New Zealand Law Society
Te Kāhui Ture o Aotearoa

Modern Slavery Bill

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

27 May 2026

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Modern Slavery Bill (**Bill**). The Bill proposes establishing a statutory framework that:

(a) reduces the risk of modern slavery incidents occurring by requiring reporting entities (as defined in the Bill) to report on their actions to identify, prevent, mitigate, and remediate modern slavery incidents occurring within their operations and supply chains, thereby encouraging reporting entities to undertake due diligence; and

(b) increases public awareness and support for victims of modern slavery.

1.2 To achieve the above, the Bill seeks to:

(a) provide for annual modern slavery statements from reporting entities to be published on a register;

(b) create offences for failing to publish a modern slavery statement or for failing to include the required information in a statement;

(c) provide for regular reviews of the effectiveness and appropriateness of laws prohibiting modern slavery, the adequacy of government policies, and other arrangements in place to support victims of modern slavery;

(d) require consideration to be given to establishing a specialist person or body responsible for promoting and leading work to combat modern slavery, whether an independent commissioner or a commissioner sitting within the Human Rights Commission; and

(e) amend the Public Finance Act 1989 (**Public Finance Act**) to prevent public money being paid to reporting entities that are listed on the register for having contravened reporting requirements.

1.3 This submission has been prepared with input from the Law Society's Criminal Law, Human Rights and Privacy, and Public Law Committees.[1] The Law Society **wishes to be heard** on this submission.

2 Submission summary

2.1 While supportive in principle of the Bill's intentions, the Law Society has some concerns with aspects of the drafting — particularly, the need for clearer boundary definitions so that reporting entities can determine the scope of their obligations with reasonable certainty.

2.2 In summary, our concerns and recommended changes are as follows.

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

Definition of modern slavery

(a) On balance, the definition of modern slavery in clause 4 is workable (subject to our further comments below) and does provide a level of definitional transparency by expressly identifying the underlying international instruments and concepts. However, to the extent possible, the Bill will benefit from the definition of modern slavery stipulating clearly the boundaries of applicable conduct.

Definition of forced or exploitative labour

(b) The Bill's definition of "forced or exploitative labour" in clause 4 is substantially wider than any existing criminal provision. In consequence, the scope of modern slavery under the Bill will overlap with other domestic legal frameworks, such as employment law and health and safety law. It would be preferable for this distinction to be expressly acknowledged so that reporting entities understand the nature and basis of the obligation. The definition as drafted also creates some ambiguity as to the type of conduct that would constitute forced or exploitative labour. We recommend that the Committee seeks advice as to which meaning(s) were intended and amends the provision if needed to improve its clarity.

Definition of debt bondage

(c) Clause 4 defines debt bondage by reference to section 98 of the Crimes Act 1961 (**Crimes Act**). However, migrant worker exploitation in New Zealand frequently involves recruitment debt that is disproportionate to the services provided, but which is technically "applied" toward the stated debt (which arguably would not constitute an offence under section 98). This means there is a potential gap between the section 98 definition and the conduct that occurs in practice. We recommend that the Committee seeks advice on how migration-linked debt tends to operate in New Zealand exploitation cases, and that the provision is amended if necessary to provide greater clarity.

Operations and supply chains

(d) The terms "operations" and "supply chains" are foundational to the Bill's reporting framework. However, neither "operations" nor "supply chains" are defined in the Bill. Reporting entities need to know the outer boundary of the reporting task. The undefined terms also determine the reach of the Bill's incident reporting, risk reporting, due diligence reporting, and effectiveness reporting requirements in clause 9. We recommend the concepts of "operations" and "supply chains" should be defined, or at least materially clarified. The vagueness of these concepts affects two further definitions in the Bill, as next discussed: "modern slavery incident" and "sexual exploitation".

Definition of sexual exploitation

(e) Clause 4 defines sexual exploitation broadly to include conduct that involves an actual or attempted abuse of a person's vulnerability or trust, or abuse of a

position of power over a person, for sexual purposes. Given the reporting obligations under the Bill relate to a reporting entity's operations and supply chains (which, as discussed above, are poorly defined) it is at least possible that within the varied group of persons involved in those activities there may be occasions of serious sexual harassment by a senior employee of a junior employee. A policy question for the Committee to consider is whether that type of conduct should constitute modern slavery.

Modern slavery incident

(f) The definition of a modern slavery incident in clause 6 refers, again, to an event or occurrence involving modern slavery within a reporting entity's operations or supply chains. The uncertainty regarding the concept of a modern slavery incident is further increased by the vagueness regarding when an event crystallises into a reportable incident, and which activities fall within the reporting boundaries. Further, if there have been separate court proceedings relating to the same conduct giving rise to the modern slavery incident, reporting restrictions may have been imposed by the courts.

(g) For these reasons, we recommend the Committee further clarifies what constitutes a modern slavery incident and that clause 9 is amended to provide an exception to the obligation to describe any details of a modern slavery incident that may have been temporarily or permanently suppressed by a court order.

The reporting threshold revenue amount

(h) Clause 6 of the Bill sets the reporting threshold revenue amount at a consolidated revenue of more than $100 million in a reporting period (mirroring the Australian legislation), or a different amount which may be prescribed in regulations made under clause 24. Determination of an appropriate reporting threshold revenue amount is a policy consideration, and the Law Society does not have a view on what the amount should be. However, when prescribing a different reporting threshold revenue amount, the effect of clause 24(2) is to confine the criteria to modern slavery risks and economic or commercial developments. We recommend that the criteria under clause 24(2) be expanded, to at least include considering the effectiveness of the Bill when the Minister is recommending regulations to prescribe an applicable threshold revenue amount.

