



7 June 2022

International Labour Policy
Workplace Relations and Safety Policy
Ministry of Business, Innovation and Employment
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Dear Chair

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on: ***A legislative response to modern slavery and worker exploitation: towards freedom, fairness and dignity in operations and supply chains discussion document.***

Yours sincerely

Katherine Rich
Chief Executive



**A legislative response to modern slavery
and worker exploitation: towards freedom,
fairness and dignity in operations and
supply chains – Discussion document**

**Submission by the New Zealand Food & Grocery
Council**

7 June 2022

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“**NZFGC**”) welcomes the opportunity to comment on *A legislative response to modern slavery and worker exploitation: towards freedom, fairness and dignity in operations and supply chains discussion document (the “Discussion Document”*.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

OVERARCHING COMMENTS

3. We support reducing modern slavery. Specific, targeted, anti-slavery legislation would provide for clarity of purpose and demonstrate New Zealand’s commitment to the International Labour Organization’s (“**ILO**’s”) Forced Labour Convention in 2019.
4. However, NZFGC is concerned that New Zealand not apply more onerous regimes than are operating in key markets such as Australia, California, EU, Canada and UK. We are also concerned at the prospect of duplication with other legislation where ‘worker exploitation’ is concerned.
5. We therefore support taking a responsible but middle path in this area, one that is described in the Discussion Document as a ‘prescribed disclosure/transparency on due diligence’ approach. By doing so, we are demonstrating commitment and building experience whilst aligning, in particular, with Australia.
6. We do not believe the framework is graduated to the appropriate degree and that medium sized businesses need to be further segmented into low end (\$20m-\$50m) and high end (\$50m-\$100m) leaving the large category to cover businesses greater than \$100m. This would more closely align with Australia. The burden on businesses should be graduated to a comparable degree with greater reliance on other suppliers and operators in relevant areas for small businesses.
7. We believe it imperative that reporting and actions required be aligned with those required of comparable businesses in Australia. The very worst outcome would be for a business to be required to prepare one report for Australia and different one for New Zealand.
8. Cultural change has to start at the top with the governing body of the entity and members of governing bodies should be held responsible for giving effect to a businesses obligations under the proposed legislation. Oversight should be by government, aided by a central register and government funded guidance, training and workshops.
9. NZFGC considers that a phase-in time or transition period (graduated in line with business size segmentation) is necessary for the proposed legislation. After such a period and the provision of tools, workshops and training, an entity that takes no action should be subject to some enforcement action. There should be a range of actions available for this purpose.
10. The Australian legislation mandates a review after three years. The same should apply in New Zealand.

DETAILED COMMENTS

Question 1. What do you think the key policy objectives should be (see, for example, our proposed objectives on page 26)? Which of these objectives do you think are most important?

11. NZFGC notes the primary objective is to reduce modern slavery and worker exploitation in New Zealand and elsewhere. We support the objective of reducing modern slavery but are concerned at the prospect of duplication with the inclusion of 'worker exploitation' in the proposals. There is other New Zealand legislation that addresses worker exploitation and duplication should be avoided, for example the *Employment Relations Act 2000*.
12. The proposed definition of modern slavery, subject to inclusions below, would adequately cover and protect freedom, fairness and dignity in the operations and supply chain of entities in New Zealand.

Question 2. Do you think that enough action is currently taken in New Zealand to address modern slavery and worker exploitation across operations and supply chains?

No, more action is needed

13. We support modern slavery legislation as another step New Zealand can take to contribute to reducing modern slavery. New Zealand ratified the ILO's Forced Labour Convention in 2019, becoming the 43rd country to do so. New Zealand legislation to give effect to this Convention is appropriate. As MBIE identified in 2021¹, such action is being taken right across the developed world with legislation passed or in development across the EU, UK, North America and Australia.
14. A standardised approach across Australasia would be optimal and therefore suggest that definition of terms of 'operations' and 'supply chain' should not be expanded outside the scope of those definitions in the Australian Modern Slavery legislation.
15. The definition of modern slavery needs to encompass slavery, forced labour, and human trafficking in order to provide adequate coverage of the issues.
16. In relation to worker exploitation, consistency or regularity of compliance monitoring in New Zealand under existing legislation could well be needed. NZFGC is aware of cases taken in the past which have been prosecuted suggesting current legislation is adequate.

