

Civil Contractors New Zealand submission on the proposed Modern Slavery Bill

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Introduction

Thank you for the opportunity to submit on this proposed legislation. Civil Contractors New Zealand (CCNZ) welcomes the opportunity to submit on the Modern Slavery Bill.

CCNZ is the industry association for horizontal construction in New Zealand, representing more than 800 member businesses and organisations involved in civil engineering, construction, maintenance and infrastructure delivery across transport, water, energy, utilities, earthworks, and site development.

Our members range from large construction firms working on the construction and maintenance of the country to small regional family businesses and skilled specialists.

CCNZ supports the purpose of the Bill: to strengthen and coordinate action to combat modern slavery, including in operations and supply chains.

Modern slavery and worker exploitation are abhorrent and must be addressed both domestically and internationally. That position is consistent with [CCNZ's 2022 submission](#), which recognised the moral imperative to eliminate exploitation while ensuring legislation is practical, proportionate, and does not impose significant cost burdens or expose businesses to undue risk for matters outside their control.

It's clear from reported cases of abuse that there is a need for the country to address the issue of modern slavery. However, this legislation requires careful handling to ensure it is not 'too much' in terms of added cost and time imposition for legitimate business interests, while achieving 'not enough' in terms of prevention and prosecution of deliberate criminal activity.

CCNZ's 2022 submission, which focussed on the need for industry and government partnership, remains valid. This submission builds on that position in light of the Bill now before the House.

Recommendations

CCNZ recommends that the Committee:

1. **Retain the Bill's core objective**, but consider whether a proportionate due diligence obligation should sit alongside reporting.
2. **Adopt a risk-based, “reasonable and practical steps” standard** for any due diligence duty, rather than an absolute obligation. Ensure this aligns with any relevant international certification systems.
3. **Clarify the position of SMEs, while avoiding excessive compliance burden**, including whether they should have a light-touch obligation to understand and manage obvious modern slavery risks, particularly where they employ migrant labour.
4. **Clarify what is considered to be a reasonable level of diligence for companies working with overseas supply chains** (i.e. is it reasonable to expect a contractor to extend reporting to equipment or equipment components).
5. **Provide a clear mechanism for larger entities to seek proportionate supply-chain information**, without enabling excessive risk transfer to subcontractors.
6. **Amend director liability settings** so liability is insurable, or otherwise applies only where there is clear, deliberate, or reckless negligence.
7. **Procurement consequences: use exclusion from government procurement for repeat, wilful, or negligent offenders**, rather than for technical or low-fault non-compliance.
8. **Develop industry guidance in partnership with affected sectors**, including civil construction.

Detailed submissions

1. Retain the Bill's core objective – support for the Bill's purpose

Few, if any, would argue against the proposition that modern slavery and worker exploitation is abhorrent in any form, and must be removed from our domestic labour markets and across our supply chains. The issue is how we can do that in practice, recognising where the greatest risks lie, and incentivising businesses to “play their part” while not overburdening them with compliance or exposing them to undue risk for things that they can't control.

CCNZ supports action to eliminate modern slavery and worker exploitation. The civil construction sector relies on complex supply chains, including materials, plant, equipment, subcontractors, labour hire to enable scalability for projects and imported products. These supply chains can include areas of risk that may not be visible, even to contractors, without complex and structured inquiry.

The Bill requires reporting entities to report on how they identify, address, mitigate, and remediate modern slavery incidents within operations and supply chains.

CCNZ supports the intent of improving transparency and accountability. However, transparency alone may not be sufficient. The key policy question is whether the Bill should require businesses merely to report, or require them to undertake due diligence to identify, prevent, mitigate, and remediate modern slavery risks.

It is easy to generalise, but our sense from our membership is that businesses are genuinely concerned about looking after their people, are more globally aware of modern slavery and exploitation, and are sensitive to a growing consumer focus on ethical labour practices in both goods and services.