Extraterritorial reach

(i) We think it is important to note that the Bill is not expressly framed as extraterritorial legislation, but it has significant extraterritorial reach in substance. That breadth is inherent in supply chain transparency legislation and is not, itself, objectionable. It does, however, reinforce the concerns we have raised regarding the need for clear boundary definitions (particularly of "operations" and "supply chains") so that reporting entities can determine the scope of their obligations with reasonable certainty.

(j) We also note that the Bill does not define the phrase "carried on business in New Zealand". This is also a key concept for clause 7 in determining whether an entity is a reporting entity for the purposes of the Bill. We recommend that this concept be defined, or at least materially clarified in the Bill.

Binding on the Crown

(k) The definition of an "entity" is provided for in clause 4 of the Bill. We recommend that this definition is carefully considered to ensure the appropriate public sector entities are clearly identified and the usual legislative definitions are applied when referencing public sector entities and the Crown.

Offences

(l) We note that there is no "lack of fault" defence provided in relation to the clause 10 obligations, both of which require information to be maintained on an internet site. As the provision stands, a reporting entity which has posted the relevant material on a website only for it to be deleted either by a technical fault or hostile action could face prosecution and conviction despite absence of any fault. We recommend that the Committee considers amending clause 10 to provide for a reverse onus of proof defence.

(m) Clause 16 also provides that the maximum fine is $200,000 for offences under that clause. We recommend that the Committee reviews the maximum fine to ensure that it provides a sufficient deterrent and incentivises compliance.

Liability of directors or other persons involved in the management of reporting entities

(n) Clause 17 provides for criminal liability of a director or person involved in the management of the reporting entity where the reporting entity has committed an offence under clause 16. There is no objection in principle to imposing liability on a director or person concerned with management of the reporting entity where that individual had knowledge of the offending and failed to take all reasonable steps to prevent it occurring. However, where the prosecution relies on the "ought to have known" element of the offending, liability is being imposed for negligence. It is not clear on the current drafting whether the offence would be committed if the director or person concerned in management had taken significant but ultimately unsuccessful steps to prevent any offending of the relevant kind. We recommend that the Committee take further advice on this point.

Pecuniary penalty for infringing conduct

(o) Clause 18 provides for a pecuniary penalty to be paid to the Crown if the High Court is satisfied that the reporting entity has contravened clauses 8(1), 10(1) or 10(2) of the Bill. We recommend that the Committee take further advice on whether the inclusion of pecuniary penalties is appropriate in this circumstance

where any earlier conduct relied on would only need to be shown on the civil standard of proof.

(p) Further, the Bill does not contain any express provision barring the bringing of pecuniary penalty proceedings based on the same matters as were relied on in a prosecution for offending whether the prosecution resulted in conviction or not. We recommend that clause 18 is amended to prohibit double punishment from arising by way of dual proceedings.

Government agencies excluded from liability

(q) We note that the Bill expressly excludes government agencies from liability under clauses 16 and 18 for breaches of clauses 8 and 10. We recommend that the Committee take further advice on whether the exclusion of government agencies as drafted is appropriate given the purpose of the Bill.

Reporting and publication of convictions and penalty orders

(r) We recommend amending clause 19 to place an obligation on the Registrar to amend the register in circumstances where a conviction or order has been quashed or order cancelled.

(s) Clause 20 should also be amended, to make clear that the Registrar is obliged at all times to comply with relevant court orders regarding the publication of matters which would normally appear on the register.

Direction to Chief Human Rights Commissioner

(t) Clause 23 of the Bill allows the Minister to direct the Chief Human Rights Commissioner to designate modern slavery as a priority area and appoint a commissioner to lead the Commission's work on that issue. Care will be needed to ensure that any direction given by the Minister does not undermine the independence of the Human Rights Commission.

The review provisions

(u) Clauses 25 and 26 of the Bill are important. Because the Bill adopts a transparency/reporting model rather than a due diligence model, its review provisions carry an unusual weight. If the review provisions are weak, the legislation risks being ineffective, underenforced, and quickly outdated. We recommend that the review provisions be strengthened so that Parliament is required to consider, on a defined timetable and against an evidence base, whether the Act's regulatory model remains adequate. This could be achieved through amending either clause 25 or 26.

Amendments to the Public Finance Act

(v) Clause 28, which inserts a new section 73A into the Public Finance Act, would prevent the Crown paying any money, directly or indirectly, to an entity convicted of an offence against, or which has had a pecuniary penalty imposed under the Bill, except where the payment is expressly authorised by any Act.

While the Law Society does not object to the intention behind this clause, as drafted, we have a number of concerns. Our view is clause 28 requires careful consideration by the Committee and should not be enacted as currently drafted.

(w) Clause 29 amends section 76 of the Public Finance Act by inserting a new provision into the offences section in relation to the payment of money to an entity that has been convicted of an offence against, or in respect of which a pecuniary penalty has been imposed under the Bill. We have several concerns with this clause and recommend that it be removed from the Bill.

2.3 We set out below our submissions in respect of these recommendations.

3 International legal and policy context

New Zealand's international obligations

3.1 New Zealand is party to the principal international instruments relevant to the Bill's subject matter, specifically:

(a) the Slavery Convention 1926 and the Supplementary Convention on the Abolition of Slavery 1956;

(b) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (**Palermo Protocol**);

(c) the ILO Forced Labour Convention, 1930 (No 29) and the Protocol of 2014 to the Forced Labour Convention 1930 (No 29) (**Forced Labour Protocol**); and

(d) the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No 182).

3.2 New Zealand's obligations under the International Covenant on Civil and Political Rights, including article 8, are also relevant.