Question 3. Do you think that New Zealand's legislation should be amended to better address modern slavery and/or worker exploitation across operations and supply chains? Other

17. As noted in response to Question 2, specific, targeted anti-slavery legislation would go beyond current legislation protecting New Zealand workers since it is intended to go beyond New Zealand's borders. Separate legislation for slavery, rather than amending current worker protection legislation, would provide clarity of purpose and would demonstrate New Zealand's commitment as a global citizen in this area. This would be consistent with provisions in free trade agreements such as that with the UK.

Question 3A. If applicable, which type of broad approach to new supply chain legislation would you most support? Other

¹ MBIE. *Modern slavery legislation final report: impact and effectiveness of modern slavery legislation*, July 2021

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18. NZFGC is concerned that New Zealand not apply more onerous regimes than are operating in key markets such as Australia, California (noting New Zealand has formed a partnership deal to work together with California on climate change), EU, Canada and UK (proposed). The countries that are going further have already had several years' experience. By taking a 'prescribed disclosure/transparency on due diligence' approach, we are entering the process, demonstrating commitment and building experience in this endeavour.
19. Due diligence is still a feature of the actions and disclosure cannot be effected without it. However, it does not require particular actions to be taken. As acknowledged by MBIE, a due diligence approach, as being taken by France, Germany and Norway, is new 'and there is little direct empirical evidence available regarding its effectiveness'. It is not applicable across the broader EU and as a small trading nation, New Zealand would do better to align with Australia and take a responsible but middle path in this area. In particular, there needs to be considerable caution around defining "significant control or influence" in relation to a businesses reach and that the definition of "international operations" is limited to the entities direct subsidiaries located outside New Zealand and excludes concepts outside New Zealand such as joint ventures, related companies and affiliates.

Question 4. Do you agree that all entities should have to take reasonable and proportionate action if they become aware of modern slavery in their international operations and supply chains, and/or modern slavery or worker exploitation in their domestic operations and supply chains? No

20. We do not believe the framework is graduated to the appropriate degree and that medium sized businesses need to be further segmented into low end (\$20m-\$50m) and high end (\$50m-\$100m) leaving large to cover businesses greater than \$100m. This would more closely align with Australia and present as a trans-Tasman, level playing field.
21. We agree that action should be taken but it is not clear what 'proportionate' means. As noted, we do not agree that the framework proposed is adequate as we consider there would be an excessive and inequitable burden for the vast majority of businesses.
22. For small businesses such as dairies, dealing in small amounts of a broad range of goods (which in the current duopoly environment would likely be bought from supermarkets) proportionate action might comprise reporting on reliance on these third parties in New Zealand. It is unrealistic and unfair for businesses, such as 'mum and dad' businesses, to take steps to identify and act on modern slavery in multitudinous supply chains.
23. For medium-sized businesses at the lower end, transparency on due diligence taken should feature but not disclosure of steps taken – this could be applied to medium-sized businesses at the higher end and large businesses.
24. More can be expected of multinational businesses and large trading companies which are almost certainly undertaking disclosure and due diligence across their business now.
25. As noted above, worker exploitation should not be included as employment relations, wage and equal pay legislation provides the protections necessary.

Question 5. What action(s) do you think would be reasonable and proportionate?

26. As noted above, 'proportionate' for small businesses might be reliance on the first supplier of goods taking requisite steps. For medium sized businesses there should be a segmented but greater demonstration of due diligence across operations and at the higher end, a disclosure of steps. For large, this should reflect the due diligence, prevention, mitigation and remedial steps taken.

Question 6. Do you agree that small and medium-sized entities should have a responsibility to undertake due diligence to prevent and mitigate modern slavery and worker exploitation in domestic operations and supply chains for New Zealand entities they have significant control or influence over? No

27. See responses above. In short, the burden on businesses should be graduated with greater reliance on other suppliers and operators in the area.