Legitimate businesses can be demonstrably undercut by those that do not provide for the needs of their workers, however the lack of a consistent system has meant efforts to resolve the risk have been largely piecemeal and operating at small scale, at this stage.

A To that end, a “carrot” approach (as proposed in the legislation) works far more effectively than a “stick” approach, as far as genuine collaboration with legitimate businesses goes, with severe punitive measures for businesses that maintain negligent practices or criminal intent.

2. Adopt a risk-based, “reasonable and practical steps” standard

The Bill adopts a disclosure-based model rather than the mandatory due diligence obligations canvassed in 2022. CCNZ understands why this approach has been taken: reporting is less onerous and may be easier to implement. It also focuses on larger entities with greater capacity.

However, CCNZ considers there is a strong moral argument that entities should not simply report on risk, but should take reasonable steps to understand and address it. Hansard records that one of the central issues before the House is whether businesses should be required to undertake due diligence, not just disclosure.

CCNZ therefore recommends the Committee consider adding a **proportionate, risk-based due diligence obligation**. Such an obligation should not be absolute. It should be framed around taking all reasonable and practical steps, consistent with the “best endeavours” approach [that CCNZ proposed in its 2022 submission](#).

This would recognise that businesses cannot guarantee there is no modern slavery anywhere in extended global supply chains (for instance, they cannot vouch for the trade practices used to create every component in a given piece of equipment). But, they can be expected to take reasonable, risk-based action. And, they can be supported to understand and manage risk of modern slavery in supply chains.

CCNZ is aware of examples of New Zealand-based slavery and exploitation identified, that have largely arisen in the labour hire/subcontractor/horticulture sectors and undermine legitimate businesses through tax avoidance or poor human rights practices. Largely, these have operated using imported migrant labour at scale.

Some Australian states have taken legislative steps toward compulsory registration of labour hire companies, resulting in new organisations like the [Victorian Labour Hire Authority](#). As we understand, there is no such regulation in New Zealand covering the operations and behaviours of labour hire companies.

While the creation of a new NZ government entity or commissioner is unlikely to be cost effective, we submit that domestic regulation or increased **government endorsement of a formal, internationally recognised certification programme (or programmes) that already exist** would go a long way toward addressing modern slavery and exploitation challenges within New Zealand.

3. Clarify the position of SMEs, while avoiding excessive compliance burden

CCNZ's members support reform that genuinely improves outcomes, reduces unnecessary compliance costs, and provides practical clarity for duty holders.

Any due diligence duty must therefore be designed carefully. If one is considered, it should:

- be risk-based;
- focus on areas of known or reasonably foreseeable risk;
- allow businesses to scale their systems to their size, resources, and supply-chain influence;
- avoid duplicative reporting;
- avoid imposing obligations that smaller contractors cannot realistically meet;
- provide clear guidance and templates.

CCNZ's 2022 submission supported allowing large businesses to design their own due diligence frameworks, tailored to their supply chains and supplier networks. That remains CCNZ's position.

4. Clarify what is considered to be a reasonable level of diligence for companies working with overseas supply chains

The Bill appears intended to cover **overseas supply chains**, not just direct New Zealand suppliers. Reporting entities must describe their structure, operations and supply chains, including domestic and international supply chains, and report incidents, known or anticipated risks, and actions taken to assess, prevent, address, mitigate and remediate those risks.

For contractors, this means imported equipment supplied through a distributor could fall within the reporting entity's supply chain. However, the Bill does **not** appear to require a contractor to guarantee that every upstream component, parts manufacturer, or raw material source is free from modern slavery.

The current model is disclosure-based, rather than a direct mandatory due diligence duty, although commentators note that the reporting criteria would be difficult to meet without some level of supply-chain due diligence.

This is exactly the practical uncertainty raised in Parliament: "how far do you go", including whether a business can be sure that overseas machinery manufacturers are "clean".