3.3 Together, these instruments impose obligations on states to:

(a) suppress trafficking, slavery, and forced labour;

(b) protect victims; and

(c) cooperate internationally.

3.4 On 13 December 2019, New Zealand ratified the Forced Labour Protocol. This is a legally binding document that requires each state that has ratified it to develop a national 'Plan of Action' for the effective and sustained suppression of forced labour, and recognises that "trafficking in persons for the purposes of forced or compulsory labour, which may involve sexual exploitation, is the subject of growing international concern". New Zealand's most recent Plan of Action against Forced Labour, People Trafficking and Slavery was launched on 16 March 2021.[2]

[2] Hon Michael Wood "Action plan to tackle modern forms of slavery released" (16 March 2021).

3.5 The Forced Labour Protocol requires states to support due diligence by both the public and private sectors to prevent and respond to risks of forced labour.[3] This reference is the closest any binding international instrument comes to supporting supply chain transparency legislation of the kind the Bill contemplates.

3.6 The Bill operates in an area informed by New Zealand's international obligations but is not dictated by them. The simple reason for this is that the entire developing regime of supply chain transparency legislation is more closely related to the United Nations' Ruggie Principles, officially known as the UN Guiding Principles on Business and Human Rights (**UNGPs**) rather than the transnational criminal legal frameworks which underpin the criminal side of the conduct that forms the concept of modern slavery.

3.7 The UNGPs are a set of 31 directives unanimously endorsed by the United Nations Human Rights Council in 2011.[4] They establish a global standard for preventing and addressing human rights violations linked to business operations.

3.8 While the UNGPs themselves are not a legally binding treaty, they act as the international best practice framework for responsible business conduct. The UNGPs have heavily influenced national legislation, such as the United Kingdom's and Australia's modern slavery legislation and are increasingly being codified into legislation such as the European Union's Corporate Sustainability Due Diligence Directive (Directive (EU) 2024/1760) (**CSDDD**).[5]

3.9 The purpose of this context is to highlight that no treaty instrument requires New Zealand to adopt supply chain transparency legislation in a specific form. In enacting this Bill, Parliament is choosing among several possible regulatory models rather than implementing a treaty prescribed design. That distinction matters as it means the design of the Bill, including its scope, definitions, review mechanisms, and enforcement settings, is a matter of domestic legislative choice on which this Committee and Parliament have scope to tailor the response to reflect New Zealand-specific characteristics.

The evolving international legislative landscape

3.10 The legislative landscape has changed substantially in the last few years.

European Union

3.11 The European Union adopted the CSDDD in June 2024. The CSDDD is a substantive due diligence instrument. In summary, it requires in-scope entities to identify, prevent, mitigate, and bring to an end adverse human rights and environmental impacts across their operations and chains of activity. It creates civil liability and requires member states to impose effective sanctions, including turnover-based fines. The CSDDD sits within a framework of related EU regulations aimed at increasing transparency and wider sustainability in the business sector.

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3 Forced Labour Protocol, art 2(e).

4 United Nations Human Rights Office of the High Commissioner *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011).

5 Available at: <eur-lex.europa.eu>.

3.12 The CSDDD has since been amended by Directive (EU) 2026/470,[6] confirming the European Union's continued commitment to the due diligence legislation while recalibrating the scope and implementation timing. The CSDDD has significant extraterritorial reach. At full implementation, it will apply to non-EU companies generating net turnover of €450 million or more in the European Union.

Canada

3.13 Canada's Fighting Against Forced Labour and Child Labour in Supply Chains Act 2023 came into force on 1 January 2024.[7] It is a reporting framework rather than a due diligence framework and, with the inclusion of offences, it is the closest international comparator to the Bill.

Australia

3.14 Australia's Modern Slavery Act 2018 (Cth) has been in force since January 2019.[8] Since coming into force, a mandatory statutory review has taken place. The McMillan statutory review,[9] tabled on 25 May 2023, recommended significant reforms including the introduction of penalties for non-compliance, a lower reporting threshold, and a requirement for entities to have a due diligence system in place. The Australian Government's response, released on 2 December 2024,[10] agreed in full, in part, or in principle to 25 of 30 recommendations — though it declined to introduce a mandatory due diligence requirement at this time.

3.15 Australia also enacted the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Act 2024 (Cth),[11] creating a dedicated statutory office. The Australian experience is particularly relevant because the Bill mirrors many of the features in the Australian legislation that have been recommended for updating by the McMillan statutory review.

United Kingdom

3.16 The United Kingdom's Modern Slavery Act 2015 has been in force since 2015 and was designed to consolidate slavery and trafficking offences, provide protection for victims and introduce transparency reporting obligations for in-scope entities.[12]

3.17 The relevant section in the legislation is section 54, which provides for the transparency reporting provisions. Arguably, by international comparison, these provisions remain the weakest of the major reporting models. The United Kingdom's Modern Slavery Act has no mandatory reporting content, no penalties for non-compliance (only the power to seek an injunction), no mandatory registry, and no single reporting deadline. One

6 Available at: <eur-lex.europa.eu>.
7 Available at: <laws.justice.gc.ca>.
8 Available at: <www.legislation.gov.au>.
9 Australian Government *Report of the statutory review of the Modern Slavery Act 2018 (Cth): the first three years* (2023).
10 Australian Government *Australian Government response to the review report of the Modern Slavery Act 2018 (Cth)* (2024).
11 Available at: <www.legislation.gov.au>.
12 Available at: <www.legislation.gov.uk>.

possible reason for this is because the United Kingdom was one of the first jurisdictions to adopt this kind of legislation.

