringer, Michailova and Harré (above n 35).

5.8 The Burmester research note also pressed the point that effective modern slavery legislation must reach beyond the first tier of supply. As the authors observed, "from the perspective of companies in high-standard jurisdictions like New Zealand, the most severe abuses of labour rights are likely to occur further out in the chain, obscured behind more respectable contractors. To be effective, modern slavery laws need to recognise obligations to report or effect remedies reaching beyond the first tier of supply".[37]

5.9 The Committee therefore faces a dilemma. A narrow definition of "supply chain" limits the regime to the most visible part of the problem and excludes the deeper-tier conduct identified by the international literature as the probable locus of any actual exploitation. A broad definition imposes obligations of impossible breadth, since few New Zealand reporting entities can be expected to monitor conditions in the third- or fourth-tier suppliers of components or commodities sourced through global markets. Neither option is workable without statutory guidance that the Bill does not provide. Suggested drafting is set out at A.2 and A.3 of Annex A.

Defect 2: Director liability departs from established principles of fault-based liability

5.10 Clause 17 of the Bill provides that, where a reporting entity is convicted of an offence against the Act, "a director of the reporting entity (if any) or a person involved in the management of the reporting entity is guilty of the same offence" if it is proved that the act or omission took place with that person's "authority, permission, or consent" or that the person "knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it".

5.11 The Bill thus exposes directors to personal criminal liability for reporting failures connected with conduct that may have occurred in the third or fourth tier of a supply chain located in a jurisdiction where the company has no direct presence and over which it has no direct control. The standard is constructive knowledge: a director who "could reasonably be expected to have known" of the conduct is personally liable, even if the director did not in fact know and even where the company had compliance systems in place that failed to detect the conduct.

5.12 The principle that fault should ground personal liability for corporate conduct is a long-standing feature of New Zealand and comparable company law. Comparative corporate-law scholarship, including Helen Anderson's analysis of Australian parent-company liability reform, cautions against attaching personal liability without fault. The principle, as Anderson puts it, is that "fault should be the basis of liability" when piercing the corporate veil.[38] The Bill, by contrast, attaches personal liability to constructive knowledge of conduct that may be objectively undiscoverable to a director exercising reasonable diligence.

5.13 The contrast with the European Union's Corporate Sustainability Due Diligence Directive is instructive. The CSDDD is the most extensive mandatory due diligence regime adopted to date.

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[37] Burmester, Stringer, Michailova and Harré (above n 35).

[38] Helen Anderson, "Challenging the Limited Liability of Parent Companies: A Reform Agenda for Piercing the Corporate Veil" (2012) 22(2) *Australian Accounting Review* 129, DOI: 10.1111/j.1835-2561.2012.00168.x. The principle is also developed in the more recent New Zealand context in *Yan v Mainzeal Property and Construction Ltd (in liq)* [2023] NZSC 113, where the Supreme Court held directors personally liable under sections 135 and 136 of the Companies Act 1993 on a fault-based standard requiring proof of the directors' actual conduct rather than constructive knowledge of a different person's conduct.

It applies to companies considerably larger than those that will fall within the Bill's $100 million New Zealand threshold. It was adopted in 2024 after years of political negotiation. As Bueno, Bernaz, Holly and Martin-Ortega note, the CSDDD's civil-liability conditions as adopted in 2024 were 'quite restrictive': liability required damage to a person, a negligent or intentional failure by the parent company and causation between that specific failure and the damage. Damage caused only by business partners was excluded. The 2026 Omnibus package has since removed the harmonised EU-wide civil-liability regime, leaving civil liability for CSDDD breaches to each Member State's national rules.[39]

5.14 The European Union therefore adopted civil liability rather than personal criminal liability and provided causation and exclusion safeguards that the Bill before the Committee does not contemplate. The German Supply Chain Due Diligence Act, one of the most closely watched European national due-diligence regimes, imposes obligations only "in an 'appropriate' manner," as Koos notes, "no performance obligations or guarantee liability are imposed on companies".[40] The Bill before the Committee comes closer to making directors personally answerable for reporting failures connected with supply-chain conduct, and does so on a constructive-knowledge basis without equivalent causation safeguards.

5.15 Mr Bates, at first reading, drew on his experience as a director of an Australian company subject to that country's Modern Slavery Act. He asked whether the company had "gone far enough visiting the factory in Vietnam" and whether "we actually know" what was happening in particular tiers of its European supply chain. He expressed concern about being clear with directors where the line is. His instinct is correct. The Bill does not draw a clear line and the line it does draw extends further than equivalent regimes in larger and wealthier jurisdictions consider appropriate. Suggested drafting is set out at A.4 to A.6 of Annex A.

Defect 3: The threshold paradox – the Bill captures the firms least likely to be the problem

5.16 The Bill applies to entities with consolidated revenue of more than $100 million in a reporting period. This threshold captures the largest publicly visible firms operating in New Zealand. It excludes the small importers, labour-hire operators, hospitality businesses, agricultural contractors and other operators where, on the empirical evidence, modern slavery in New Zealand is most likely to occur.