CCNZ's earlier position is also relevant: obligations should be based on "all reasonable and practical steps" or a "best endeavours" principle, because businesses should not be exposed to undue risk for matters they cannot control.

A reasonable approach would be for contractors to report on:

- direct equipment suppliers and distributors;
- known or anticipated risks by product type, country, sector, or supplier;
- information requested from suppliers;
- any supplier codes, declarations, audits, certifications, or overseas modern slavery statements relied on;
- steps taken where risks or incidents are identified.

It would be unreasonable, and often impossible, to expect contractors to trace and verify every part manufacturer in complex global equipment supply chains. The Bill should therefore clarify that reporting is based on reasonable, proportionate, risk-based inquiry, not absolute verification.

Again, use of an internationally-recognised certification scheme may reduce the operational burden while addressing CCNZ's concern about unreasonable supply-chain assurance by creating a **trusted, risk-based evidence pathway**.

5. Provide a clear mechanism for larger entities to seek proportionate supply-chain information,

Although SMEs may not be directly captured, large reporting entities are likely to request information from suppliers and subcontractors to meet their own obligations. Depending on the information requested, this may be onerous for smaller suppliers, that may not be well equipped to respond or provide information of this nature.

CCNZ is concerned this could lead to informal compliance obligations being pushed down the contracting chain. This is consistent with CCNZ's broader concern in other regulatory contexts that risk and compliance obligations should not be unfairly transferred to subcontractors and SMEs.

The Bill requires large entities to report on their supply chains and how risks are managed. CCNZ recommends the Bill (or, perhaps more likely, its associated regulations and guidance implanted through any secondary legislation), provide a clear mechanism for larger entities to request proportionate information from suppliers. Any such guidance should include:

- standardised questionnaires;
- limits on duplicative requests;
- recognition of sector templates;
- safe-harbour guidance for SMEs that respond in good faith;
- clear expectations that principals remain accountable for their own reporting obligations.

6. Amend director liability settings

The Bill includes potential personal liability for directors and others involved in producing disclosures. Hansard describes director liability as one of the "teeth" in the Bill.

CCNZ accepts that directors should take modern slavery reporting seriously. However, personal liability must be proportionate. Directors should not face uninsured or strict liability for technical errors, incomplete supply-chain information, or matters outside reasonable control.

CCNZ recommends that director liability should either:

- a. be insurable; or
- b. if not insurable, apply only where there has been clear, deliberate, reckless, or grossly negligent conduct.

The Committee should also consider a due diligence defence or 'safe harbour' for directors who can show they took reasonable steps, relied on appropriate systems, and acted in good faith.

7. Procurement consequences: use exclusion from government procurement for repeat, wilful, or negligent offenders

CCNZ supports strong consequences for repeat, wilful, or negligent offenders. Excluding such entities from future government procurement is preferable to relying primarily on broad personal liability or penalties for low-fault non-compliance.

The Bill has been described as preventing public funds being paid to entities that breach the Act. At its highest level, that may prevent some businesses from taking on public sector contracts in New Zealand. CCNZ supports that principle, provided exclusion is targeted at serious, repeated, or deliberate non-compliance.

Government procurement consequences should not apply automatically to technical, first-time, or good-faith reporting errors.

8. Develop industry guidance in partnership with affected sectors

The Bill requires the Minister to issue guidance on reporting suspected incidents, government agency processes, and assistance for victims. CCNZ recommends this guidance be developed in collaboration with industry, to ensure it is fit for purpose. Civil construction needs practical guidance tailored to project-based delivery, subcontracting, labour hire, imported materials, and public procurement.

Industry associations, such as CCNZ, have considerable experience in producing technical guides that interpret laws and regulations in the context of their own operating environments (in our case civil construction) and offer best practice solutions for our members to embed in their business operating procedures. This is most useful for small to medium members who do not necessarily have the resources, skills, and expertise in-house to do this.

