MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Carmel Sepuloni	**Portfolio**	Workplace Relations and Safety
Title of Cabinet paper	*Proactive release of Cabinet paper: Modern Slavery and Worker Exploitation: Supply Chain Legislation*	**Date to be published**	27 September 2023

List of documents that have been proactively released		
Date	**Title**	**Author**
June 2023	Modern Slavery and Worker Exploitation: Supply Chain Legislation	Office of the Minister for Workplace Relations and Safety
06 June 2023	Modern Slavery and Worker Exploitation: Supply Chain Legislation: CAB-23-MIN-0221 Minute	Cabinet Office
26 January 2023	Modern Slavery and Worker Exploitation Reform: Regulatory Impact Statement	MBIE

Information redacted **YES / NO**

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In Confidence

Office of the Minister for Workplace Relations and Safety

Chair, Cabinet Economic Development Committee

Modern Slavery and Worker Exploitation Supply Chain Legislation

Proposal

1 This paper seeks agreement to issue drafting instructions to the Parliamentary Counsel Office to give effect to policy proposals to address modern slavery and worker exploitation in the operations and supply chains of New Zealand entities.

Relation to Government priorities

2 This paper helps deliver on the following Labour Party 2020 Election Manifesto commitment:

> "Labour will continue our work to stamp out migrant worker exploitation with a focus on exploring the implementation of modern slavery legislation in New Zealand to eliminate exploitation in supply chains."

3 This paper also delivers on New Zealand's international trade commitments, including our commitment under the Trade for All Agenda to assess whether "New Zealand legislation to address modern slavery [is] sufficient, given international trends" [DEV-20-MIN-0052 refers] and our commitment in the NZ-UK Free Trade Agreement to "encourage private and public sector entities… to take appropriate steps to prevent Modern Slavery in their supply chains."

Executive Summary

4 Modern Slavery broadly reflects exploitative situations that a person cannot leave due to threats, violence, coercion, deception and/or abuse of power. It is an umbrella term that includes the legal concepts of forced labour, debt bondage, forced marriage, slavery and slavery like practices, and human trafficking. Worker exploitation is defined in various ways by different States, but I propose that worker exploitation refers here to serious breaches of New Zealand's employment standards.

5 Modern slavery is increasing globally due to the compounding crises of COVID-19, armed conflicts and climate change. The International Labour Organization (ILO) and Walk Free Foundation's latest report estimates that in 2021 there were 50 million victims of modern slavery around the world (an increase from 40 million in 2016). There have also been cases in New Zealand, such as the sentencing of Joseph Matamata in 2020 to 11 years in jail for 10 charges of human trafficking and 13 charges of dealing in slaves. We also know, from research conducted as part of the Government's Review into Temporary Migrant Worker Exploitation, that many more people in New Zealand are likely to be facing highly exploitative working conditions.

6 New Zealand is falling behind our international trading partners, which have increasing expectations of New Zealand to take strong action to protect workers. This

includes through commitments set out in recent Free Trade Agreements (FTAs) with the United Kingdom (UK) and the European Union (EU).

7 There has been growing pressure from New Zealand businesses and individuals for the Government to do more to address modern slavery. In 2021, I received an open letter signed by over 100 businesses and a public petition signed by more than 37,000 people calling on the Government to implement modern slavery legislation.

8 In March 2022, Cabinet agreed to consult on a set of graduated responsibilities to address modern slavery and worker exploitation in the operations and supply chains of New Zealand entities [DEV-22-MIN-0027 refers].

9 The proposals we consulted on included proactive disclosure (for entities with over $20 million in revenue) and due diligence responsibilities (for entities with over $50 million in revenue or contractual control over another New Zealand entity), as well as a responsibility for entities of any size to 'take action' where they become aware of exploitation.

10 The proposed legislation was developed in close consultation with and supported by a Modern Slavery Leadership Advisory Group (MSLAG), convened by MBIE and chaired by Rob Fyfe. The 14 MSLAG members include experts and leaders from business, unions, non-governmental organisations and academia. The MSLAG are strongly supportive of the need for change, and the broad reform package proposed in consultation.

11 The Ministry of Business, Innovation and Employment (MBIE) received 5,614 submissions through the public consultation process, including from a wide range of businesses and business organisations. The proposals were all strongly supported across sectors, with approval for each of the proposed responsibilities ranging from between 87 per cent to 95 per cent.

12 It is important that we take the time needed to get the settings right and to make sure the legislative package will be feasible and effective in practice. I therefore propose a sequenced approach where legislation to introduce a disclosure responsibility is introduced ahead of additional legislation that includes stronger, more complex and novel responsibilities (such as the due diligence and 'take action' duties). Disclosure legislation will drive change now by providing public transparency on the steps that entities are taking to address modern slavery and worker exploitation, while analysis continues on the broader reform.

13 I seek Cabinet's agreement to introduce disclosure responsibilities requiring New Zealand entities with $20 million or more in consolidated annual revenue, covering an estimated 4,000 entities, to disclose the steps they are taking to address:

13.1 Modern slavery in their international operations and supply chains; and

13.2 Worker exploitation and modern slavery in their domestic operations and supply chains.

14 I am proposing best-practice disclosure legislation which applies lessons learned from the Australian model introduced in 2018 and the UK model introduced in 2015. This will include:

14.1 A comparatively low $20 million revenue threshold for entities captured, prescribed reporting requirements, and a publicly accessible register for disclosures;

14.2 It will apply to all types of entities, including companies, sole traders, charitable entities, central and local government, trusts and incorporated societies; and

14.3 To ensure integrity and public trust in the register, a graduated range of offences and penalties for non-disclosure.

15 The mandatory minimum costs for entities would be very low, as they would have flexibility to disclose that they are not taking any steps to identify or address exploitation in their supply chains and could describe their supply chains and operations at a high level. Such disclosures would only take a few hours of work to complete. While this would meet the proposed minimum legal obligation, entities that chose to disclose in this way would expose themselves to reputational risks (a key incentive provided by the proposed reform).