5.17 The exploitation that Anderson and Kenner discuss frequently appears in migrant-labour settings, including fishing, hospitality, tourism and seasonal agriculture.[41] New Zealand's first trafficking conviction (Faroz Ali, 15 charges under s 98D of the Crimes Act 1961, September 2016)[42] arose from migrant-labour exploitation in a small enterprise. The 2020 modern slavery conviction (R v Matamata) that Hon Casey Costello referenced at first reading involved a small horticulture operator who exploited thirteen Samoan victims. The Thai massage parlour case that Laura McClure referenced in the same debate involved migrant exploitation in a small

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39 Bueno, Bernaz and Holly (above n 30).

40 Stefan Koos, "Civil Law, Conflict of Laws, and Extraterritoriality in the European Supply Chain Due Diligence Law" (2024) 10(2) *Hasanuddin Law Review* 144. DOI: 10.20956/halrev.v10i2.5535.

41 Anderson and Kenner (above n 5).

42 R v Ali and Kurisi [2016] NZHC 3077 (Heath J, sentencing, 15 December 2016). The jury verdict was on 12 September 2016.

business setting. The foreign charter vessel arrangements documented by Stringer et al. in fisheries were addressed in 2014, by direct regulation of the relevant vessels.[43]

5.18 The Bill's defenders will respond that the Bill targets supply chains, which are global by definition and that the conduct of concern occurs offshore rather than in New Zealand small businesses. That is a fair point about the international supply chain dimension of the regime. But it sits awkwardly with the empirical evidence from the United Kingdom and Australia, reviewed in section 4, that statutory reporting requirements on large firms have not, in fact, translated into changed practice in the deep tiers of global supply chains, for the reasons LeBaron and others have documented. The Bill, therefore, concentrates compliance obligations on a population of large firms whose offshore conduct is of a kind that comparable overseas regimes have failed to alter. Meanwhile, small enterprises and migrant labour arrangements where exploitation is most likely to occur in New Zealand would be left to existing criminal and employment law, which is acknowledged to be under-resourced.

5.19 The Anderson and Kenner findings cited above, taken together with the empirical record of New Zealand-specific exploitation in the cases documented by Stringer and others, suggest that the policy lever for the conduct occurring within New Zealand should be the enforcement of existing criminal and employment law. A reporting regime that exempts smaller firms cannot reach their conduct. However, a reporting regime that included them would impose a disproportionate compliance burden on small businesses with no realistic capacity to comply. Suggested drafting on the threshold and trans-Tasman alignment is set out at A.7 and A.8 of Annex A.

Defect 4: The Bill creates perverse incentives against discovery

5.20 The Bill's enforcement architecture combines mandatory reporting (clause 8), entity publication of its own statement (clause 10), inclusion in the annual modern slavery report produced by the Registrar (clauses 14 and 15), publication of convictions and pecuniary penalty orders on a dedicated section of that register for three years (clause 20) and exclusion from Crown payments for entities convicted of, or subject to pecuniary penalty for, contravention of the core reporting offences in clauses 8(1) and 10(1)/(2) (proposed section 73A of the Public Finance Act 1989, inserted by clause 28).

5.21 Considered as a whole, this architecture penalises discovery. A reporting entity that conducts thorough supply chain due diligence and identifies modern slavery in its operations or supply chains must disclose the incident in its statement under clause 9(2)(b), publish that statement under clause 10 and see it collated into the Registrar's annual modern slavery report under clause 14(2)(a). The consequences are public exposure on a register designed for that purpose resulting in reputational damage and, if the company's reporting of the incident is found to be defective in any respect, exposure to pecuniary penalty proceedings and exclusion from Crown procurement processes.

5.22 A reporting entity that conducts only superficial due diligence and finds nothing faces none of these consequences directly. Its statement will not name itself in connection with any incident.

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[43] Stringer, Hughes, Whittaker, Haworth and Simmons (above n 4). The research, conducted at the University of Auckland Business School, documented systemic exploitation of migrant crew on foreign charter vessels operating in New Zealand waters in the years preceding the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014.

It will not appear on the convictions section of the register. It will continue to qualify for Crown procurement.

5.23 The Hon Casey Costello identified this problem at first reading. Her concern was that the regime should "encourage transparency and reporting, that those who do good, who delve into their supply chains, who audit, who do all the right things should be commended for that effort, not condemned when they find slavery within their supply chain". She observed that the regime risks creating "perverse outcomes where we would be choosing to not see it rather than see it, report it, and therefore risk being held accountable for it being in your supply chain".

5.24 The Bill as drafted does not solve the problem Ms Costello identified. It compounds it. The international literature confirms the perverse incentive. McCorquodale and Nolan note that, even where reporting regimes are mandatory, "if sourcing decisions by business remain predominantly motivated by commercial terms – quality, speed of delivery, and price – rather than social compliance, suppliers will have little incentive to change their behaviour".[44] The Bill compounds those commercial incentives with a regulatory incentive against discovery. Suggested drafting on the safe-harbour and the Public Finance Act amendment is set out at A.9 and A.10 of Annex A.

