

Submission by



to the

Ministry of Business, Innovation and Employment

on the Discussion Document

**A Legislative Response to Modern Slavery and
Worker Exploitation**

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**A LEGISLATIVE RESPONSE TO MODERN SLAVERY AND WORKER
EXPLOITATION
SUBMISSION BY BUSINESSNZ¹**

INTRODUCTION

1. BusinessNZ does not condone slavery or exploitation in any of its forms and therefore welcomes the opportunity to comment on the Discussion Document (the Document), *A Legislative Response to Modern Slavery and Worker Exploitation, Towards, freedom, fairness and dignity in operations and supply chains*.
2. Slavery and exploitation are complex issues, both in the way they manifest themselves and in their propensity to be conflated and/or confused the one with the other.
3. New Zealand already possesses a range of tools to combat both slavery and exploitation, although these are rather more aligned to domestic exploitation. Consequently, there is further work to do if slavery and exploitation are to be eliminated, particularly in global supply chains.
4. Effective counters to slavery and exploitation must be built on solid foundations aligning with best industry practice, international standards (UN Guiding principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises, ILO Conventions) and collaborations such as Alliance 8.7, the Responsible Business Alliance, the Leadership Group for Responsible Recruitment and other such efforts. While applicable principles can be derived from the Discussion Paper, they are not necessarily clearly identified. Therefore the submission focuses on identifying key issues and principles and does not respond directly to the questions posed.

RECOMMENDATIONS

That any Modern Slavery legislation introduced take account of the following:

1. Any New Zealand new modern slavery legislation should complement legislation already in place that deals effectively with worker exploitation, avoiding duplication. In this regard, and in addition to New Zealand's existing suite of minimum employment standards, account should be taken of current Crimes Act section 98, (Dealing in slaves) and sections 98A to F (of which sections 98C and 98 D relate respectively to migrant smuggling and trafficking), recognising the problem of enforcement even where legislation of this kind already exists.

¹ Background information on BusinessNZ is attached as Appendix 1.

2. Any New Zealand modern slavery legislation should align and operate consistently both with comparable legislation applying to our major trading partners and the relevant international standards referred to in paragraph 4. Account should be taken of the UK and Australian positions and of evolving legislation beyond organisation size/limits, including the burden imposed by such requirements as might be contemplated.
3. Legal obligations resulting from the introduction of modern slavery legislation should apply commensurate with the size and influence of supply chain businesses, particularly those in global supply chains. Consistently with international standards, a risk-based approach should be adopted reflecting the severity of the offence.

DISCUSSION

Exploitation

4. The tendency to conflate slavery with the related but different concept of exploitation has long been recognised. This submission takes the opportunity to distinguish between the two.
5. Exploitation, at least in the New Zealand context, involves a failure to comply with the minimum employment code - minimum wage, holidays, other leave provisions, equal pay, health and safety, wages protection, human rights, and all other legislative provisions applicable to the employment situation. Breaches can be and are prosecuted, even if the complainant is a migrant worker working illegally.
6. It is observable, though not always acknowledged, that workers subject to exploitation are more often than not from the exploiter's country of origin – or enlisted by a third party in the workers' country of origin - where employment standards are lesser in kind. In such cases either the exploiter is not aware of employers' legal obligations or does not support this country's standards. (Notably, this year, according to the [Acumen Edelman Trust Barometer, New Zealand](#) employers had an 80 per cent trust rating.)
7. The *Matamata case* illustrates the difficulty referred to in identifying the problem. Held to be trafficking, with the workers' situation clearly the consequence of deception, it essentially involved extreme exploitation demonstrating an attitude to employment very much at odds with expectations in New Zealand and certainly contrary to current New Zealand law. But even here, once the workers' situation was revealed, the exploiter could be and was brought to justice.
8. In the above circumstances education on and enforcement of the present laws are obvious answers, not penalties.