16 While there is no mandatory maximum cost (given that it will be for entities to choose how comprehensive and costly their disclosures will be), officials estimate that the total annual cost to all 4,000 entities in the first year would not be more than $60 million. The exact figure will depend on how many of the 4,000 entities covered choose to make a comprehensive disclosure statement (with an average estimated cost of $15,000), versus a basic-minimum disclosure. Officials expect that disclosure costs will also reduce over time as entities develop their information bases upon which their disclosures are made.

17 The disclosure legislation will have commercial benefits for businesses by bolstering the transparency and ethical reputation of New Zealand’s products and services, and meeting the increasing expectations of international markets for transparency and ethical provenance. For example, under our recent FTA with the UK we have committed to encouraging entities to identify and address modern slavery in their supply chains, which may include proposing laws and regulations. I am also mindful that businesses in some of our key trading partner countries increasingly expect exporters to have robust processes to ensure there is no exploitation in their operations, and this could increasingly affect market access over time.

18 I propose that the legislation, and central digital register of statements, will be administered by MBIE. The primary responsibility will be to manage the digital register. MBIE will also play an important role in encouraging best practice by providing support and guidance for entities to take meaningful action across their operations and supply chains in the first instance, and undertake any compliance and enforcement action that may be required.

19 I am now seeking agreement to issue drafting instructions to Parliamentary Counsel Office (PCO). This Bill would not be introduced before the 2023 general election.

However, there are increasingly strong public and stakeholder expectations for legislation to be developed, including from the MSLAG, and New Zealand's progress is also regularly mentioned in international fora. Agreement to develop drafting instructions will show clear progress towards meeting expectations, and will enable introduction of the Bill to occur at the earliest opportunity.

Confidential advice to Government

20 I further seek Cabinet's agreement that broader reform to address modern slavery and worker exploitation within the supply chains and operations of New Zealand entities remains a priority for this Government. The disclosure legislation is an important first step, but I see the additional take action and due diligence responsibilities that were proposed in public consultation as being necessary to fully implement a comprehensive and robust supply chain regime. These additional steps were strongly recommended by the MSLAG, as well as widely supported in public consultation. I have directed my officials to continue further analysis on options to establish stronger measures to address modern slavery and worker exploitation, and I will report back to Cabinet on the broader reform.

Background

21 Modern Slavery broadly reflects exploitative situations that a person cannot leave due to threats, violence, coercion, deception and/or abuse of power. It is commonly understood, including by the ILO, as an umbrella term including the legal concepts of forced labour, debt bondage, forced marriage, slavery and slavery like practices, and human trafficking. These concepts are defined in international and domestic law.

22 Worker exploitation is defined in various ways by different States in accordance with their own set of laws. I propose here that worker exploitation refers to serious breaches of New Zealand's employment standards. This would include, for example, serious failures to provide workers their holiday and minimum wage entitlements, as well as unlawful wage deductions. Determining whether a breach was serious would take into account factors including the amount of money involved, the number of times and period over which the breach occurred, and whether it was intentional. Breaches that are not 'serious', such as failures to keep proper records, may still be indicators of exploitation and considered in assessing the severity of a serious breach. While narrower than the 'non-minor' threshold proposed in consultation, this reflects feedback that the proposed definition was too broad and that there should be a closer connection between the definitions of worker exploitation and modern slavery.

23 Modern slavery, whether it occurs here or overseas, has direct and indirect implications for us all. Modern slavery includes the denial of basic freedoms and dignity, and a victim of slavery can face lifelong physical and emotional harm. Modern slavery impacts productivity across global supply chains, with domestic and international economic implications.

24 The use of modern slavery in supply chains creates an environment based on unfair competition, in which exploitative practices can be leveraged to gain competitive

advantage over responsible operators. Put simply, modern slavery goes against the values of New Zealand as a country.

Modern slavery and worker exploitation are significant worldwide problems

25 Current estimates from the ILO and Walk Free Foundation suggest there were 50 million victims of modern slavery around the world in 2021 (comprising 28 million victims of forced labour, including sexual exploitation, and 22 million victims of forced marriage). This is an increase from their previous estimates of 40 million victims in 2016, which comprised 25 million victims of forced labour and 15 million victims of forced marriage. Women and girls accounted for 54 per cent of modern slavery victims, including 43 per cent of victims of forced labour. An estimated one in four victims of modern slavery are children, who account for 12 per cent of victims of forced labour.

26 Modern slavery has increased due to recent compounding crises, including the COVID-19 pandemic, armed conflicts, and climate change. These crises have disrupted employment and education, increased extreme poverty, forced and unsafe migration, and there has been an upsurge in reports of gender-based violence.

27 A recent study by World Vision estimates that an average New Zealand household spends approximately $34 each week on industries whose products are implicated in modern slavery.[1] Yet we know that consumers, as well as businesses, want to purchase from supply chains based on fairness and dignity. In 2021, I received an open letter signed by over 100 businesses and a petition from World Vision and Trade Aid signed by 37,000 New Zealanders calling for modern slavery legislation. In the 2020 New Zealand Consumer Survey, 50 per cent of consumers report their purchasing decisions are affected by knowing whether a business treats its workers fairly either always or most of the time. However, access to information about an entity's supply chains remains a key barrier for consumers.

28 New Zealand itself is not immune to modern slavery and worker exploitation. MBIE has identified 51 victims of trafficking in New Zealand to date. The Walk Free Foundation's internationally recognised Global Slavery Index now estimates that around 8,000 people in New Zealand were in conditions of modern slavery in 2021, up from 3000 people in 2016.

29 We also know, from research conducted as part of the Government's Review into Temporary Migrant Worker Exploitation, that many more people in New Zealand are likely to be facing highly exploitative working conditions. A clear example involves the Labour Inspectorate's investigation of the Ultra-Fast Broadband (UFB) rollout supply chain, which found potential employment standards breaches in 73 out of 75 subcontracted employers initially investigated. An independent review identified that around 50 to 60 per cent of the subcontracted workforce was comprised of temporary migrant workers, but all cases of non-compliance had involved employers of migrant workers.

