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Committee Secretariat
Education and Workforce Committee
Parliament Buildings
Wellington

By email: ew@parliament.govt.nz

Guardians of NZ Superannuation: Submission Modern Slavery Bill

This submission is made by the Guardians of New Zealand Superannuation (**Guardians**) in response to the Modern Slavery Bill (the **Bill**).

We do not request to appear before the Committee but are happy to work with officials if matters raised in the submission require clarification or expansion.

The Submitter

The Guardians is the autonomous Crown entity responsible for managing and administering the New Zealand Superannuation Fund (the **Fund**). The Fund is a long-term, globally diversified investment portfolio managed on a prudent and commercial basis.

We are a large institutional investor with significant exposures across global public and private markets, often through external investment managers and pooled investment vehicles.

The Guardians has existing commitments to responsible/sustainable investment and is an active participant in international initiatives aimed at identifying and addressing human rights risks, including modern slavery, in investment portfolios.

Modern Slavery

Modern slavery is a systemic, global issue that is often embedded within complex and fragmented supply chains. Addressing modern slavery risk therefore requires a preventative, system-level response that addresses unfair market practices from low-cost illegal labour, improves visibility of risks, incentivises robust corporate identification and remediation practices, and supports continuous improvement over time.

The investor role in addressing modern slavery, as a serious human rights abuse, is through active diligence and stewardship practices. For this, investors require corporate disclosure and dialogue. The prevalence of modern slavery in operations and supply chains can give rise to long-term financial, regulatory, and reputational risks for companies and investment risk to investors reinforcing the importance of promoting high standards of risk management and disclosure.

Policy Intent

We support the policy objective underpinning the Bill, to strengthen transparency and accountability in relation to modern slavery risks and incidents within operations and supply chains. The focus on requiring reporting entities to report on how they identify, assess, prevent, and remediate modern slavery risks is appropriate and aligned with emerging international practice.

However, aspects of the Bill require clarification to ensure that the regime can operate in a proportionate and practical manner for institutional investors and corporate structures, particularly in relation to the treatment of investments within the concepts of control, operations and supply chains.

Operations, Supply Chains, Ownership and Control

Under the Bill, modern slavery statements must include:

- descriptions of the structure, ***operations*** and ***supply chains*** of the reporting entity (both domestic and international) including any entities ***owned*** or ***controlled*** by the reporting entity;

- a description of any modern slavery incident that has occurred within the ***operations*** and ***supply chains*** of the reporting entity and any entities ***owned*** or ***controlled*** by the reporting entity;

- a description of any known or anticipated risks of modern slavery occurring within the ***operations*** and ***supply chains*** of the reporting entity and any entities ***owned*** or ***controlled*** by the reporting entity;

- a description of the actions taken by the reporting entity, and any entity that the reporting entity ***owns*** or ***controls***, to assess, prevent, address, mitigate, and remediate modern slavery and risks of modern slavery occurring, including due diligence and remediation processes.

The highlighted concepts (***operations, supply chains***, ***ownership*** and ***control***) are fundamental to determining the scope of a reporting entity's obligations. We submit that these concepts are not defined clearly enough and will lead to uncertainty over the scope of those obligations, especially for complex entities and corporate structures and for investment entities such as the Guardians.

Application to investors

The Guardians (and other institutional investors) are operational entities in their own right and procure products or services for their activities. In this regard, investors are no different from other businesses.

However, specific features of investors that differ from other businesses include:

- they hold broad investment portfolios, often comprising thousands of discrete investments;
- they may hold controlling interests in other entities as part of these portfolios, but this is for investment purposes only (i.e. not as an operating subsidiary that would properly be regarded as part of an investor's operations).

The Bill is currently unclear on the extent to which reporting is expected in respect of investment portfolios, and as drafted results in duplicative and impractical reporting for controlled entities.

As ***operating*** entities, we are able to report on modern slavery risks within our enterprise supply chains. However, we submit that specific definition of operations and supply chains would help clarify the expected depth of supply chain reporting, including how far obligations extend across upstream inputs (e.g. beyond tier 1 and tier 2 suppliers). Defining these boundaries would support a proportionate, risk-based approach and improve consistency and comparability across reporting entities.

As ***investment*** entities, we submit that investment portfolios (i.e. investee entities in which we hold interests) should not be considered part of the operations or supply chain. If any reporting is required in respect of investment portfolios, then thematic reporting on investment entities should be sufficient (discussed further below).