3.18 The United Kingdom Government's 2020 consultation response proposed legislative strengthening, including mandatory content, mandatory registry publication, and civil penalties. However, as of May 2026, none of those changes have been enacted.[13] In our view, the United Kingdom is not an adequate benchmark for the Bill, because the United Kingdom itself has long acknowledged the need for reforms.

4 The legal character of the Bill

4.1 By way of a preliminary comment, the drafting of the Bill appears to draw on more than one legal/regulatory tradition:

(a) The Bill's broad subject matter (being slavery, trafficking, forced labour, and related exploitation) belongs domestically to criminal law, and internationally to both transnational criminal law and international human rights law.

(b) The language and explanatory material to the Bill adopt the victim-protective language of human rights law.

(c) The Bill's offence and penalty provisions in clauses 16 to 18 are structurally aligned to criminal regulation.

(d) The Bill's operative legal mechanism is mandatory reporting/disclosure (i.e. the substantive obligations in clauses 8 to 10 require reporting entities to prepare, submit, and publish statements).

4.2 Because there are multiple legal/regulatory traditions influencing the drafting, some of the clauses sit awkwardly together. For example, the Bill requires in-scope entities to report on due diligence, but does not itself impose a free-standing duty to undertake due diligence. Similarly, liability attaches to failures in reporting, not to the underlying exploitation (which is largely already addressed by domestic criminal law).

4.3 In the Law Society's view, it is important to be clear about the purpose of the Bill and what it is trying to achieve. Within the international context discussed above, overall, the Bill falls within the category of supply chain transparency legislation (i.e. creating a reporting/disclosure obligation). In this regard, it is akin to, and structurally comparable with, section 54 of the Modern Slavery Act 2015 (UK) and Australia's Modern Slavery Act 2018 (Cth), rather than to the substantive due diligence regimes operating in the European Union (and other European jurisdictions).

4.4 That characterisation is not a criticism. It is a legitimate policy choice. However, from a legal perspective it is relevant to several issues that we have identified below. Transparency/reporting legislation enacted in 2026 will likely be legislatively modest by international comparator standards and risks becoming dated before or during its first statutory review cycle in about three years' time. That has direct implications for the design of the review provisions in clauses 25 and 26, which we later discuss.

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13 Gov UK "Transparency in supply chains: Government Response" (15 October 2021).

5 Scope and reach of the Bill

What constitutes "modern slavery"

5.1 One challenge, in seeking to legislate to address modern slavery, is there is no settled international legal definition of what "modern slavery" means. Generally modern slavery is used to describe serious exploitation, such as situations where coercion, threats or deception are used to exploit victims and undermine or deprive them of their freedom. The term modern slavery is not generally used to cover illegal employment practices like breaches of minimum employment standards. While those practices are illegal and may either be present in some situations of modern slavery or escalate into modern slavery if not addressed, such conduct is already subject to New Zealand's employment law framework.

5.2 In light of the above, clause 4 of the Bill adopts an "umbrella approach" to define modern slavery by reference to various domestic criminal offences (none of which themselves refer to modern slavery directly) and by reference to the international legal definition of human trafficking. This approach is used in the Australian Modern Slavery Act, which was the first national legislation to define modern slavery in this way.

5.3 One issue with this approach is that it brings together categories that are not all doing the same kind of legal work. Some of the definitions are linked to specific offences while others are descriptive concepts from international legal definitions that do not align exactly with existing domestic criminal law definitions (we discuss this issue further at [5.15] below).

5.4 On balance, our view is that the legal definition of modern slavery in the Bill is workable (subject to our further comments below) and does provide a level of definitional transparency by expressly identifying the underlying international instruments and concepts. The Law Society supports that approach.

5.5 Notwithstanding the workability of the definition of modern slavery in the Bill, to the extent possible, the scope of what conduct constitutes modern slavery for the purposes of complying with the Bill's reporting obligations should be set out clearly in the Bill because reporting entities will need to use the Bill's definitions as their practical compliance guide, subject to further guidance being issued by the registrar of modern slavery statements (**Registrar**).

Forced labour and existing criminal law

5.6 There is no standalone offence of "forced labour" in New Zealand criminal law. Forced labour appears in the Crimes Act:

(a) as an element within the section 98D trafficking offence (but only when coupled with coercion or deception in the trafficking context);

(b) as a purpose within section 98AA (but only in relation to children under 18); and

(c) potentially within section 98 (if the conduct amounts to slavery, debt bondage, or serfdom).

5.7 Conduct that amounts to forced labour but does not involve the specific elements of trafficking and does not reach the threshold of slavery or serfdom may not be covered by existing criminal offences.

5.8 The Bill's definition of "forced or exploitative labour" in clause 4 is substantially wider than any existing criminal provision. In particular, subclause (a)(iii), the limb capturing work involving a "serious violation of legislation relating to employee rights or health and safety in the workplace", has no criminal law counterpart. The consequence is that a reporting entity may be required to report on conduct that falls within the Bill's definition of "modern slavery" but that would not, if occurring in New Zealand, constitute a domestic criminal offence. The result is that the scope of modern slavery under the Bill will overlap with other domestic legal frameworks, such as employment and health and safety law.

5.9 That may well be a legitimate and deliberate legislative choice. Supply chain reporting legislation commonly uses broader risk concepts than domestic criminal law, and there are sound policy reasons for doing so. But the Committee should recognise that the Bill is not simply creating a reporting overlay on existing criminal law. It is using a wider compliance concept of "modern slavery" that extends beyond the present scope of New Zealand criminal law. If that is Parliament's intention, it would be preferable for the scope to be expressly acknowledged so that reporting entities understand the nature and basis of the obligation.