[1] Risky Goods: New Zealand Imports, World Vision, 2021. https://www.worldvision.org.nz/getmedia/6904e490-14b7-4fbf-b11e-308ddf99c44a/WVNZ-research-risky-goods-nz-imports/

30 Many other countries including international trading partners such as Australia, the UK, United States, France and Germany have introduced legislation to address modern slavery in global supply chains, while other countries are actively considering such legislation. New Zealand was downgraded to 'Tier 2' (of three tiers) on the United States' Trafficking in Persons Report in 2021, increasingly putting us out of step with these trading partners who have demonstrated sustained efforts to address trafficking. Without our own legislative framework to address such risks within the supply chains and operations of New Zealand entities, we risk being seen as falling behind and not supporting collective global efforts to stamp out these practices.

Legislation is needed to address modern slavery and worker exploitation in operations and supply chains

The current legislative gap

31 We know that modern slavery and worker exploitation are likely to be found in the operations and supply chains of many New Zealand entities. Broad definitions of 'operations' and 'supply chains' as follows were supported in consultation:

31.1 Operations can be defined as all activity undertaken by an entity to pursue its objectives and strategy. This includes all material relationships an entity has with other entities which are linked to its activities, including for example investment and lending activity; material shareholdings; and direct and indirect contractual relationships (such as subcontracting and franchising relationships).

31.2 Supply chains can be defined as the network of organisations that work together to transform raw materials into finished goods and services for consumers. They include all activities, organisations, technology, information, resources and services involved in developing, providing, or commercialising a good or service into the final product for end consumers.

32 We do not know the full extent to which New Zealand entities are contributing to exploitation, and there are currently no regulatory requirements for entities (other than those directly involved in the exploitation) to prevent or mitigate exploitation. This is because New Zealand's existing regulatory framework focuses on direct exploitation by employers, rather than the broader operations and supply chain practices that contribute to exploitation.

33 For supply chains and operations extending beyond New Zealand's borders, this regulatory gap leaves monitoring and mitigation to foreign regulators (which can have significant variation in their prioritisation of cases) and the efforts of non-governmental organisations. Both internationally and domestically, entities can take voluntary action and we have seen that some are already taking significant steps. However, many entities are not taking steps and with no rules in place we have no certainty that they will improve their performance over time. Further, entities may be disincentivised from taking measures due to cost or the fear of adverse publicity if they encounter problems.

34 Collectively, these issues mean that victims, both domestically and internationally, are not always identified and supported. The low chance of detection and prosecution of

modern slavery offences, and the potential for significant profit, creates an incentive for entities in favour of exploitation and leads to an uneven playing field where not all entities are acting responsibly.

35 New Zealand is party to a range of relevant international conventions and trade agreements which collectively require us to take measures to address modern slavery and worker exploitation. Under our recent FTA with the UK, for example, we have committed to actions including to:

35.1 facilitate private and public sector entities to identify and address Modern Slavery in their global and domestic supply chains, including to publish relevant guidance to raise awareness, to promote responsible business conduct, and to foster collaboration across sectors and with civil society;

35.2 encourage private and public sector entities to identify and address Modern Slavery in their global and domestic supply chains, which may include proposing laws and regulations; and

35.3 facilitate the capability of staff in public sector entities working on government procurement to identify and address Modern Slavery in their global and domestic supply chains, including through training.

36 New Zealand has also made commitments in the EU FTA to respect, promote and realise the fundamental principles and rights at work including the elimination of all forms of forced or compulsory labour. Under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), New Zealand is also obliged to "discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour."

37 The United States-led Indo-Pacific Economic Framework (IPEF) negotiations also involve discussions of labour standards and worker protections, including in supply chains. In November 2022, IPEF Ministers jointly stated their ambitions for the negotiations, including provisions on corporate accountability for labour violations and supply chain transparency to improve social outcomes. IPEF negotiations are progressing at pace and there is continued international pressure on these issues. Progressing our disclosure legislation will support New Zealand in these discussions.

38 New Zealand is increasingly becoming out of step with international best practice in this regard, as other countries and key trading partners strengthen their own legislative frameworks. Businesses and consumers (domestically and internationally) increasingly expect clear assurance that products and services are free from slavery and exploitation. In addition to the serious harm experienced by victims, an inability to clearly demonstrate the provenance of New Zealand entities' operations and supply chains creates risks to the ethical reputation of New Zealand's products and services. On the other hand, demonstrating that measures are being taken to improve supply chain practices amongst New Zealand entities will strengthen New Zealand's reputation and sustainability credentials as well as our ability to meet current and likely future free trade agreement obligations.

The legislative proposal consulted upon

39 In March 2022, Cabinet agreed to consult on a comprehensive proposal to address our legislative gap in relation to modern slavery and worker exploitation in supply chains and operations [DEV-22-MIN-0027 refers].

40 The proposed legislation was developed in close consultation with a Modern Slavery Leadership Advisory Group (MSLAG), convened by MBIE and chaired by Rob Fyfe. There are 14 MSLAG members including experts and leaders from business, unions, non-governmental organisations and academia, and the MSLAG is continuing to meet to inform the policy development process. The MSLAG was supportive of the full legislative package as proposed in consultation, including taking a broad-ranging approach which is inclusive of all New Zealanders and New Zealand entities.

41 The proposal was to introduce a graduated set of responsibilities with increasing requirements for entities based on their size and control over other entities. Collectively, these changes will require entities to take greater responsibility of slavery and exploitation by third parties in their operations and supply chains. The key elements of the proposal are that:

41.1 All entities would be required to **take action** if they become aware of modern slavery or worker exploitation, such as by working with the supplier to address the problem, reporting the case to the appropriate authority and/or changing suppliers;

41.2 Medium and large entities (with more than $20 million consolidated revenue) would be required to **disclose** the steps they are taking, by preparing and lodging an annual disclosure statement; and

41.3 Large entities (with more than $50 million consolidated revenue), and entities with contractual control over other New Zealand entities, would be required to undertake **due diligence**. This involves undertaking a process of identifying risks, taking measures to prevent, mitigate and remedy those risks, and evaluating the effectiveness of those measures.

42 In addition, MBIE consulted on the potential establishment of a register for disclosure statements and introduction of a new independent Commissioner to support the new regime.