Defect 5: Ministerial discretion over the revenue threshold

5.25 Clause 24(1)(c) of the Bill empowers the Governor-General, by Order in Council on the recommendation of the responsible Minister, to prescribe an "applicable threshold revenue amount" that overrides the $100 million figure in clause 6.

5.26 The threshold determines the scope of criminal liability under clause 16 and pecuniary liability under clause 18. It determines whether a particular reporting entity is subject to personal liability for its directors under clause 17. It determines whether an entity falls within the Public Finance Act 1989 amendment in clause 28.

5.27 The threshold is therefore a determinant of the scope of criminal and civil liability. That is not a matter properly delegated to the executive. Ms McClure at first reading drew attention to this point: "do we really trust that a future Minister, with the stroke of a pen, won't actually change that to $100,000 or $10,000?" The constitutional concern she raises is independent of the wider policy debate on whether a reporting regime is desirable at all.

5.28 If Parliament wishes to alter the threshold, it should have to amend the Act to do so. Setting the threshold by regulation transfers a significant policy decision from Parliament to the executive. That is hard to reconcile with established New Zealand constitutional practice on the location of decisions that determine criminal liability. Suggested drafting is set out at A.7 and A.11 of Annex A.

Defect 6: The cost-benefit case has not been made

5.29 The Bill is a member's bill and was not accompanied by a regulatory impact statement of the kind that ordinarily accompanies a Government bill. Its joint sponsors acknowledged at first reading that they had not enjoyed the support of a Government department in the drafting.

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[44] McCorquodale and Nolan (above n 33), discussing Justine Nolan and Nana Frishling, "Australia's Modern Slavery Act: Towards Meaningful Compliance" (2019) 37 *Company and Securities Law Journal* 104.

Mr Tuiono of the Greens acknowledged the same point: "the members themselves don't have the full backing of a whole Government department to help them to draft it. The workload will be on the select committee."

5.30 The cost side of the cost-benefit calculation is therefore not before the Committee. The Bill imposes reporting obligations, mandates detailed statement contents, establishes a Registrar, requires the Minister to produce a further annual report and contemplates an independent Anti-Slavery Commissioner. None of these obligations is costless. Carl Bates, at first reading observed that "every cost that is incurred increases the cost of the supply chain, and ultimately of the products that New Zealanders are buying."

5.31 The Australian experience permits a reasoned order-of-magnitude estimate of what the regime is likely to cost in New Zealand. The Australian Regulation Impact Statement that accompanied the introduction of the Modern Slavery Act 2018 (Cth) estimated the average annual cost of preparing and submitting a modern slavery statement at AU$21,950 per reporting entity.[45] The McMillan Review then surveyed 496 Australian reporting entities about the actual direct cost of preparing their most recent statement. The results show that 71.17 per cent reported costs of AU$25,000 or less, 17.14 per cent AU$25,000 to AU$50,000, 5.44 per cent AU$50,000 to AU$75,000, 1.41 per cent AU$75,000 to AU$100,000, 2.02 per cent AU$100,000 to AU$150,000 and 2.82 per cent more than AU$150,000.[46] Taking midpoints of those bands produces a survey-weighted average of approximately AU$27,400 per entity per year for direct preparation costs alone. The McMillan Review records that consultations suggested even these figures may understate the true burden, because they exclude set-up costs, the costs of auditing services and the workload of appointing dedicated staff.

5.32 The implications for New Zealand depend on how many entities are within scope. There is no published New Zealand estimate. Applying the Australian threshold to Statistics New Zealand Business Demography data at February 2024 (using employment-size data as a rough proxy, since Stats NZ does not publish counts by revenue band) and allowing for the fact that many large entities operating in New Zealand are subsidiaries of larger overseas groups whose consolidated revenue would also trigger the threshold, we estimate that between 300 and 600 reporting entities are likely to be within scope of the Bill at its current threshold.[47] Multiplying that range by the survey-weighted Australian cost figure (AU$27,400, equivalent to approximately NZ$29,500 at an assumed exchange rate of NZ$1 = AU$0.93) produces an

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[45] Commonwealth of Australia, *Modern Slavery in Supply Chains Reporting Requirement: Regulation Impact Statement* (Department of Home Affairs, 2018), as referenced in McMillan Review (above n 1) at p 51.

[46] McMillan Review (above n 1) at p 51, drawing on Figure 10 in Appendix D (survey of 496 reporting entities, conducted 2022).