5.10 In addition, as currently drafted, subclause (a)(iii) lacks clarity. On its face it could mean:

(a) a violation of an important legislative provision relating to employees' rights;

(b) that there is a large-scale (and therefore serious) violation of a relatively unimportant legislative provision; or

(c) both of the above.

5.11 Given the likely overlap with existing employment and health and safety law, we recommend that the Committee seeks advice as to which meaning(s) were intended and, if necessary, amend the provision to provide greater clarity.

Debt bondage and existing criminal law

5.12 Clause 4 defines debt bondage by reference to section 98 of the Crimes Act. Section 98(2) defines debt bondage by reference to whether the value of pledged services is not applied toward debt liquidation, or whether the length and nature of services are not limited and defined. It does not include a limb covering debt that is itself manifestly excessive or fraudulently inflated — the formulation used in Australia's Criminal Code.

5.13 This matters because migrant worker exploitation in New Zealand frequently involves recruitment debt that is disproportionate to the services provided, but which is technically "applied" toward the stated debt. The gap in the section 98 definition propagates into the Bill's reporting regime, because the Bill picks up the section 98 definition.

5.14 We recommend that the Committee seeks advice on how migration-linked debt tends to operate in New Zealand exploitation cases and, if necessary, amend the provision to provide greater clarity.

Operations and supply chains

5.15 The terms "operations" and "supply chains" are foundational to the Bill's reporting framework. These phrases appear in the purpose clause (clause 3(1)(a)), the definition of "modern slavery incident" (clause 6), the mandatory content of modern slavery statements (clause 9(2)(a)–(f)), and the regulation-making criteria (clause 24(2)(a)). Yet neither "operations" nor "supply chains" are defined.

5.16 This is not a new problem. The same gap apparent in this Bill is also present in the Australian and United Kingdom legislation. For a regime whose enforceability depends on what entities must report on, that is a material weakness. Reporting entities need to know the outer boundary of the reporting task. The Registrar, the Minister, and ultimately the courts will need a stable and consistent understanding of the scope of the reporting task. The undefined terms determine the reach of the Bill's incident reporting, risk reporting, due diligence reporting, and effectiveness reporting requirements in clause 9.

5.17 Not knowing the reach of the obligations in clause 9 will create practical concerns for reporting entities, such as how far back in their supply chain they are required to consider. In the Australian context, the Attorney-General's Department has attempted to address this issue by issuing updated guidance for reporting entities.[14] While the Bill also provides that one of the functions of the Registrar is issuing guidance to facilitate compliance with the reporting obligations under the Bill, as noted in the Legislation Design and Advisory Committee (**LDAC**) *Legislation Guidelines* for good legislative design, if legislation cannot be understood, then both the efficacy of the legislation and the rule of law itself are undermined. If legislation is vague about the obligations it imposes, or leaves too much to discretion, it will create confusion and inconsistency. This places significant costs on those who are regulated. It also causes constitutional concern about the lack of legal clarity over rights and obligations.

5.18 In light of the above, the Law Society's view is that the concepts of "operations" and "supply chains" should be defined, or at least materially clarified in the Bill. The UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct provide established frameworks that could inform statutory definitions without requiring the work to be developed from scratch.

Sexual exploitation

5.19 Sexual exploitation has been included within the definition of modern slavery in clause 4. The Law Society does not object to this inclusion. However, from a drafting perspective sexual exploitation has been broadly defined in the Bill to include conduct that involves an actual or attempted abuse of a person's vulnerability or trust, or abuse of a position of power over a person, for sexual purposes.

14 *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (May 2023).

5.20 Given the reporting obligations under the Bill relate to a reporting entity's operations and supply chains (and therefore inherit the unresolved ambiguity of "operations" and "supply chains" earlier discussed) it is at least possible that, within the varied group of persons involved into those activities, there may be occasions of serious sexual harassment by a senior employee of a junior employee.

5.21 A policy question for the Committee to consider is whether that type of conduct should constitute modern slavery.

"Modern slavery incident"

5.22 We are concerned that there is ambiguity in the definition of "modern slavery incident" in clause 6 of the Bill. As currently drafted, the definition refers to an event or occurrence involving modern slavery within an entity's operations or supply chains (terms which themselves are unclear, as discussed above).

5.23 The uncertainty regarding the concept of a modern slavery incident is further increased by the vagueness as to when an event crystallises into a reportable incident, and which activities fall within the reporting boundaries. These difficulties will likely compound in practice. For example, is there an "incident" if there is a report or complaint of modern slavery, but there is no formal decision that the conduct took place? Or if it is determined that conduct did occur but after an investigation it was determined that the conduct did not amount to modern slavery as defined in the Bill?

5.24 For these reasons, we recommend the Committee further clarifies what constitutes a modern slavery incident.

5.25 Further, if there have been separate court proceedings relating to the same conduct giving rise to the modern slavery incident, reporting restrictions may have been imposed by the courts. From a practical perspective, this may be a particular problem in reporting incidents in New Zealand where there is a delay between the charge and the resolution with restrictions in place or in incidents in countries other than New Zealand where different reporting restrictions apply. Arguably, as drafted, a reporting entity would not comply with clause 9 (contents of a modern slavery statement), and therefore commit an offence under the Bill, if it fails to provide a description of a modern slavery incident, even if the circumstances surrounding the incident are subject to reporting restrictions imposed by a court.

5.26 We recommend that clause 9 is amended to provide an exception to the obligation to report any details of a modern slavery incident which have been suppressed temporarily or permanently by a court order, until such time as suppression is lifted (if applicable).