43 The primary objective of the proposed legislation is to reduce modern slavery and worker exploitation in the supply chains and operations of New Zealand entities, helping to build practices based on fairness and respect. The secondary objectives that support this primary objective are to:

43.1 enhance New Zealand’s international reputation as a country that supports human rights and transparency;

43.2 strengthen New Zealand’s international brand and make it easier for our businesses to continue to trade with the world;

43.3 support consumers to make more informed choices in relation to modern slavery and worker exploitation risks associated with good and services;

43.4 drive culture and behaviour changes in entities which lead to more responsible and sustainable practices; and

43.5 level the playing field for entities which act responsibly across their operations and supply chains.

44 These objectives must be balanced against the need to ensure that the regulatory burden is proportionate to, and no greater than necessary to mitigate, the risk. I am conscious that businesses of all sizes are experiencing significant cost and supply chain pressures, and it is important that the legislation does not create an unnecessary compliance burden. I am mindful of these experiences and perceptions, while also recognising that entities cannot continue to profit from modern slavery and worker exploitation. I am also mindful that businesses in our key trading partner countries are increasingly expecting exporters to have robust processes to ensure there is no exploitation in their operations, and this could increasingly affect market access over time.

The proposed legislation was strongly supported in public consultation

45 MBIE received 5,614 submissions through the public consultation process, with the proposed legislation's objectives and graduated approach all being strongly supported.[2] This support was consistent across different types of submitters, including across businesses.

46 5,184 of the submissions were provided using a template prepared by World Vision, the Human Rights Commission, Trade Aid and Tearfund and promoted by World Vision, Trade Aid and Tearfund. These template submissions recommended:

46.1 A law that applies to international and domestic supply chains operating in Aotearoa New Zealand, to all entities of all sizes (small, medium, and large businesses) and to private and public sectors;

46.2 Due diligence that requires entities to identify risks and cases of modern slavery and exploitation and take action to address what they find. From there, they must publicly report on those actions and the impacts they have had; and

46.3 That there be penalties for non-compliance as this will set the law up from the onset to create positive change and help create a level playing field for businesses.

47 While there was strong support for the general concepts proposed in consultation, many submitters requested further clarity on key concepts and what specific action would be required. This was particularly the case for the 'take action' and due diligence responsibilities. For example, many submitters supported the proposed idea that measures be 'reasonable and proportionate' but sought further clarity on what this would mean in practice, particularly for small businesses – though the Small Business Advisors Group expressed concern that small businesses would not be able to take

[2] MBIE has published a summary of the feedback received through consultation at: <https://www.mbie.govt.nz/assets/consultation-on-legislation-to-address-modern-slavery-and-worker-exploitation-summary-of-feedback.pdf>.

any meaningful action. Many submitters, particularly businesses, also suggested aligning with the Australian disclosure legislation to avoid duplication.

Sequencing change by introducing disclosure responsibilities first

48 Implementation of the legislation will involve setting up a new regime, including the establishment of a new regulator, as well as the introduction of obligations that will be new to many New Zealand entities. For the legislation to be successful, it is critical that we positively incentivise and support enduring culture change within entities. Key to this will be enabling entities to build the capability necessary to take meaningful action to mitigate risks of modern slavery and worker exploitation. This reflects feedback from consultation, where there was support for a sequenced approach under which different responsibilities are implemented over a period of time rather than all at once.

49 It is important that we take the time needed to get the settings right. This is especially the case where legislative requirements would apply to entities of all sizes (in the case of the proposed 'take action' responsibility). This is a step which is currently unprecedented across international modern slavery legislation, and I am mindful of concerns raised by some members of the Small Business Advisors group that this could introduce additional cost on small businesses while having little impact. Currently, Germany is the only country with an explicit requirement for entities to take action where they become aware of exploitation in their supply chain. However, its legislation will apply only to large enterprises with over 1,000 employees[3] and has only taken effect from 1 January 2023.

50 I therefore propose that disclosure responsibilities be introduced now, while further work is undertaken on stronger, more complex and novel measures, including responsibilities to undertake due diligence and to 'take action'. Subject to this further analysis and future Cabinet decisions, such measures could be introduced separately in due course through further legislative amendments to the proposed Bill. I also propose that a new independent Commissioner function (which was also supported in consultation) be considered as part of this further work.

51 I recommend that MBIE take on the disclosure regulatory functions because they have experience with business disclosures and registers. Additional regulatory functions would be required if the due diligence and take action obligations are introduced later, which would require further consideration.

52 Bearing in mind the strong support in public consultation for the broad legislative package, I seek Cabinet's agreement that broader reform to address modern slavery and worker exploitation within the supply chains and operations of New Zealand entities remains a priority for this Government. It will be important to communicate this clearly, acknowledging that further work needs to be done to make sure the broader package will be feasible and effective in practice. I also seek Cabinet's agreement for me to report back to Cabinet on the progress of the reform.

[3] Also adopting a sequenced approach, the German legislation currently applies to enterprises with over 3,000 employees in Germany but this will reduce to 1,000 from 1 January 2024.

53 Broadly, this sequenced approach to introducing a comprehensive modern slavery regime would:

53.1 enact and establish the disclosure responsibility and public register as a first step towards delivering the full reform as soon as possible, while providing the time needed to finalise the more substantial, complex and contentious operational and policy development of stronger and more complex measures (including the due diligence and take action responsibilities);

53.2 provide time for both entities and the regulator to build capability; and

53.3 provide additional time for the experiences of other countries to be considered and incorporated into the longer-term policy development. For example, Australia's statutory review of its disclosure legislation is scheduled to be completed in March 2023, while Germany's comprehensive due diligence legislation (which includes an equivalent to the 'take action' responsibility) has only just entered into force.

54 The proposed disclosure Bill, for which Cabinet's agreement is now sought, will introduce responsibilities requiring all entities in New Zealand with $20 million or more in consolidated annual revenue over each of their last two financial years to disclose the steps they are taking to address:

54.1 Modern slavery in their international operations and supply chains; and

54.2 Worker exploitation and modern slavery in their domestic operations and supply chains.

Introducing disclosure legislation that builds on international experiences

55 I propose disclosure legislation which adopts the strengths and builds on lessons learned from the Australian model introduced in 2018 and the UK model introduced in 2015. This disclosure approach will support public scrutiny and provide a structured, trusted and accessible public reporting framework to drive improvements in practices. I propose to set prescribed reporting requirements, establish a public register for disclosure statements, and introduce financial penalties for non-compliance.