We anticipate CCNZ (and related associations in immigration and recruitment) sharing information and developing or contributing to best practice guidelines for businesses, helping them understand and implement systems contemplated under the proposed legislation.

It is worth noting the many international resources compiled by the Infrastructure Sustainability Council, on its Modern Slavery in Infrastructure Resources Hub:

<https://www.iscouncil.org/modern-slavery-in-infrastructure-resources-hub/>.

Further notes

Our member businesses care about their workers, understand global social responsibility, and fiercely protect their brands. They can be trusted to take the elimination of any risk of modern slavery or worker exploitation seriously, and to act accordingly to remove it from their supply chains.

However, the difficulty in establishing a consistent reporting system, let alone a system that supports due diligence requirements for companies, is determining what is “reasonable and proportionate”, which is a subjective definition. There are similar challenges in establishing a workable health and safety system, as noted in CCNZ’s recent submission on proposed amendments to health and safety legislation.

What is reasonable and proportionate to one entity may be unreasonable and disproportionate to another. The question is, will the legislation or its interpretation allow industry groups to determine what is reasonable through the development of their best practice guidelines, awareness, and education programmes?

It seems reasonable to create a system that supports reporting and due diligence in New Zealand entities which are a parent or holding company, or have significant contractual control.

The need to describe the structure of the supply chain and the risks of modern slavery are unnecessary. They add a level of complexity and extra administration with little or no corresponding benefit. Focus should be on what actions the entities are taking to ensure that modern slavery and worker exploitation are identified and addressed and what the impact of a particular course of action has been.

What may be unreasonable is for some entities to be forced out of business if they cannot take reasonable and proportionate action. We would expect these cases to be rare but not impossible and suggest the test should be that all reasonable and practical steps have been taken (a ‘best endeavours’ principle as found in much of New Zealand’s legislation).

Large businesses (by our definition over \$100m in turnover) should be able to design their own due diligence framework, incorporating some or all of the measures outlined in the consultation document. These businesses are best placed to tailor their programmes to their respective supply chains and supplier networks, and to consistently and effectively roll such a programme out across their organisation.

On ‘the carrot’ and ‘the stick’

Too much of New Zealand’s legislative and regulatory framework is based on compliance, enforcement, unnecessary reporting and punitive penalties. Businesses are being crushed under this weight, with reduced productivity the outcome.

Where there is evidence of a serious breach some form of sanction is appropriate. However, consideration must be given to the seriousness of the situation. In the same way that an entities actions to mitigate risk must be reasonable and proportionate, so too should any reaction by regulators to a perceived breach.

On the other hand, having the right positive incentives in place should reward the right behaviours. Having an appropriate mediation process in the legislation is critical to its credibility as an effective partnership tool.

Conclusion

While the global experience of implementing a legislative regime has not been particularly successful, there are aspects of the proposed solution for New Zealand that, with tweaking, have promise.

These include the appropriate recognition of the role of industry best practice and participation, giving businesses a key role in defining their work programmes in this area, and not just focusing on punitive measures but also rewarding good behaviour.

CCNZ supports the Bill's intent and agrees modern slavery must be eliminated from New Zealand operations and supply chains. However, the Bill should be strengthened and clarified. As mentioned in the introduction, it's clear from reported cases of abuse that there is a need for the country to address the issue of modern slavery. However, a reporting-only model may be 'too much' in terms of added cost, and 'not enough' in terms of preventing deliberate criminal activity.

CCNZ supports consideration of a proportionate, risk-based due diligence obligation, provided it is practical, scalable, and based on reasonable steps.

In summary, the Bill must avoid excessive risk transfer to SMEs, it must provide workable supply-chain mechanisms, it must ensure director liability is proportionate, and it must reserve procurement exclusion for repeat or negligent offenders, especially in the early stages of implementation.

CCNZ would welcome the opportunity to appear before the Committee, to further discuss this submission further.

Sincerely,



Alan Pollard
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Civil Contractors NZ