It is important to note that any investee entities within investor portfolios may themselves be subject to modern slavery reporting obligations, to the extent applicable within their own jurisdiction, and many will be subject to multiple modern slavery frameworks. In other words, the direct companies undertaking activities will be reporting modern slavery risks where appropriate. Corporate reporting also helps investors understand modern slavery risk across sectors and geographies.

At the investment level, portfolios are more appropriately understood as a set of exposures rather than supply chains. Modern slavery risks are managed through due diligence, stewardship, and engagement with investee companies, rather than through direct operational control. This reflects the practical reality that investors often hold diversified, global portfolios with varying levels of influence.

Note that it is common practice for investors to report on their responsible/sustainable investment activities, such as through Stewardship Reports or other transparency reporting. Investors are increasingly including modern slavery as a key human rights risk in their stewardship reporting. As such, from a market perspective there is already a significant level of investor reporting.

We therefore query whether portfolio reporting should be required at all for investors, and in that regard we understand that certain other regimes more directly exclude investment portfolios from reporting obligations (for example, Canada).

Under the current Bill the position is unclear. Minority investment positions in investee entities would not ordinarily be regarded as 'ownership or control' of those entities. Moreover, disclosing complaint and incident information in relation to such entities would not be possible.

There are also specific issues with how the Bill uses the concept of 'control'. While the NZ Superannuation Fund is permitted to hold controlling interests in entities, it would do so strictly as an investment (and not as subsidiaries carrying on part of its operations). Financial investors are required to account for investee subsidiaries using investment entity accounting, under which the investment is shown as a single fair value line item, rather than consolidating the subsidiary's revenue, expenses, assets and liabilities into the investor's own reporting. That accounting treatment recognises that the interest is held as an investment that may be sold, rather than as part of the investor's operational activities.

The reporting obligations for 'controlled' entities within the Bill contemplate a more conventional corporate group structure where the parent has control or involvement within the subsidiary operations (for example, it contemplates the provision of training to employees). This is not applicable for financial investors, and the requirement for reporting would be duplicative and impractical.

We note that there are similar uncertainties around the terms used in Australia's Commonwealth Modern Slavery Act 2018. However, in that context, guidance for reporting entities issued by the Attorney-General's department[1] makes explicit that reporting entities engaged in investment activities often do not have control over the actions of their investees and in these situations, entities are not required to individually monitor or report on the operations and supply chains of each investee.

[1] Australian Government, *Commonwealth Modern Slavery Act 2018 – Guidance for Reporting Entities* (May 2023), Chapter 5

For internally managed portfolios: reporting entities are asked to report at an overarching, thematic level on modern slavery risks – by sector, geography, asset class or investment category – rather than entity by entity.

For externally managed portfolios: reporting entities treat external fund managers as supply chain participants, and report on how the asset owner engages with those managers to ensure modern slavery risks are considered in portfolio management.

We have submitted above that the preferable approach is simply to exclude all portfolio reporting. However, if there is to be any reporting in respect of investment portfolios, we submit that investor reporting obligations be framed around the areas where investors can assess, influence and respond to modern slavery risks through their investment processes. This includes clear disclosure of how risks are identified and addressed within portfolios (for example through manager due diligence and mandate-setting, stewardship and escalation processes, and collective action). This avoids duplication of investee company reporting and strengthens the overall quality and usefulness of disclosures.

Liability Provisions

The Bill introduces civil and criminal liability, including potential liability for directors and senior managers, in relation to failures to comply with reporting obligations.

As currently drafted, the offence regime is severe in that it applies to a failure to comply with the obligation to prepare a modern slavery report under section 8 of the Bill. Notably, section 8 of the Bill requires the modern slavery report to "comply with section 9", which specifies the content requirements of the modern slavery report. As such, a minor disclosure matter could constitute a corporate offence, which is a severe outcome given the breadth of certain reporting requirements and underlying definitions.

The Bill also personalises liability to directors and persons involved in the management of reporting entities, including if they "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.

In our view, the introduction of individual liability in a disclosure-based regime raises concerns as to proportionality and effectiveness. We consider that entity-level accountability is sufficient to achieve the policy objective of improved transparency.