56 The regulator's key role will be to ensure the integrity and public trust in the register, and that disclosure statements are accessible and enable scrutiny of the actions entities disclose they are taking. This will involve ensuring that entities have disclosed information under the mandatory reporting criteria (see paragraph 65), and if necessary, verifying that their disclosures are neither false nor misleading. While entities will be able to decide how much information they wish to disclose under each of the prescribed reporting categories, this approach will allow consumers, non-governmental organisations, academics and businesses partners to evaluate and compare the actions entities have disclosed. Increased public scrutiny, supported by a robust and trusted registry, will create a strong new incentive for non-performing entities to improve and allow responsible operators to be celebrated.

57 The legislation will also help to promote a level playing field for all entities by providing a consistent disclosure format which leverages reputational incentives to drive action. While the regulator would not be assessing the strength of the actions taken by entities to address exploitation under this disclosure proposal, this aspect could be strengthened as part of a future 'due diligence' responsibility that officials are continuing to develop for Cabinet's consideration in due course.

Who the legislation would apply to

58 I propose that all New Zealand entities, and overseas entities carrying on business in New Zealand, with $20 million or more in consolidated revenue over each of their last two financial years (including prior to commencement of the Act) be required to prepare a disclosure statement. For New Zealand entities, this would take into account the revenue of the entity's subsidiaries (including those based offshore and any offshore revenue).[4]

59 This legislation would apply to all types of entities, including those of the Crown, capturing an estimated 4,000 entities altogether. It would not include individual consumers but would include companies, sole traders, partnerships, state sector organisations, local government, charitable entities, trusts, incorporated societies, and Māori trusts and incorporations (among other types of entity).[5] Consistent with the Australian legislation, entities would also be able to prepare joint statements, such as across any subsidiaries, provided the information disclosed applies to all entities (or any differences are clearly indicated).

60 The Office of the Privacy Commissioner (OPC) has noted the importance of consistency with the *Privacy Act 2020*, and that care must be taken in relation to the extent to which personal information would be required to be disclosed (particularly in relation to disclosures by family trusts). While we do not envisage that entities would be required to disclose personal information, my officials will continue to work with OPC to ensure that personal information is not publicised unnecessarily through the disclosure process. I seek Cabinet's agreement to delegate decision-making authority to enable me to make any necessary adjustments to the policy in this regard.

61 I also seek Cabinet's agreement to delegate decision-making regarding the potential publication of voluntarily prepared statements by entities that are outside the $20 million threshold. Allowing voluntary statements to be lodged and published on the register could support the policy objectives of the legislation by further promoting transparency, and would be consistent with the Australian legislation (where around 10 per cent of statements published on the register have been voluntarily prepared). However, due consideration must be given to how any provisions would be designed, including provisions relating to penalties and protections, and the implications for the regulator.

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[4] Any overseas entity carrying on business in New Zealand would fall in scope if they earned more than $20 million in revenue in New Zealand. 'Revenue' would take into account all sources of revenue, including for example grants or donations.

[5] To illustrate, section 4 of the *COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020* provides a comprehensive account of the different types of entities that exist in New Zealand. This would also include financial institutions such as banks and investment entities.

62 A limited exception would be required on national security and defence grounds, as the public disclosure of this information could be prejudicial to the security or defence of New Zealand. This would be an exception from the requirement to describe the entity's supply chains and operations. It would only apply to government agencies which could impact on the national security and defence of New Zealand (such as the Government Communications Security Bureau, New Zealand Defence Force, and New Zealand Police), and to relevant procurement from and contracts with entities that supply those agencies (e.g. in relation to the provision of IT services to a national security agency). These entities would still be required to disclose the types of actions they are taking to prevent, mitigate and remediate risks of exploitation, and could voluntarily describe non-sensitive parts of their supply chains and operations.

63 The $20 million revenue threshold is lower than that used in most other jurisdictions, which have revenue thresholds ranging from $12 million to $144 million (NZD). This lower figure reflects that New Zealand is a small but integrated trading nation with firms that are smaller and more likely to engage in international trade sooner than similarly sized firms in foreign markets. New Zealand entities are therefore more likely to have exposure to and leverage over suppliers compared to similarly sized entities in other countries.

64 Notably, the MSLAG considered the legislation should cover as wide a range of entities as possible and feasible, and suggested that a relatively low threshold amount should be proposed from the outset. Some MSLAG members supported a threshold lower than $20 million; however, this threshold was the most commonly supported by stakeholders in public consultation. I believe $20 million strikes an appropriate balance in covering a wide range of entities while also targeting those entities which are best placed to meaningfully implement the legislation and meet its policy objectives.

The information that will need to be disclosed

65 Disclosure statements would be due by six months after the end of the entity's financial year, and would cover the same 12-month period as their financial year. The statement would reflect the due diligence process set out in the UN Guiding Principles on Business and Human Rights, and include:

65.1 the structure, operations and supply chains of the reporting entity;

65.2 risks identified by the entity in its operations and supply chains, and any entities that the reporting entity owns or controls, relating to:

65.2.1 modern slavery in the entity's international operations and supply chains; and

65.2.2 worker exploitation and modern slavery in the entity's domestic operations and supply chains;

65.3 the actions taken by the reporting entity, and any entity that the reporting entity owns or controls, to prevent and mitigate and remediate those risks;

65.4 how the reporting entity assesses the effectiveness of such actions; and

65.5 the process of consultation with any entities that the reporting entity owns or controls, or any other entity that is a party to the disclosure.

66 This is aligned with the Australian model except that entities will also be required to report in relation to worker exploitation in their domestic operations and supply chains, as well as modern slavery in their global operations and supply chains. This reflects that entities often have more leverage over their domestic suppliers, and that serious breaches of employment standards can both indicate and be a precursor to modern slavery in a workplace context. Including these additional risks in a domestic context will have a greater positive impact on New Zealand workers compared to if the focus was only on modern slavery both internationally and domestically.