[47] This range is an Initiative estimate. No published New Zealand figure exists. Statistics New Zealand's Business Demography Statistics at February 2024 record approximately 2,900 large enterprises (those with 100 or more employees) in New Zealand, employing a total of 1.24 million people: see https://www.stats.govt.nz/information-releases/new-zealand-business-demography-statistics-at-february-2024/. Stats NZ does not publish enterprise counts directly by revenue band. The estimate of 300 to 600 New Zealand entities likely to fall within the Bill's $100 million consolidated revenue threshold is derived by applying the proportional relationship between the Australian register's over 7,000 published statements relating to nearly 8,000 reporting entities under an equivalent threshold (McMillan Review, above n 1, at p 25) and the relative size of the two economies, adjusted for the inclusion of overseas-parented entities that would meet the threshold on a consolidated basis. The estimate is illustrative rather than analytical; a published figure should form part of the independent regulatory impact assessment recommended at paragraph 2.4.

aggregate direct compliance cost of between approximately NZ$9 million and NZ$18 million per year for the reporting population, with the indirect costs of audit, training, supplier engagement, remediation activity and the workload of in-house specialist staff likely adding materially to that total. The aggregate cost would increase broadly in proportion to the number of additional entities brought into scope if the threshold were reduced by Order in Council under clause 24(1)(c) and could rise substantially if New Zealand were to follow the McMillan Review's recommendation to lower the threshold to AU$50 million, which the McMillan Review reports would expand the Australian reporting population by approximately one-third. We do not present this range as analytically robust. We present it as the order of magnitude that the Ministry for Regulation impact assessment recommended at 2.4 should establish more precisely before reporting obligations come into force.

5.33 The benefit side is more difficult still. The international evidence reviewed in section 4 documents that comparable regimes have not produced measurable reductions in modern slavery. The McMillan Review concluded that there is no hard evidence that the Australian Act has caused meaningful change for people living in conditions of modern slavery. The peer-reviewed literature on the United Kingdom Act reaches the same conclusion.

5.34 The Bill itself provides no mechanism for measuring outcomes against its stated purpose. Clause 21 requires the Minister to report on the number of referrals, criminal investigations, prosecutions, certified victims and victims granted support. These are inputs and intermediate outputs, not outcomes. The Bill does not require the Minister to estimate the number of people in modern slavery in New Zealand, the change in that number over time or the contribution of the Act to any observed change.

5.35 The clause 25 review at three years and the clause 26 periodic review at three-year intervals therefore lack an empirical basis on which to assess whether the Act is achieving its purposes. The clause 25(1) requirement to review "the operation and effectiveness of this Act" cannot, in practice, be discharged in the absence of measurable outcome indicators. The suggested draft for a regulatory impact statement requirement and an outcome-indicator framework is set out at A.12 and A.13 of Annex A.

Defect 7: The Bill rests on prevalence figures based on contested methodology

5.36 The case for the Bill at first reading was advanced in part by reference to figures derived from the Walk Free *Global Slavery Index*. Ms Belich cited 50 million people in modern slavery globally and 8,000 in New Zealand. Ms Tinetti and Ms Kaipara identified the *Global Slavery Index 2023* as the source of comparable figures. The Index is produced by Walk Free, the relevant arm of the Minderoo Foundation, which publishes from Perth.[48]

5.37 The methodology underlying the *Global Slavery Index* is contested in the peer-reviewed literature. The leading critique is by Dr Anne Gallagher AO, a leading scholar of international human-trafficking law. In her 2017 paper in the *Anti-Trafficking Review*, Dr Gallagher conducted a detailed methodological assessment of the Index across its three components, namely vulnerability measurement, prevalence measurement and response measurement,

[48] Walk Free, *The Global Slavery Index 2023* (Minderoo Foundation, 2023), available at https://walkfree.org/global-slavery-index/.

and found significant weaknesses in all three.[49] Guth, Anderson and Kinnard, in an earlier paper in *Social Inclusion*, identified "significant and critical weaknesses" in the Index methodology and warned that "the longer improper methods are used the more damage is done to the public policy debate on slavery by advancing data and policy that is not based on sound methodology".[50]

5.38 The most recent published assessment, by Reiner, Malik and Murray in the *Journal of Industrial Ecology* in 2025, reached a conclusion that ought to give the Committee pause. The authors examined whether global modern slavery could be footprinted for corporate due diligence purposes. They concluded:

5.39 "In addition to data on confirmed cases being unrepresentative of the likely population, estimates risk high sampling errors and low reproducibility… Modern-slavery footprints may be misleading because the complexities and limitations of the data are not well-represented in a simple indicator, the underlying data are highly uncertain, and the results simply tend to reflect poverty."[51]

5.40 The closing observation of Reiner and her colleagues is significant. The supply chain hotspots that modern slavery footprints identify, on which corporate due diligence efforts would in practice be concentrated, "simply tend to reflect poverty." The mechanism is not measuring slavery, but economic development gaps. To the extent that the Bill's premise rests on accurate prevalence measurement and the targeting of due diligence to where modern slavery usually occurs, the empirical foundation is weaker than the first reading debate suggested.

5.41 None of this is to suggest that modern slavery does not occur. It does. The point is that legislating a compliance regime, with criminal and pecuniary penalties and personal director liability, on the basis of prevalence estimates whose methodology is contested and which on the most recent assessment may track poverty rather than the conduct of interest, presents a regulatory design problem the Bill does not address. The suggested draft requiring methodologically robust prevalence measurement is set out at A.14 and A.15 of Annex A.