Experience with other recent disclosure regimes suggests that the introduction of personal liability risks may incentivise a compliance-driven approach, encouraging overly cautious or defensive reporting practices, and significant costs for reporting entities rather than encouraging meaningful risk identification and remediation. This may reduce the usefulness and clarity of disclosures rather than improving them, and work against the ultimate objective of reducing incidents of modern slavery given that this depends on fulsome and confident reporting. Increasing personal liability risks may also deter suitably qualified individuals from serving as directors, with potential longer-term implications for governance quality.

We suggest that a calibrated approach, focused on entity-level compliance and supported by clear guidance, is more likely to achieve high-quality, meaningful reporting outcomes. The Bill already mandates ongoing periodic reviews, and overall liability settings are something that could be considered for expansion in the future as the reporting matures and if it transpires there is a clear need for this.

Interoperability

Given the global nature of institutional investment portfolios, interoperability with comparable overseas regimes is critical for reporting entities.

Many New Zealand businesses that will become reporting entities under the Bill are already subject to modern slavery reporting frameworks in jurisdictions such as Australia. Alignment of core concepts, including control, operations, and supply chains, would reduce duplication and support consistent, meaningful reporting across jurisdictions.

Absent such alignment, there is a risk of overlapping, inconsistent, or conflicting obligations, particularly where different regimes adopt divergent interpretations of investment relationships. We consider that provision for consistency—whether through legislative alignment, guidance, and/or mutual recognition—would improve the workability of the regime and ensure reporting efforts remain focused on substantive risk rather than navigating compliance complexity.

Crown procurement

We note the proposed prohibition on Crown payments to entities that have contravened reporting requirements, including where a pecuniary penalty has been imposed. While we recognise the intent to strengthen compliance, we query whether this could be better addressed in a softer way through factoring non-compliance as a consideration in Government procurement guidance/rules.

Baking an absolute prohibition into the legislation may be disproportionate to situations where breaches relate to administrative or procedural failures rather than substantive issues. Moreover, as drafted there is no sunset date on the prohibition, and the scope is unclear as it extends to "indirect" payments. It also does not reflect practicalities that certain critical arrangements could take time to unwind, that contracts may not be able to be terminated immediately, etc.

Reporting on remediation

Expectations should reflect the different roles and levels of involvement of reporting entities, including where entities are directly causing harm, contributing to harm, or are linked through their business relationships. Clear guidance would support alignment with international approaches, promote consistency across reporting entities, and ensure that responses remain focused on effective, victim-centred outcomes. This includes requiring clear privacy-safe disclosure standards, to ensure that reporting on incidents and remediation does not inadvertently expose victims to harm.

Other observations

We also comment briefly on some more minor matters that would enhance the operation of the Bill:

- **Reporting entity:** the concept of "threshold revenue amount" requires the $100m consolidated revenue threshold to be met in any reporting period. However, other regimes that apply reporting requirements based on revenue or other financial thresholds (for example, climate reporting) require the threshold to be satisfied over multiple reporting periods, reflecting that companies may hover around the reporting threshold over time and that where they increase in scale such that reporting will apply they require lead in time to prepare. At present a reporting obligation could arise from a single, outlying period of financial performance and the entity would have not had lead time to prepare the necessary frameworks for reporting, etc.
- **Reporting period:** the Bill hardwires a reporting period ending 31 March for all non-government entities. We recommend the Bill is updated to contemplate that issuers can follow their accounting year, as this will allow modern slavery reporting to integrate into other reporting practices and increase efficiency.
- **Control / group reporting**: the Bill requires amendments to ensure that it works properly in group structures and so that the correct entities are caught by reporting obligations, and that there are group reporting exemptions. At present the reporting obligations are triggered at multiple points within a corporate structure which results in duplicative reporting and significant additional compliance costs.

- **"owned or controlled":** The Bill uses a concept of 'owned or controlled', but it would be preferable to define what is meant and use conventional tests for corporate groups applied in other legislation. For example, it is not clear when a company might be "owned" but not "controlled".
- **Regulation making power:** We query whether, in issuing regulations under section 24, the Minister should also be required to consider consistency with modern slavery reporting frameworks in Australia (and potentially other markets) and evidence on the cost and feasibility of compliance.

Conclusion

We support the objective of the Bill. However, we recommend that further clarity in relation to its scope would improve implementation and disclosure outcomes. We also recommend certain clarifications as regards its application to investors, particularly around control, operations, and supply chain concepts.

Contact for more information:

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