67 In Australia, disclosures can be made in any format, which has made it challenging to enforce the basic requirements and enable independent assessments and analysis to be made. I propose a more structured form that makes it easier to assess the actions that entities are taking. Further details on the format of disclosures may be set out in regulations.

68 Entities would be encouraged to report in relation to all tiers of their operations and supply chains, not just their direct suppliers. Risks of exploitation occurring are often further up the supply chain (though this is not necessarily always the case). There are particular global supply chain risks, for example, linked to the extraction of raw materials and agriculture. As seen with Australian disclosures, this will likely be a gradual process in which entities look deeper into their supply chains over time.

69 Entities would have flexibility regarding the level of information they choose to disclose and would not be required to, for example, identify individual suppliers in their disclosure statements or publish detail that would be commercially sensitive. However, to avoid disincentivising entities from publishing substantive information, I propose that entities would have a defence from litigation (such as defamation claims) where they have published information relating to third party suppliers in good faith. This defence would not exclude entities from complaints to the Privacy Commissioner or Ombudsman.

70 It is important that accountability is set at a senior level, to reflect the significance of the issue and to incentivise change throughout organisations. I therefore propose that the governing body of an entity be responsible for approving disclosure statements. This would be consistent with settings in Australia, where it has been seen as a key step in helping to make addressing exploitation a standard consideration for entities.

Penalties for non-compliance

71 I also propose introducing an infringement offence carrying an infringement fee of $10,000 in cases where entities fail to meet their reporting obligations. This amount reflects the estimated cost of preparing a basic disclosure statement and is intended (as a last resort) to discourage entities from failing to make at least a basic disclosure. The Australian and UK legislation do not provide financial penalties, but these have been recommended in reviews of their legislation and penalties were supported in public consultation.

72 The Ministry of Justice notes that a $10,000 infringement fee exceeds its standard guidance for appropriate levels of up to $1,000 for an individual and $3,000 for a body corporate. The Ministry of Justice has reservations about whether up to $10,000 is appropriate as it is a penalty that would be handed down outside of the court by an enforcement officer, and so would not have judicial oversight. However, I consider that a $10,000 infringement fee is appropriate in the context of the modern slavery regime. It would only be applied to entities with over $20 million in consolidated revenue, and would provide a stronger incentive for entities to meet their disclosure obligations.

73 Further, I propose a new offence and penalty of up to $200,000 in cases where an entity provides false or misleading information. This reflects the deliberate and serious nature of this type of offending and the harm it can do to the integrity of the registry. This amount is commensurate with similar offences in other legislation, including the penalty for providing false statements under the *Companies Act 1993*.

A register of disclosure statements will further enhance transparency

74 I propose that entities be required to lodge their statements on the register. Registers have been introduced in Australia and the UK, and the establishment of a register was strongly supported in public consultation.

75 Registers enhance transparency by providing a more accessible means for the public to view statements, and it is important that a New Zealand register be designed to facilitate this access including through accessible search functions. The UK register provides a good example, with entities requested to provide information through a template which allows comprehensive data (such as on entity sectors, modern slavery risks and policies) to be retrieved by members of the public and easily compared.

76 Registers also support enforcement by providing a common platform for statements to be received and checked by the regulator. This reduces the cost of compliance and enforcement. Over time, if stronger due diligence responsibilities are introduced, I expect that information provided in disclosures will be used by other entities as well as the regulator in its enforcement of the due diligence responsibility. It will be important to ensure the legislation works as a package and that data from disclosures can appropriately inform enforcement of any broader package of responsibilities.

A regulator will be needed to administer, support and enforce the legislation

77 I propose that this legislation, and the central digital register of statements, be administered by MBIE. The key responsibility will be to manage and enforce the digital register, and MBIE has considerable experience in administering a wide range of registers.

78 The regulator will have an important role in providing support and guidance for entities of all types and sizes to take meaningful action to address slavery and exploitation. This will enable entities to be well positioned to meet and exceed any due diligence responsibilities, should they come into force in future.

79 Reputational impacts are a key incentive for change under disclosure-based regimes, with the extent of any impact linked to perceptions of the appropriateness of an entity's due diligence practices. I propose that the regulator be able to make publicly available the names of entities that have been convicted of an offence (for providing false or misleading information) or that have been issued with infringement notices. This will help to further drive compliance through reputational impacts, and disincentivise entities from knowingly declining to prepare statements to avoid drawing attention to their poor practices. The regulatory arrangements for the due diligence and take action responsibilities will be subject to future consideration.

80 To effectively enforce the legislation, the regulator will need powers to request information from entities and to apply enforcement tools to support compliance. These enforcement tools would include the ability to issue improvement notices. This will allow the regulator discretion and flexibility to best support entities to act in line with the intent and requirements of the legislation. It would provide the regulator a tool for escalating its enforcement approach by giving it flexibility to issue a formal notification, which could trigger a penalty if not complied with. In cases where an entity fails to act in accordance with an improvement notice, they would be liable for an infringement fee or penalty based on the nature of the offence (i.e. whether they have not met the reporting obligation, or have provided false or misleading information).

81 I propose that the regulator also have an immunity from litigation (such as against defamation or negligence claims), including vicarious liability for the Crown, unless they have acted otherwise than in good faith. Such immunities are common in other legislation, and immunity is needed here as the Crown could otherwise be sued for publishing a disclosure statement. While the individual regulator has personal immunity under the *Public Service Act 2020*, the Crown could be sued vicariously for the regulator's actions. The usual public interest concerns against an immunity do not apply here as the regulator is not making a discretionary decision which impacts on the rights of individuals, but merely publishing disclosure statements which entities are required by law to lodge. This immunity will not exclude the regulator from complaints to the Privacy Commissioner or Ombudsman.

82 It is critical that the proposed legislation works cohesively with our existing legal and policy frameworks. The legislation would provide for information to be shared by the Inland Revenue Department (IRD), which will require amending the *Tax Administration Act 1994*, and the New Zealand Customs Service. Tax (GST) information held by IRD will be needed to identify which entities fall in scope of the legislation (by meeting the $20 million revenue threshold), while country of origin information held by Customs may support an investigation into whether a disclosure is false or misleading. The legislation would also allow information to be shared by the regulator to relevant enforcement agencies where they become aware of potential offences while undertaking an investigation.