Question 6A. What actions or measures do you think could be reasonable and proportionate for small and medium-sized entities to meet domestic due diligence obligations? Do you think those actions would be reasonable and appropriate generally, or in specific contexts?

28. See responses above.

Question 7. Do you agree that 'medium' and 'large'-sized entities should be required to annually report on the due diligence they are undertaking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains? No

29. As noted above we do not consider that the framework is adequately segmented. Medium sized businesses at the higher end (\$50m-\$100m) and large businesses (>\$100m) should be required to report annually on due diligence and steps taken. Medium-sized businesses at the lower end (\$20m-\$50m) should not be required to report annually but perhaps once every two or three years.

Question 7A. What information should be compulsory for entities to provide in their annual disclosures?

30. We have no suggestions as to the detail but we believe it imperative that reporting and actions be aligned with those required of comparable businesses in Australia. The very worst outcome would be for a business to be required to prepare one report for Australia and different one for New Zealand.

Question 8. Do you agree that 'large'-sized entities should be required to meet due diligence obligations to prevent and mitigate modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains? Yes

31. Such an approach would align with Australia and a range of other similarly placed countries/regions.

Question 8A. What actions or measures do you think could be appropriate for large entities to meet domestic and international due diligence obligations? Do you think those actions would be reasonable and proportionate generally, or in specific contexts?

32. An approach that aligns with the requirements for large businesses in Australia and a range of other similarly placed countries/regions. Large businesses should be responsible for

remediation action only where a direct causal connection exists between the business and harm in their international operations or supply chain. The due diligence vs disclosure approach must be aligned with Australia. It would be a costly exercise and put New Zealand businesses at a significant disadvantage to do otherwise.

Question 9. How far across an entity's operations and supply chains should expectations to undertake due diligence apply?

33. To the extent reasonable, taking into account business size, extent of control over supplier etc. This would align with comparable Australian provisions. Beyond a first tier supplier, visibility is often not available and is a complex, costly and challenging prospect.

Question 9A. What could reasonable due diligence activity look like at different supply chain tiers, and how could this be defined or reflected in the legislation?

34. The use of Ethical Trade Audits aligned with the Ethical Trading Initiative Base Code is supported. These cover labour standards, business ethics, health and safety and environmental practices. We do not have the information to respond beyond this level of detail.

Question 10. Are there any types of entities that should not be included in this legislation? If so, please specify and explain why they should not be included.

35. No, all should be covered including unincorporated entities, charities and partnerships.

Question 11. Do you agree that 'medium' and 'large' entities should be defined based on revenue? Yes

36. NZFGC agrees that the segmentation of businesses by size based on revenue is appropriate but considers additional segmentation should apply.

Question 12. What do you think the revenue threshold for defining a medium-sized entity should be? Please specify what you think the amount should be and explain why.

37. As noted in response to Question 4 We do not believe the framework is graduated to the appropriate degree and that medium sized businesses need to be further segmented into low end (\$20m-\$50m) and high end (\$50m-\$100m) leaving large to cover businesses greater than \$100m. as noted also, this would more closely align with Australia and present as a trans-Tasman, level playing field.

38. We do not agree that the framework proposed is adequate as we consider there would be an excessive and inequitable burden for the vast majority of small to medium sized businesses.

39. For small businesses, dealing in small amounts of a broad range of goods proportionate action might comprise reporting on reliance on these third parties in New Zealand, that is first tier suppliers. Supermarkets will be large and will be required to meet the extended obligations. It is unrealistic and unfair for businesses, such as 'mum and dad' businesses, to take steps to identify and act on modern slavery in multitudinous supply chains.

40. For medium-sized businesses at the lower end, transparency on due diligence taken should feature but not disclosure of steps taken – this could be applied to medium-sized businesses at the higher end and large businesses.

41. More can be expected of multinational businesses and large trading companies which are almost certainly undertaking disclosure and due diligence across their business now.

Question 13. What do you think the revenue threshold for defining a large-sized entity should be? Please specify what you think the amount should be and explain why.