Defect 8: The Bill makes no provision for Trans-Tasman harmonisation

5.42 The Australian Modern Slavery Act 2018 (Cth) imposes reporting obligations on entities with consolidated revenue of more than AU$100 million. Many of the largest New Zealand businesses are subsidiaries of Australian parent companies or are otherwise within the scope of the Australian Act through their consolidated operations. The European Union has now added the CSDDD; the United Kingdom Act continues to apply to entities with United Kingdom operations meeting its £36 million threshold.

5.43 A New Zealand reporting entity operating across these jurisdictions will face four overlapping reporting regimes once the Bill is enacted, each with its own threshold definitions, mandatory reporting criteria, publication timetable and enforcement regime. The Bill makes no provision

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[49] Anne T Gallagher, "What's Wrong with the Global Slavery Index?" (2017) (8) *Anti-Trafficking Review* 90. DOI: 10.14197/atr.20121786.

[50] Andrew Guth, Robyn Anderson, Kasey Kinnard and Hau Tran, "Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An Examination of the Global Slavery Index" (2014) 2(4) *Social Inclusion* 14.

[51] Vivienne Reiner, Arunima Malik and Joy Murray, "Can global modern slavery be footprinted for corporate due diligence? A data review and analysis" (2025) 29(4) *Journal of Industrial Ecology* 1077, abstract. DOI: 10.1111/jiec.70037.

for mutual recognition with the Australian Act, for the acceptance of an Australian modern slavery statement as satisfying the New Zealand reporting obligation or harmonising mandatory reporting criteria with those in force in Australia.

5.44 This omission is a particular concern for the trans-Tasman business community. The academic literature on multiple-jurisdiction compliance burden, discussed below at paragraph 5.45, identifies the duplication problem directly.

5.45 McGaughey, Voss and Cullen documented the burden imposed by multiple overlapping regimes in their 2021 comparative study of the Australian, French and United Kingdom regimes. They identified only 22 companies globally that were required to report under all three of those regimes and observed that compliance with multiple jurisdictions imposes substantial duplicative costs.[52] The CSDDD has since added a fourth layer for many of those companies. The Bill before the Committee would add a fifth for many New Zealand-operating entities.

5.46 Sensible legislation in a small open economy would build harmonisation into its design from the outset. The Bill does not. Suggested drafting for trans-Tasman mutual recognition is set out at A.16 to A.18 of Annex A, and the general implementation provisions at A.19 and A.20 propose a staged commencement and a statutory guidance requirement that, together, would allow reporting entities reasonable time to comply.

6. AN ALTERNATIVE APPROACH

6.1 We have set out reasons why the Modern Slavery Bill, as drafted, will not achieve its purpose and will impose significant costs on a misdirected reporting population. The Initiative shares the concern that prompted the Bill. We agree that something should be done. This section sets out a more effective approach.

6.2 The starting point is the existing New Zealand legal architecture, which is substantial. Sections 98, 98AA, 98D and 207A of the Crimes Act 1961 criminalise the substantive conduct that the Bill is concerned to prevent: dealing in slaves, trafficking in persons, debt bondage, sexual exploitation, removal of body parts and forced labour. The Employment Relations Act 2000, the Minimum Wage Act 1983, the Wages Protection Act 1983 and the Holidays Act 2003 establish the minimum employment standards whose breach has been the empirical correlate of exploitation in the New Zealand cases documented by Stringer and others. The Immigration Act 2009 provides for the prosecution of exploitation of migrant workers. The 2014 reform of foreign charter vessel arrangements demonstrates that targeted statutory amendment can be made when an identifiable problem requires it.

6.3 Three reforms grounded in this existing architecture would deliver more for the people the Bill is intended to protect than the proposed reporting regime.

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[52] Fiona McGaughey, Hinrich Voss, Holly Cullen and Matthew C Davis, "Corporate Responses to Tackling Modern Slavery: A Comparative Analysis of Australia, France and the United Kingdom" (2021) 7(2) *Business and Human Rights Journal* 249. DOI: 10.1017/bhj.2021.47.

Properly resource the Labour Inspectorate and the agencies that enforce existing prohibitions

6.4 Anderson and Kenner document that the most concentrated forms of exploitation occurring within New Zealand take place in fishing, hospitality and tourism and seasonal agriculture, particularly among migrant workers on temporary visas.[53] We acknowledge that strengthened domestic enforcement does not, by itself, address the transnational supply chain dimension that the Bill is also concerned with. The conduct that Mr Twyford described in the Hansard debate, such as Xinjiang cotton, South-east Asian fishing and South Asian bonded labour, occurs in jurisdictions in which New Zealand inspectors, police and immigration officers have no enforcement jurisdiction. The two problems, domestic exploitation in New Zealand and transnational supply chain exposure, are complementary in their nature, not substitutes. The alternative approach we propose is targeted at the first because that is the part New Zealand has both the jurisdiction and the operational capacity to address effectively. The second remains a serious concern. We argue that the Bill's reporting regime is not the right mechanism for it, as set out in section 4.