Prescribing a different reporting threshold revenue amount

5.27 Clause 6 of the Bill sets the reporting threshold revenue amount at a consolidated revenue of more than $100 million in a reporting period, mirroring the Australian legislation, or a different amount prescribed in regulations made under clause 24. As earlier noted, this is a policy consideration and the Law Society does not have a view on what an appropriate reporting threshold revenue amount should be.

5.28 Clause 24(1) provides that the Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for all or any of the purposes listed in that clause, including under subclause (1)(c) to prescribe an applicable threshold revenue amount. However, before recommending regulations be made under subclause 1(c), clause 24(2) requires the Minister to take into account:

(a) the level of risk of modern slavery incidents occurring within the operations and supply chains of an entity; and

(b) the extent to which that risk may be increased by economic or commercial developments both domestically and internationally.

5.29 The effect of clause 24(2) is to confine the criteria guiding the prescribing of a reporting threshold revenue amount to modern slavery risks and economic or commercial developments. It does not require consideration of the effectiveness of the Bill, compliance under the Bill, the extent to which the threshold amount leaves certain sectors outside the scope of the reporting regime, or developments in comparable overseas jurisdictions.

5.30 We recommend that the criteria under clause 24(2) be expanded, to at least include considering the effectiveness of the Bill, when the Minister is recommending regulations to prescribe an applicable threshold revenue amount.

Extraterritorial reach

5.31 We think it is important to note that the Bill is not expressly framed as extraterritorial legislation, but it has significant extraterritorial reach in substance.

5.32 The effect of clause 7(1) of the Bill is that New Zealand entities are caught wherever their operations and supply chains are located. Overseas companies carrying on business in New Zealand are also captured. Clause 7(2) also appears to extend the extraterritorial reach to overseas companies that are not directly carrying on business in New Zealand but may have a New Zealand subsidiary entity that it directly or indirectly controls. This is a broader extraterritorial reach than under the current Australian legislation.

5.33 That breadth is inherent in supply chain transparency legislation and is not objectionable in itself. It does, however, reinforce the concerns we have raised regarding the need for clear boundary definitions (particularly of "operations" and "supply chains") so that reporting entities can determine the scope of their obligations with reasonable certainty. For completeness, we also note that the Bill does not define the phrase "carried on business in New Zealand". This is also a key concept for clause 7 in determining whether an entity is a reporting entity for the purposes of the Bill.

5.34 We recommend that this concept be defined, or at least materially clarified in the Bill.

Binding on the Crown

5.35 The definition of an "entity" is provided for in clause 4 of the Bill. For public sector entities, clause 4 relies on certain definitions in the Public Finance Act, the Crown Entities Act 2004 and the Local Government Act 2002. As currently drafted this definition includes the Crown, which would capture the Sovereign in right of New

Zealand, and includes organisations named in Schedule 4 of the Public Finance Act, but not Schedule 4A companies or mixed ownership model companies. Arguably Schedule 4A and mixed ownership model companies are already caught by the definition because they are companies but listing some entities under the Public Finance Act and not others could cause confusion.

5.36 We recommend that this definition is carefully considered to ensure the appropriate public sector entities are clearly identified and the usual legislative definitions are applied when referencing public sector entities and the Crown.

6 Offences, liability, and pecuniary penalties provisions

Offences

6.1 Clause 16(1) creates an offence of failing to comply with the reporting obligations imposed by:

(a) clause 8(1) (preparing and submitting a modern slavery statement);

(b) clause 10(1) (publishing a modern slavery statement); and

(c) clause 10(2) (the version of the modern slavery statement published must be the same as the version submitted).

6.2 We note that there is no "lack of fault" defence provided in relation to the clause 10 obligations, both of which require information to be maintained on an internet site. As the provision stands, a reporting entity which has posted the relevant material on a website only for it to be deleted either by a technical fault or hostile action could face prosecution and conviction despite absence of any fault. Amending clause 10 to provide a defence for lack of fault with the standard reverse onus of proof would avoid any need to rely on prosecutorial discretion in such circumstances.

6.3 We recommend that the Committee considers amending clause 10 to provide for a reverse onus of proof defence.

6.4 Clause 16 also provides that the maximum fine is $200,000 for offences under that clause. While that amount is substantial for an individual, the maximum fine should be evaluated against the definition of a reporting entity which has a consolidated revenue for the relevant reporting period of more than $100,000,000 (or 500 times the maximum fine).

6.5 We recommend that the Committee reviews the maximum fine to ensure that it provides a sufficient deterrent and incentivises compliance. As an alternative approach to setting a maximum fine, the fine could be prescribed as a percentage of a reporting entity's revenue. Revenue-linked penalty calibration is becoming the predominant international approach in relation to supply chain transparency/reporting and due diligence legislative frameworks and other New Zealand statutes take this approach.

Liability of directors or other persons involved in the management of reporting entities

6.6 Clause 17 provides for criminal liability of a director or person involved in the management of the reporting entity where the reporting entity has committed an offence under clause 16 if the director or person connected with management:

(a) had authorised, permitted or consented to the act or omission that constituted the offence; or

(b) the director or 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.

6.7 In the former, under clause 17(a) the prosecution will have to show conduct and a state of mind which would mean the director or person could be guilty under section 66(1) of the Crimes Act as a party to the reporting entity's offending. The Law Society has no objection to this subclause. While clause 17 does not give express guidance as to which specific persons involved in the management of the reporting entity might be liable under the section, the requirement for knowledge of the offending and the implied requirement that the person have some ability to prevent the offending should prevent too wide an application of the offence.

6.8 However, clause 17(b) raises more complex issues. There is no objection in principle to imposing liability on a director or person concerned with management of the reporting entity where that individual had knowledge of the offending and failed to take all reasonable steps to prevent it occurring. However, where the prosecution relies on the "ought to have known" element of the offending, liability is being imposed for negligence. It can reasonably be expected that a person who is unaware that offending is occurring or may occur will fail to take reasonable steps to prevent that particular offending occurring. However, it is not clear on the current drafting whether the offence would be committed if the director or person concerned in management had taken significant but ultimately unsuccessful steps to prevent any offending of the relevant kind.

6.9 We recommend that the Committee take further advice on this point. A possible option might be to provide for a modified reverse onus provision specifically providing for a defence of having created and maintained procedures to prevent offending of the kind that in fact occurred where the director or person involved in management was not aware of the specific offending or the probability of it occurring. A similar provision is included in the Crimes Act, in relation to bribery of foreign public officials.[15]

Pecuniary penalty for infringing conduct

6.10 Clause 18 provides for a pecuniary penalty to be paid to the Crown if the High Court is satisfied that the reporting entity has contravened clauses 8(1), 10(1) or 10(2) of the Bill. In principle we do not object to the inclusion of pecuniary penalties but note the warning

15 Crimes Act 1961, s 105C(2B).

in the LDAC Guidelines that although pecuniary penalties are not criminal sanctions, they can have serious reputational and financial effects on a person or entity.[16]

6.11 We recommend that the Committee take further advice on whether the inclusion of pecuniary penalties is appropriate in this circumstance, where any earlier conduct relied on would only need to be shown on the civil standard of proof.

6.12 Further, the Bill does not contain any express provision barring the bringing of pecuniary penalty proceedings based on the same matters as were relied on in a prosecution for offending whether the prosecution resulted in conviction or not. This appears to be contrary to the LDAC Guidelines, which state that there should be an express prohibition on such dual proceedings.[17] Such dual proceedings would appear to breach the right against double punishment in section 26(2) of the New Zealand Bill of Rights Act 1990.

6.13 We recommend that clause 18 is amended to prohibit dual proceedings.

Government agencies excluded from liability

6.14 For completeness, we note that the Bill expressly excludes government agencies from liability under clauses 16 and 18 for breaches of clauses 8 and 10. We note the LDAC Guidelines state public service agencies may be liable to criminal prosecution only if there are compelling reasons.[18] However, the Guidelines also note that individuals employed by the Crown should be subject to the same criminal liability as the equivalent people employed in the private sector.

6.15 We recommend that the Committee take further advice on whether the exclusion of government agencies as drafted is appropriate given the purpose of the Bill.

Reporting and publication of convictions and penalty orders

6.16 Clause 19(1) of the Bill requires the registrar of the relevant court to inform the Registrar of modern slavery statements if a reporting entity is convicted of an offence under clause 16 or is the subject of a pecuniary order made under clause 18. Clause 20 then requires the Registrar to publish on the registry the name of the reporting entity, a description of the offence or contravention that led to the order, and the penalty imposed.

6.17 We have two concerns with this process:

(a) Clause 19(2) requires the registrar of the relevant court to notify the Registrar if a conviction or order has been quashed or order cancelled. There is no express requirement on the Registrar to respond to such communication by amending the register accordingly.

(b) Clause 20(1)(a) and (b) require the Registrar to place on the register the name of the reporting entity convicted or subject to a pecuniary order and a description of

16 Legislation Design and Advisory Committee *Legislation Guidelines: 2021 edition* (September 2021) at [26.1].
17 Legislation Design and Advisory Committee, above n 16 at [26.7].
18 Legislation Design and Advisory Committee, above n 16 at [11.4].

the offence or contravention that led to the order. There may be cases where suppression orders have been made by the court either permanently or pending resolution of proceedings against other persons or entities.

6.18 We recommend that clause 19 is amended to place a corresponding obligation on the Registrar to amend the register accordingly and that clause 20 is amended to make clear that the Registrar is obliged at all times to comply with relevant court orders regarding the publication of matters which would normally appear on the register.

7 Other matters

Direction to Chief Human Rights Commissioner

7.1 Clause 23 of the Bill allows the Minister to direct the Chief Human Rights Commissioner to designate modern slavery as a priority area and appoint a commissioner to lead the Commission's work on that issue. That approach has practical merits, in that it uses an existing institution and avoids the immediate creation of a new statutory office. Care will be needed to ensure that any direction given by the Minister does not undermine the independence of the Human Rights Commission.

7.2 A trade-off with the proposed approach is that it creates a Ministerially-driven model rather than a structurally independent model. It is materially different from the specialist Anti-Slavery Commissioner model adopted in Australia in 2024 and discussed in the United Kingdom. Further, there is a policy question as to the effectiveness of such a direction, in circumstances where the Bill does not provide any additional powers to the Human Rights Commission to support victims or provide any additional resources.

7.3 The Law Society supports the inclusion of clause 26(c), which requires the Minister to report to the House of Representatives on whether a specialist person or body, such as an independent Anti-Slavery Commissioner, ought to be established or appointed where the Minister has not issued a direction to the Chief Human Rights Commissioner under clause 23.

Importance of the review provisions

7.4 Clauses 25 and 26 of the Bill are important. Clause 25 requires a review of the operation and effectiveness of the Bill at least every five years, with the first review completed within three years of commencement. Clause 26 requires three-yearly reporting on victim support, the need for amendments, and whether a specialist person or body, such as an independent Anti-Slavery Commissioner, ought to be established or appointed.

7.5 Because the Bill adopts a reporting model rather than a due diligence model, its review provisions carry an unusual weight. If the review provisions are weak, the legislation risks being ineffective, underenforced, and quickly outdated. As proposed, neither clause expressly requires consideration of whether a transparency/reporting-only model remains adequate in light of overseas developments.

7.6 The Bill will come into force in a regulatory environment where the European Union has adopted and amended a due diligence directive, and Australia has officially recognised

the need for significant strengthening of its legislation. The direction of travel is observable in enacted legislation across multiple jurisdictions.

7.7 In light of this, the Law Society recommends that the review provisions are strengthened so that Parliament is required to consider, on a defined timetable and against an evidence base, whether the Act's regulatory model remains adequate. This will assist in continuing to ensure that the law remains fit for purpose, and could be achieved through amending either clause 25 or 26 to require the Minister's review to consider:

(a) developments in comparable overseas jurisdictions, including the extent to which those jurisdictions have moved from transparency/reporting only models to mandatory due diligence models;

(b) whether the Act should be supplemented by substantive due diligence obligations; and

(c) whether the Act's reporting threshold revenue amount and enforcement settings remain appropriate.

7.8 Further, if Parliament intends clauses 25 and 26 to function as the mechanism for periodic review of New Zealand's wider modern slavery settings, those clauses should be drafted broadly enough to permit consideration of criminal law and victim protection issues, not solely the operation of the reporting regime contained in the Bill in isolation.

7.9 For example, New Zealand has no statutory non-punishment provision for victims of trafficking or slavery who commit offences as a direct consequence of their exploitation. The United Kingdom enacted such a defence in section 45 of the Modern Slavery Act 2015. The principle of non-punishment is grounded in article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings, endorsed by multiple UN bodies, and was noted in the 2025 Trafficking in Persons Report, which observed that New Zealand did not take effective measures to prevent the inappropriate penalisation of potential trafficking victims.

8 Amendments to the Public Finance Act 1989

8.1 Clause 28, which inserts a new section 73A into the Public Finance Act, would prevent the Crown paying any money, directly or indirectly, to an entity convicted of an offence against, or which has had a pecuniary penalty imposed, for contravention of clauses 8(1), 10(1) or 10(2), except where the payment is expressly authorised by any Act.

8.2 While the Law Society does not object to the intention behind this clause, as drafted, we have several concerns:

(a) New section 73A effectively creates a second penalty on the entity in question. As such it is arguably in breach of section 26(2) New Zealand Bill of Rights Act 1990, which provides that no one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again. The effect of new section 73A would vary according to the quantum of money otherwise to be paid. The imposition of what is in effect a fine of an arbitrary amount is in our view the wrong approach — as the severity of the additional penalty may be drastically disproportionate to the seriousness of the conduct in question. Further, as

drafted the prohibition would be permanent for what could be a simple reporting failure, and there may be circumstances where (absent any other particular facts or unlawful behaviour) this may not be necessary over the long term.

(b) The use of the phrase "directly or indirectly" in new subsection (1) and the obligation imposed on the Crown in new subsection (2) together suggest that in every case where a conviction or pecuniary penalty had been imposed the Crown would have to investigate in some depth the potential bodies or persons linked to the relevant entity, to determine whether a payment to such a body or person would indirectly benefit the entity convicted or on whom a pecuniary penalty had been imposed.

(c) The phrase "expressly authorised by any Act" is less clear than is desirable. On a literal reading, it would require each and every payment made to the relevant entity to have separate and specific Parliamentary authority in the form of an empowering clause. That would be obviously impractical. It could also involve a serious limitation of the powers of courts and tribunals which could make awards of damages, costs or reparation to the relevant entity (or which would indirectly benefit that entity). It would be contrary to justice that a judge could not award costs or damages against the Crown where the reporting entity had succeeded in litigation against the Crown on an unrelated matter.

(d) As drafted, the new section would prohibit the Crown from fulfilling contractual obligations to the convicted entity even though the obligations, for example, to pay rent on leased premises, or make payment for supplies already received, had no connection to the matters giving rise to the conviction or pecuniary penalty. This is unfair, unreasonable, and contrary to the way the Crown should conduct itself.

8.3 For these reasons, in our view clause 28 requires careful consideration by the Committee and should not be enacted as currently drafted.

8.4 Clause 29 amends section 76 of the Public Finance Act by inserting a new provision into the offences section in relation to the payment of money to an entity that has been convicted of an offence against, or required to pay a pecuniary penalty for contravention of clauses 8(1), 10(1) or 10(2) of the Bill. We have concerns with this approach:

(a) Such an offence will be out of place in the Public Finance Act, as section 76(2) is applicable to all persons dealing with the relevant entity whether or not connected to public finance. On its face, it would ban banks from lending money to the relevant entity. More seriously, read literally, it would prevent a court from ordering reparation or restitution be paid by a person convicted of offending against the reporting entity. That would be a significant infringement of judicial powers.

(b) The use of the phrase "directly or indirectly" gives the proposed offence a very wide potential scope. While the prosecution would have to show absence of reasonable excuse (itself a somewhat unusual provision, in that normally one would expect a reverse onus provision requiring the defendant to show lack of fault on the balance of probabilities) it is uncertain what level of inquiry or

investigation would need to be performed by a person to have a "reasonable excuse" based on lack of knowledge that the payee was connected to the convicted entity (this is the same issue discussed above at [8.2(b)]).

(c) If the aim is limited to payments by persons connected with public finances, our view is that the additional offence is unnecessary, as existing section 76(2)(d) would arguably cover the same conduct.

(d) Should the Crown breach the obligation proposed in new section 73A, there are likely to be existing public law remedies available, such as judicial review.

8.5 For these reasons, in our view, clause 29 should be removed from the Bill.

Nāku noa, nā

Jesse Savage
Vice President