42. We consider there should be alignment with Australia and the level be set at >\$100m. This means our competitors would have the same burden for meeting the obligations associated with due diligence, disclosure and reporting.

Question 14. How could the proposals and/or the implementation of the proposals better reflect Kaupapa Māori and Te Tiriti o Waitangi principles?

43. NZFGC defers to Māori submitters for this response.

Question 15. Are you aware of any disproportionate impacts (positive or negative) this legislation could have on Māori entities? Please explain what impacts may apply, if any.

44. It would be important to understand the spread of Māori businesses within the total New Zealand enterprise financial statistics by sales bands as set out in Figure 4 in the Discussion Document to ensure that they were not disproportionately impacted by such legislation.

Question 16. Are you aware of any disproportionate impacts (positive or negative) this legislation could have on Māori individuals? Please explain what impacts may apply, if any.

45. . NZFGC considers Māori submitters are best placed to respond to this question.

Question 17. What types of non-compliance should lead to enforcement action?

46. NZFGC considers that, after an adequate transition period and the provision of tools, workshops and training, an entity that takes no action should be subject to some action but not a penalty regime. There should be a range of actions available for this purpose including public naming, requiring remedial action etc.

Question 18. Do you think there should be different offences and tools to deal with non-compliance with different obligations (such as for disclosure versus due diligence)? Should these differ depending on the size of the entity (or other factors, such as whether an entity is run by volunteers)?

47. There should be no penalty regime which would align with Australia and other key markets. As noted above, NZFGC considers that, after an adequate transition period and the provision of tools, workshops and training, an entity that takes no action should be subject to some actions. There should be a range of actions available for this purpose.

Question 19. What comparable legislation do you think we should consider in developing the penalties framework for this legislation?

48. There should not be a penalties regime.

Question 20. What responsibilities, if any, should members of the governing body of the entity (such as the directors and board of a company) be personally liable for?

49. For cultural change, this has to start at the top. Members of the governing body of the entity should therefore face consequences.

Question 21. Should victims onshore and offshore have the ability to bring a civil claim against an entity that has failed to meet its responsibility?

50. Civil claims against an entity should be limited to cases onshore where no other legislation is available. Cases offshore should be prosecuted in international courts as they are extra-territorial.

Question 22. Should entities be required to remedy any harm they have caused or contributed to, where there is a clear link between their actions and the harm? If so, how should this link be demonstrated and what types of remediation would be appropriate?

51. Yes, entities should be required to remedy harm they have caused or contributed to, where there is a clear link between their actions and the harm.

Question 23. Is an independent oversight mechanism required, or could this oversight be provided by Government and civil society? No (oversight can be provided by Government and civil society)

52. Oversight in other areas and countries is generally government.

Question 23A. If independent oversight is required, what functions should the oversight mechanism perform?

53. Not applicable.

Question 24. Do you think a central register for disclosure statements should be established? Yes

54. A central register should be established for accountability purposes and to assist with compliance. A register shared with Australia could be useful.

Do you have any other comments or suggestions?

55. No.

Question 25. What support services, products or other guidance do you think are most needed? What would be of greatest benefit to you?

56. NZFGC is aware that government funded guidance, training and workshops are important as part of an implementation programme.

Question 26. What do you consider would be needed from the regulator to support the adoption of good operational and supply chain practice, and compliance with the proposed responsibilities?

57. See response to Question 25.

Question 27. Do you consider a phase-in time is needed for this legislation? If so, do you consider the phase-in should apply to the responsibilities or application of

penalties, or both? Do you consider a different phase-in period should apply in relation to domestic responsibilities compared to internationally-focused responsibilities?

58. We consider a phase-in time or transition period is necessary for this legislation. The phase-in should apply to both the responsibilities and application of penalties. A different phase-in period should apply to domestic responsibilities compared to internationally-focused responsibilities since domestic responsibilities should reflect greater accessibility to determine the situation.

Question 28. What additional monitoring, evaluations and review mechanisms are needed, if any, to support this legislation?

59. The Australian legislation mandates a review after three years. The same should apply in New Zealand.