6.5 Within that scope, the Labour Inspectorate currently operates with approximately 81 inspectors nationally, of whom only two work full-time on Recognised Seasonal Employer compliance despite the documented exploitation in horticulture and viticulture.[54] On a working assumption that the fully loaded cost per inspector is in the range of $120,000 to $150,000, adding 30 inspectors (a 37 per cent increase in inspector numbers) would cost approximately $3.6 million to $4.5 million per year. Comparable proportionate increases in Immigration New Zealand's compliance and investigation functions, and in specialist New Zealand Police capability on labour trafficking, would, on order-of-magnitude estimates, lift the total alternative cost to approximately $10 million to $15 million per year. These figures are illustrative; a Ministry for Regulation impact assessment, paired with detailed costings from MBIE, Immigration New Zealand and the New Zealand Police, would be necessary before they could be relied upon.

6.6 The Committee should put to the Government the question of whether the resources that would be consumed by establishing and operating the Registrar, the public register, the Minister's annual reporting function and the contemplated Anti-Slavery Commissioner, would be more effectively deployed in strengthening the enforcement of existing law.

Use targeted statutory intervention where existing law proves inadequate

6.7 The foreign charter vessel reforms of 2014 illustrate how New Zealand can respond effectively when an identifiable problem requires statutory intervention. The conditions endured by Indonesian crew on South Korean foreign charter vessels operating in New Zealand waters had been the subject of academic research, parliamentary debate and media exposure for more than two decades before Parliament acted in 2014.[55] When it acted, it did so by directly regulating the conduct of concern. Foreign charter vessels were required to reflag to

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[53] Anderson and Kenner (above n 5).

[54] RNZ, 'No increase in funding for Recognised Seasonal Employer inspectors in 17 years' (26 August 2024), https://www.rnz.co.nz/news/national/526160/no-increase-in-funding-for-recognised-seasonal-employer-inspectors-in-17-years (recording 81 labour inspectors nationally as at August 2024).

[55] Stringer, Hughes, Whittaker, Haworth and Simmons (above n 4).

New Zealand registration, bringing crews within New Zealand labour law. Kartikasari, Stringer and Henderson, evaluating the reform in 2022, document substantial (though not completely adequate) improvements in conditions for crew on what had previously been the most problematic vessels.

6.8 The Bill before the Committee adopts the opposite approach. It imposes generalised reporting obligations on the New Zealand operating entities least likely to be implicated in modern slavery, while leaving untouched the specific operators and arrangements where most actual exploitation occurs. We respectfully suggest that the 2014 model is the more promising one.

If reporting is to be pursued, harmonise with Australia from the outset

6.9 We do not consider that a New Zealand modern slavery reporting regime is likely to be effective for the reasons set out in sections 4 and 5. But if Parliament wishes to proceed with such a regime, the Initiative urges the Committee to insist that the legislation be designed from the outset to harmonise with the Australian Modern Slavery Act 2018 (Cth).

6.10 Harmonisation would reduce duplication for trans-Tasman businesses, allow New Zealand to draw on Australian guidance and reporting practice, permit common evaluation and benchmarking against Australian data and avoid New Zealand legislating an inconsistent standard for what is, in substance, the same regulatory problem.

6.11 The conceptual case for mutual recognition is straightforward. A New Zealand reporting entity that has already complied with Australian disclosure obligations should not be required to repeat the exercise in a separate form for the New Zealand register. Annex A.16 to A.18 set out the operational drafting that would give effect to that principle.

6.12 The McMillan Review's recommendations for amending the Australian Act are before the Australian government. If New Zealand legislates first on different lines, the prospects for future trans-Tasman harmonisation will be substantially diminished.

7. CONCLUSION

7.1 The Initiative shares the concern of every party that supported this Bill at first reading about the conduct that the Bill is concerned to prevent. Modern slavery, in all the forms enumerated in clause 4 of the Bill, is a grave violation of human dignity. It occurs in international supply chains that connect New Zealand consumers and businesses to producers abroad. It also occurs, less visibly but no less seriously, in industries within New Zealand itself.

7.2 The Bill, as drafted, will not, in our view, make a meaningful contribution to addressing this conduct. The international evidence from comparable reporting regimes is unfavourable. Two official government reviews, namely Field in the United Kingdom and McMillan in Australia, have found their own national legislation wanting. The peer-reviewed literature confirms their findings. The European response has been to intensify the regime through mandatory due diligence and civil liability, while Germany has moved to narrow the scope of its own Act within eighteen months of its coming into force. None of this is evidence on which to base New Zealand legislation.

7.3 The Bill also has eight specific design defects that we have identified in section 5. These are the undefined scope of "supply chain", the departure from established principles of fault-based director liability, the threshold mismatch with the empirical distribution of modern slavery in New Zealand, the perverse incentives against discovery, the constitutional concerns

about ministerial discretion over the revenue threshold, the absence of a cost-benefit case, the reliance on contested prevalence figures and the absence of provision for trans-Tasman harmonisation. Together, they constitute a comprehensive critique of the regulatory model the Bill proposes.