9. Here the statement page 53 of the discussion document is noted: *"In cases where no reasonable or proportionate action can be taken, including where there is no ability to change to a different supplier, the expectation would be that the entity nonetheless ceases their engagement with the supplier. We acknowledge the possibility that in some cases this could mean that the entity's ongoing operations become unviable."*
10. The Discussion Document recognises that standards imposed could not only have negative impacts on businesses here but could negatively affect businesses and workers elsewhere as well. Therefore whatever is to be introduced must be carefully designed with flexible and practicable reporting measures. Objectives should be stated but should not be overly prescriptive.
11. Despite the existence of relevant international labour standards – including forced labour standards to which most countries are signatory - national employment standards inevitably vary from country to country making it difficult, if not impossible, to create a seamless standards-based regime between them. Unfortunately too, they are not always effectively enforced.
12. This is not to suggest better employment standards should not be aimed for. It is merely to reflect that applying standards here that might have negative consequences elsewhere could have perverse effects. Care should be taken not to require New Zealand employers to trade only with companies with standards comparable to New Zealand's. A more nuanced approach is needed.
13. With the government's stated intention that any legislative requirements put in place should also cover small- and medium-sized employers/entities, further thought should be given to precisely what can be expected of such firms. In line with international standards, account should be taken of entity size, sector, operational context, ownership and structure as well as the severity of any adverse impacts. SMEs are likely to lack both the expertise - and the wherewithal to pay for that expertise - to enquire closely into whether workers in their supply chains are experiencing exploitation and what, in specific contexts, can be taken to constitute exploitation. As just one example, wage rates might be considered poor by New Zealand standards but be perfectly acceptable in the country in question. Wage increases out of step with local pay rates would introduce their own set of problems. Furthermore, many SMEs do not operate in international supply chains and are unlikely to have much if anything to report; if so involved, they should try to ensure suppliers observe laws and regulations applying in their own countries.
14. It should also be recognised not only that many firms will lack the ability to carry out the kind of investigative exercises expected of them but if the cost of trying to do so proves prohibitive, the consequent effect on productivity will act to their own workers' detriment.

Modern Slavery

15. The term 'modern slavery' covers a wide range of practices from forced labour, including debt bondage, forced marriage, forced sexual exploitation of both adults and children and state-imposed forced labour.
16. As the discussion document notes, New Zealand's Crimes Act 1961 covers slavery in this sense while this country has also ratified the relevant ILO anti-slavery conventions, namely: C29 Forced Labour, 1930 and the Protocol to that convention ratified on 13 December 2019, C105 Abolition of Forced Labour, 1957 and C182 Worst Forms of Child Labour, 1999. An order prohibiting the importation of goods produced by using prison labour was promulgated in 2019.
17. New Zealand, does not, therefore, lack legislative means to address slavery if it occurs here in any form. But the extent to which a country with mostly small business entities can expect those businesses to investigate the activities of complex overseas supply chains is open to question, beyond, possibly, the first one or two levels.
18. The problems of country-of-origin labelling have some relevance since often a new supplier must be found at quite short notice (weather conditions, for example, might mean a particular product ingredient is temporarily unavailable). In such circumstances checking the new supplier's credentials might simply not be possible nor, necessarily, will establishing that a supplier has no connection with a company deemed less than desirable. Ownership can be difficult to disentangle and can change with remarkable speed, often with avoidance of the law in mind. Small businesses typically are not equipped to undertake such an analysis without help.
19. Further, New Zealand itself has in the past been accused of using forced labour when prison inmates were employed to manufacture certain goods. Determining whether a particular production process *does* involve the use of forced labour is not always as simple as might first be thought.
20. Nor is slavery absent from every country with which New Zealand trades. This presents a particular challenge as such countries are unlikely to acknowledge that activities of this kind occur. And this is so despite the fact that all ILO member countries (187) have ratified the Worst Forms of Child Labour Convention and 176 countries have ratified Convention 105, Forced Labour.ⁱ Arguably, the problem is as much one of enforcement and a lack of global will to deal with modern slavery as it is a lack of means for addressing the modern slavery issue.
21. That, however, is not an argument that nothing more needs to be done. To the contrary we still need to fill gaps in the present legislative infrastructure in a way that creates a cohesive whole, engendering effective action by business and

society in general to counter instances of slavery and exploitation wherever these occur. Gaps need to be identified, filled and integrated with what is already in place to make a whole. A collaborative effort is needed.