Implementation

83 Given the limited time and resources available, this Bill will not be introduced before the 2023 General Election. However, progressing this proposal is necessary to meet increasingly strong public expectations, including from the MSLAG and international fora, for legislation to be developed. Announcing that we are drafting legislation will

show clear progress towards meeting those expectations, and enable Bill introduction at the earliest opportunity.

84 As this legislation involves the creation of a new regulatory system and regulator, Confidential advice to Government There will be up-front and ongoing costs associated with the development and maintenance of the digital register, compliance and enforcement activity, guidance and education, service centre, and depreciation and capital charges. These functions will be essential to the success of the legislation. Confidential advice to Government

Financial Implications

85 There will be costs to establish and maintain the register, as well as to provide guidance and carry out compliance and enforcement functions Confidential advice to Government

86 To estimate the costs, officials reviewed the costs for the Australian and UK registers, as well as a similar New Zealand register. The capital expenditure to set up the register depends on whether bespoke software is required, or existing models can be adapted. MBIE has committed some funding within existing baselines to undertake further analysis on the design of the future register, which will provide further certainty on the capital and operating costs that will be required.

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Costs for regulated entities will be low

89 The mandatory costs for individual regulated entities will be very low because they can choose to disclose that they are not taking any steps to identify or address exploitation in their supply chains. The minimum requirements will only take a few hours of work, mainly for entities to describe their supply chains and operations at a high level. While this would meet the minimum legal obligation, those entities will expose themselves to reputational risks.

90 Officials estimate that the total cost to all entities in the first year will be in the range of $20 million to $60 million. The range will depend on how many of the 4,000 entities covered choose to make a comprehensive disclosure statement (with an average estimated cost of $15,000) versus a basic-minimum disclosure. Officials expect that disclosure costs will reduce over time as entities develop their information bases upon which their disclosures are made.

91 I am not proposing to charge users to cover costs of the register, because the benefits of the increased transparency will mainly go to workers (domestically and internationally) and the broader public.

Legislative Implications

92 A new Act will be required to implement the proposal. As noted earlier in this paper, I propose that the Act will be binding on the Crown. The Modern Slavery and Worker Exploitation in Supply Chains Bill has been included in the Legislation Programme with priority category five (drafting instructions provided to PCO before the 2023 general election).

Impact Analysis

Regulatory Impact Statement

93 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposal in the paper. Although the scale of the problem and the monetised benefits are not quantified, the Impact Statement clearly identifies the reasons for this, and draws on international experience from similar regimes, feedback from relevant stakeholders and qualitative evidence.

Climate Implications of Policy Assessment

94 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

95 This legislation will have a disproportionately positive impact on groups recognised internationally and domestically as being more vulnerable to modern slavery and worker exploitation. Key factors affecting vulnerability can include poverty, gender, age, geographic and social isolation, lack of education, language or other communication barriers, cultural norms (such as views on positions of rank or authority) and a lack of knowledge or understanding of the law.

96 The ILO has recently found that migrant workers are over three times more likely to be in forced labour than adult non-migrant workers. It also found that women account for 43 per cent of victims of forced labour and children account for 12 per cent of victims.

97 Within New Zealand, this legislation will have a disproportionately positive impact on population groups that are more likely to be in lower-paid and precarious employment, and who are more vulnerable to worker exploitation. These groups include migrant workers, Māori, Pacific peoples, women, children and youth.

98 Migrant workers in New Zealand are well-recognised as a group that is particularly vulnerable to exploitation. The Government already has a comprehensive programme in place to prevent migrant exploitation, protect workers and improve enforcement of the law, following from the Government's Temporary Migrant Worker Exploitation Review. One of the changes agreed as part of that Review, to introduce a duty for entities to prevent breaches of employment standards by employers they have significant control or influence over [DEV-20-MIN-0034 refers], is reflected in the domestic component of this legislation and will be further considered as part of further work on the proposed due diligence responsibility.

99 Specific questions were asked as part of the public consultation to identify the impact on Māori businesses and individuals. While submitters did not generally identify disproportionate impacts compared to the general population, feedback emphasised the need for ongoing consultation with Māori. Submitters asked for specific guidance which takes into account Māori worldviews and approaches to doing business. I expect that engagement with Māori will continue as the legislation is implemented.

Human Rights

100 This legislation will strengthen human rights protections for individuals in New Zealand as well as overseas. The proposed responsibilities are informed by the *United Nations Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises*, which are the internationally recognised frameworks for addressing adverse human rights impacts linked to business activity.

101 Modern slavery represents one of the most severe violations of human rights. Efforts to address exploitation in supply chains will accordingly serve to prevent situations where severe human rights violations occur, and mitigate situations where violations are likely occurring.

Consultation

102 The following agencies have been consulted: the Ministries of Foreign Affairs and Trade, Justice, Social Development, Transport, Education, Primary Industries, Environment, Health, Conservation, Culture and Heritage; the Ministries for Women and Ethnic Communities; Treasury; Inland Revenue Department; Department of Internal Affairs; Department of the Prime Minister and Cabinet; New Zealand Customs Service; New Zealand Police; Oranga Tamariki - Ministry for Children, Te Arawhiti; Te Puni Kōkiri; Kāinga Ora and the Office of the Privacy Commissioner. Officials are also engaging with the Legislation Design and Advisory Committee (LDAC) on the proposed Bill. LDAC has noted that the reform proposals are technically complex, and the drafting will need careful consideration to ensure consistency with the Legislation Guidelines – including in relation to penalties and enforcement settings. Officials will continue to engage with LDAC throughout the drafting process to ensure these outcomes.

103 As part of the public consultation process, MBIE officials consulted extensively with stakeholders across different sectors. This included specific engagements with the procurement teams of central and local government agencies and their affiliated entities.