7.4 We invite the Committee to consider whether each of these defects can be addressed within the framework the Bill provides, or whether the better course is to recommend that a different approach be taken. Annex A sets out the drafting amendments that would, on our analysis, be the minimum necessary to address each defect, but those amendments would not cure the underlying empirical objection in section 4. The eight defects are symptoms of a regulatory model that places the disclosure obligation in the wrong place and rewards the wrong behaviour, and drafting that mitigates the symptoms cannot make the model work where the United Kingdom, Australian, German and European experience indicates it does not.

7.5 The existing New Zealand criminal and employment law could be properly resourced, properly enforced and supplemented by targeted statutory intervention against identified problems of the kind that produced the Foreign Charter Vessels Amendment Act 2014. That would deliver more for the people the Bill is intended to protect than a generalised reporting regime modelled on overseas precedent that has not yet delivered for such people.

7.6 Two government reviews, a substantial peer-reviewed literature, eight specific design defects and an aggregate compliance cost estimated at NZ$9 to $18 million per year together establish that the Bill, in its current form, imposes substantial cost without demonstrated benefit, attaches personal liability to conduct directors cannot directly observe and adopts a regulatory model whose comparable implementations have not measurably reduced the conduct of concern. The seriousness of modern slavery deserves a response that targets the conduct, enforces existing law and can be expected to work. The Bill before the Committee, on the available evidence, would not meet any of these criteria.

ENDS

ANNEX A: DRAFTING AMENDMENTS REQUIRED TO ADDRESS THE DEFECTS IDENTIFIED IN SECTION 5

A.1 The body of this submission sets out an evidentiary case against the Bill in its current form. The annex below complements that case with the technical drafting work that would be required if the Committee nevertheless elects to proceed. Should the Committee proceed with the Bill, the drafting amendments set out below would, on our analysis, be the minimum necessary to address the defects identified in section 5. Even if all of them are adopted, the Bill would remain subject to the empirical objections set out in section 4, for the reasons given at the close of this annex (A.21). This annex is offered as a working document for the Committee's clause-by-clause consideration. It does not represent the Initiative's preferred course, which remains that set out in section 6 of this submission. Suggested drafting is shown in italics; clause numbers track the Bill as introduced.

Defect 1: undefined supply chain

A.2 Insert in clause 6 the following definition of "supply chain": *"supply chain, in relation to a reporting entity, means the network of entities, persons, processes and resources involved in the production, supply, distribution or provision of goods or services to the reporting entity, up to and including the first-tier suppliers of those goods or services, and any further tier of supply that the reporting entity knows or ought reasonably to know presents a material risk of modern slavery."*

A.3 Insert in clause 9 a corresponding obligation that a modern slavery statement must specify the tier or tiers of supply to which the statement applies and the basis on which the reporting entity has determined the scope of its reporting.

Defect 2: director liability

A.4 Amend clause 17 to replace the words "knew, or could reasonably be expected to have known" with the words "knew or was reckless as to whether". The recklessness standard is well established in New Zealand criminal and corporate law and is more consistent with fault-based liability than the constructive-knowledge standard the Bill proposes.

A.5 Insert a new clause 17(2) as follows: *"A director or person involved in the management of a reporting entity is not liable under this section in respect of conduct occurring in a tier of the supply chain beyond the first tier unless the director or person had actual knowledge of that conduct, or had received specific notice of a substantial risk of that conduct and failed to take reasonable steps to investigate."*

A.6 Amend clause 16 so that the maximum fine in respect of an offence under section 8(1) is calibrated to the offence-element involved, namely a reporting omission, rather than the underlying conduct of slavery. The penalty regime for analogous reporting obligations under the Financial Markets Conduct Act 2013 provides a reasonable benchmark. Adopting a comparable structure would produce a tiered penalty with a lower fine for first contravention of the reporting obligation and higher penalties for repeat or knowing breach, in place of the flat $200,000 maximum the Bill proposes.

Defect 3: threshold paradox

A.7 Repeal clause 24(1)(c). The threshold should be set in primary legislation and amended only by Parliament.

A.8 Consider inserting in clause 6 a provision linking the threshold to the equivalent Australian threshold (currently AU$100 million) by automatic reference, so that trans-Tasman alignment is preserved over time. We do not recommend extending the regime to small enterprises.

Defect 4: perverse incentives

A.9 Amend clause 9(2)(b) so that the disclosure of incidents is paired with a statutory safe-harbour confined to that disclosure. Insert a new clause 16(3): *"It is a defence to a prosecution under section 16 in relation to a contravention of section 9(2)(b) (disclosure of incidents) for the defendant to establish that (a) the modern slavery incident disclosed in the statement was identified by the reporting entity in the course of due diligence; (b) the entity has taken concrete steps to investigate the incident; and (c) the entity has provided verified remediation to the affected workers, which must include, where applicable, payment of unpaid wages and entitlements, access to legal and immigration support, no retaliatory termination of employment and independent verification of the remediation outcome."* The conditions in (c) ensure that the safe-harbour incentivises genuine remediation for victims rather than allowing reporting entities to define their own compliance test.

A.10 Repeal clause 28 (the proposed section 73A of the Public Finance Act 1989) or amend so that exclusion from Crown payments arises only on conviction for the underlying conduct under the Crimes Act 1961, not for breach of the reporting obligation in this Bill.

Defect 5: ministerial discretion over the threshold

A.11 Confine the regulation-making powers in clause 24 to procedural and incidental matters. The substantive scope of the regime, including the revenue threshold (see A.7 above), is a matter for Parliament rather than the executive.

Defect 6: cost-benefit case

A.12 Insert a new section in Part 4 requiring the Minister to publish, before the Act comes into force, a regulatory impact statement prepared by the Ministry for Regulation with input from Treasury's Regulatory Quality Team. The statement should quantify the expected compliance costs for the reporting population, evaluate the international evidence on the effectiveness of comparable regimes and identify the measurable outcome indicators against which the Act will be reviewed at year three under clause 25.

A.13 Amend clause 25 to require that the three-year review explicitly assess the Act against the outcome indicators published under A.12 above. Without measurable indicators, the clause 25 review cannot in practice be conducted.

Defect 7: prevalence figures

A.14 Insert a new clause obligating the Minister to publish, at intervals of not more than three years, an estimate of the prevalence of modern slavery in New Zealand prepared in accordance with a published methodology that has been subject to expert peer review. Reliance on the Global Slavery Index in its current form is not a sufficient basis.

A.15 Amend clause 21(2) to add to the matters that the Minister's annual report must include an estimate of the prevalence of modern slavery in New Zealand and the change in that estimate over the relevant reporting period.

Defect 8: trans-Tasman harmonisation

A.16 Insert a new clause as follows: *"A modern slavery statement that has been submitted by a reporting entity under the Modern Slavery Act 2018 (Cth) of the Commonwealth of Australia in respect of a reporting period satisfies the requirement of section 8(1) of this Act in respect of that reporting period, provided that (a) the statement substantially covers the operations of the reporting entity in New Zealand; (b) the statement has been signed by an authorised person of the reporting entity in respect of those New Zealand operations; and (c) the Registrar has been notified of the submission within the time required by section 8(1)(b)."* Condition (b) preserves the board-level accountability mechanism the Bill establishes in clause 9(1).

A.17 Insert a corresponding provision empowering the Registrar to mirror entries from the Australian Modern Slavery Statements Register on the New Zealand register, subject to any further requirements set out in regulations made under clause 24.

A.18 Empower the Minister, in consultation with the Australian Attorney-General's Department, to enter into a memorandum of understanding providing for cross-recognition of modern slavery statements between the two jurisdictions. New Zealand cannot, of course, direct Australian action; the legislation should, however, authorise New Zealand's side of any reciprocal arrangement.

General implementation provisions

A.19 Staged commencement. Amend clause 2 to provide that the Act comes into force twelve months after Royal assent, rather than six months. The additional time would allow for the publication of the regulatory impact statement required by A.12, the development of statutory guidance and templates required by A.20 below, the establishment of internal compliance systems by reporting entities and the negotiation of the trans-Tasman mutual recognition arrangements contemplated by A.17 and A.18, which should, so far as practicable, be in place before the first mandatory reporting period begins. Also provide that the first reporting period under section 8 is voluntary, with mandatory reporting commencing only in the second reporting period. These transitional measures would give reporting entities a reasonable period in which to build the compliance systems the Act requires before sanctions apply, on the model of the staged implementation adopted in equivalent overseas regimes.

A.20 Practical implementation guidance. Insert in clause 13 (functions of the Registrar) an express requirement that the Registrar must, before the first mandatory reporting period, publish a standard-form reporting template aligned where appropriate with the Australian Modern Slavery Statements template, sector-specific guidance for industries identified as high-risk under the modern slavery report required by clause 14, frequently-asked-questions material directed at compliance professionals in reporting entities and worked examples of compliant statements. The Australian Home Affairs department has produced substantial guidance material of this kind over six years of operating experience with the Australian Act. The New Zealand Registrar should not require reporting entities to develop their compliance approaches in the absence of equivalent material.

A general observation

A.21 We anticipate that the Committee may be tempted to read this annex as the Initiative's preferred path: adopt the amendments, proceed with the Bill and consider the matter resolved. That would be a misreading. The amendments set out here, including the general

implementation provisions in A.19 and A.20, would address the worst of the design problems, but they cannot make the regulatory model work where the United Kingdom, Australian, German and European experience set out in section 4 indicates it does not work. The eight defects in section 5 are not drafting failures isolated from the regime's premise; they are symptoms of a regime that places the disclosure obligation in the wrong place and rewards the wrong behaviour. The amendments here would mitigate those symptoms. They would not cure the underlying condition. The Initiative's preferred course remains that set out in section 6: redirect the resources that the Bill's compliance regime would consume to the enforcement of existing law against the operators and the conduct where modern slavery in New Zealand actually occurs, and to the international cooperation mechanisms through which transnational supply-chain risk is more effectively addressed. We offer the drafting above for the Committee's use should Parliament nevertheless choose to proceed; we do not, by offering it, withdraw the objections to the Bill set out in the body of this submission.