22. Policy -makers should work closely with industry, including with many global brands already working to understand and address any modern slavery/forced labour risks that might arise in their operations and supply chains.
23. With that in mind, it is noted that, at present, two government working groups are independently addressing slavery and worker exploitation. Inherent in this is a risk that the opportunity to create an effective, cohesive response to the issues of slavery and exploitation might not be fully realised. It is suggested that if not already considered, the two groups should either work closely together or combine to ensure opportunities are not lost.

CONCLUSION

24. The need to do everything possible to eliminate slavery and exploitation is well recognised but it also has to be recognised that effective approaches should be well designed, cohesive and ultimately consistent with obligations applicable to supply chains into, within and out of New Zealand. To the extent possible, harmonisation should be aimed for driving the expanded international cooperation essential to meeting the cross-border nature of the challenge.
25. Ultimately, a truly effective response to the issues of slavery and exploitation will be driven by the weight of public opinion, i.e., when it becomes socially unacceptable to engage in such practices. With that in mind, the ideal legislative approach is one that engenders a social response, starting in New Zealand and building on existing global efforts. Enterprises respond to demand and as more is known of the ill-treatment to which some workers are subject, the more customers and clients will expect matters to change or will look to buy elsewhere.ⁱⁱ That means communicating with each other up, down and across supply chains as far as they reach.
26. Even though distance is a limiting factor, many businesses make reasonable efforts to check that what they import - products and componentry - have been made or supplied by companies adhering to good employment standards and they have policies and practices requiring them to do so. Any modern slavery legislation should help, not hinder, them in that process.
27. In terms of the scale and detail of reporting or other obligations created by any modern slavery legislation, account needs to be taken of the size and effectiveness of businesses in domestic and international supply chains. New Zealand entities

are small by global standards so even without significant supply chain connections their ability to make things change might be minimal at best. However, that is not to say such entities should be exempt from any obligation to do something, even if this be simply reporting what they have learned.

28. To this end, BusinessNZ would support a system where reporting obligations range from a compliance-based regime applicable to entities that are significant global users of supply chains and exert measurable market power, down to an encouragement-based approach focused on educating smaller firms on how to recognise symptoms of slavery and exploitation and providing tools to facilitate reporting any instances. Such an approach should be taken if the proposed modern slavery legislation is also to encompass smaller firms (which it is noted, are not covered by overseas countries' modern slavery legislation - Australia's and the UK's, for example). What is asked of SMEs should be less onerous – voluntary even - than if the expectations on large organisations were applied across the board. And it should include training and capacity-building efforts, encouraging industry collaboration.
29. Outside any legislative response, New Zealand should also look for opportunities to encourage collaboration between partner countries and intergovernmental organisations. New Zealand's trade agreements now contain strong employment standards obligations) encouraging change rather than (ultimately) penalising local entities for others' compliance failures.

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ⁱ Non-ratifying countries are: Brunei Darussalam, China, Japan, Lao People's Democratic Republic, Marshall Islands, Myanmar, Palau, Republic of Lore. Timor-Leste, Tonga, Tuvalu

ⁱⁱ Note the Boohoo company fashion garment case in the UK where even after an independent QC inquiry there continuing allegations of low wages and poor working conditions in supply chains (theguardian.com/business/2021/jun/18/boohoo-accused-of-failing-to-improve-working-conditions-in-its-supply-chain), whereas in the US a 2015 report indicated that a number of major companies had raised their minimum wage despite no movement in the federal minimum: <https://www.tuck.dartmouth.edu/news/articles/how-public-opinion-can-influence-organizations>



The BusinessNZ Network is New Zealand's largest business organisation, representing:

- Business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Business South](#)
- [BusinessNZ](#) policy and advocacy services
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium-sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and Business at OECD ([BIAC](#)).

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