Communications

104 I intend to make an announcement following Cabinet agreement to the proposed legislation.

Proactive Release

105 I propose to proactively release this Cabinet paper in line with Cabinet guidelines.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

1 **note** that in March 2022, Cabinet agreed to release the discussion document *A Legislative Response to Modern Slavery and Worker Exploitation: Towards Freedom, Fairness and Dignity in Operations and Supply Chains* and invited the Minister for Workplace Relations and Safety to report back to DEV on the feedback from public consultation and proposed legislative approach [DEV-22-MIN-0027 refers];

2 **note** that there was strong support in public consultation for the key proposed responsibilities, under which:

2.1 All entities would be required to take action if they become aware of modern slavery or worker exploitation;

2.2 Medium and large entities (with more than $20 million consolidated revenue) would be required to disclose the steps they are taking; and

2.3 Large entities (with more than $50 million consolidated revenue), and entities with contractual control over other New Zealand entities, would be required to undertake due diligence;

3 **note** that I propose a sequenced approach to addressing modern slavery and worker exploitation, where a disclosure responsibility is introduced ahead of the further development of stronger, more complex and novel responsibilities (such as the due diligence and ‘take action’ duties);

Proposed disclosure regime

4 **agree**, subject to any drafting refinements by Parliamentary Counsel Office, that:

4.1 Operations refer to all activity undertaken by an entity to pursue its objectives and strategy. This includes all material relationships an entity has with other entities which are linked to its activities, including for example investment and lending activity; material shareholdings; and direct and indirect contractual relationships (such as subcontracting and franchising relationships);

4.2 Supply chains refer to the network of organisations that work together to transform raw materials into finished goods and services for consumers. They include all activities, organisations, technology, information, resources and services involved in developing, providing, or commercialising a good or service into the final product for end consumers;

5 **agree** that all eligible New Zealand entities, and entities carrying on business in New Zealand, with $20 million or more in consolidated annual revenue over each of their last two financial years be required to prepare an annual disclosure statement covering their financial year setting out:

5.1 the structure, operations and supply chains of the reporting entity;

5.2 the risks in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls, relating to:

5.2.1 modern slavery in the entity's international operations and supply chains; and

5.2.2 worker exploitation and modern slavery in the entity's domestic operations and supply chains;

5.3 the actions taken by the reporting entity, and any entity that the reporting entity owns or controls, to prevent and mitigate and remediate those risks;

5.4 how the reporting entity assesses the effectiveness of such actions;

5.5 the process of consultation with any entities that the reporting entity owns or controls, or any other entity that is a party to the disclosure; and

5.6 any other matter the entity considers relevant;

6 **agree** that the legislation will apply to all types of entities, and be binding on the Crown, subject to recommendation 28 below;

7 **agree** that entities can prepare joint statements, such as across any subsidiaries, provided the information disclosed applies to all entities and any differences are clearly indicated;

8 **agree** that a limited exception apply to government agencies involved in the national security and defence of New Zealand, and to relevant procurement and contracts with entities that supply those agencies, from the requirement to describe the entity's supply chains and operations;

9 **agree** that the scope of the legislation extends beyond an entity's direct suppliers, and applies to all tiers of an entity's operations and supply chains;

10 **agree** that disclosure statements must be approved by the relevant governing body of the entity;

11 **agree** that entities would have a defence from litigation (such as defamation claims) where they have published information in good faith;

12 **agree** that a new infringement offence and fee apply for failing to meet the disclosure obligations above, with a penalty of $10,000;

13 **agree** that a new offence and penalty of up to $200,000 apply in cases where an entity provides false or misleading information;

Regulator and central digital register

14 **agree** to establish a regulator and a central register for disclosure statements, and that the legislation be administered by the Ministry of Business, Innovation and Employment;

15 **agree** that disclosure statements must be lodged no more than six months after the end of the entity's financial year;

16 **agree** that the regulator have an immunity from litigation (such as against defamation or negligence claims), including vicarious liability for the Crown, unless they have acted otherwise than in good faith;

17 **agree** that the regulator have powers to issue improvement notices to entities they believe on reasonable grounds are non-compliant with the legislation, with a penalty based on the relevant offence (in line with the penalties agreed in recommendations 12 and 13 above);

18 **agree** that the regulator have the ability to publish the names of entities that have been convicted of an offence (for providing false or misleading information) or that have been issued with infringement notices;

19 **agree** that the regulator have powers to request information from entities necessary to enforce the legislative requirements;

20 **agree** to amend the *Tax Administration Act 1994* to allow for the disclosure of tax (GST) information from the Inland Revenue Department to the regulator, for the purpose of identifying which entities fall in scope of the legislation (by meeting the $20 million revenue threshold for the relevant period of time);

21 **agree** that the legislation provides for an information sharing arrangement with the New Zealand Customs Service relating to country of origin information, for the purpose of verifying the accuracy of information disclosed by an entity;

22 **agree** that the legislation allow for information to be shared by the regulator to relevant enforcement agencies (such as the Labour Inspectorate or Immigration New Zealand) where the regulator becomes aware of potential offences while undertaking an investigation, for the purpose of alerting those agencies to potential criminal offending or breaches of New Zealand law;

Implementation and financial implications

Confidential advice to Government

Next steps

25 **note** that the proposals will be given effect through the Modern Slavery and Worker Exploitation in Supply Chains Bill, which holds a category five priority on the 2023 Legislation Programme (drafting instructions provided to PCO before the 2023 general election);

26 **note** that there are strong public expectations for legislation to be developed, and issuing drafting instructions will show clear progress towards meeting those expectations;

27 **invite** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above policy proposals;

28 **authorise** the Minister for Workplace Relations and Safety to make further decisions that do not depart significantly from the policy decisions agreed by Cabinet (including in relation to the potential narrowing of the entities captured and disclosure requirements to maintain the privacy of individuals as protected by the *Privacy Act 2020*, and the potential for enabling voluntary disclosure statements);

29 **agree** that broader reform to address modern slavery and worker exploitation within the supply chains and operations of New Zealand entities remains a priority for this Government;

30 **note** that further analysis will be undertaken by my officials on legislative options to establish stronger measures to address modern slavery and worker exploitation, including the potential for new ‘take action’ and ‘due diligence’ responsibilities and an independent Commissioner as proposed in public consultation; and

31 **direct** the Minister for Workplace Relations and Safety to report back to Cabinet on the progress of the reform.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety