

**SUBMISSION****9 June 2022****On the Proposed Legislative Response to Modern Slavery and Worker Exploitation**

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**Introduction**

Thank you for the opportunity to submit on this proposal.

It is somewhat ironic that, through this proposed legislation, the government is seeking an environment which recognises and protects basic human rights, including fairness, respect, dignity, transparency and choice while at the same time it is considering a Bill (the Fair Pay Agreements Bill) that will remove employer and employee choice and freedom to negotiate terms and conditions of employment, and introduces the concept of compulsion which appears to breach New Zealand's international obligations.

While that is not the focus of this submission, it does warrant reflection.

**Modern Slavery and Exploitation**

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.

Whether legislation is the right approach to tackling slavery and exploitation is open to debate. The International Bar Association in its article "Tackling Modern Slavery" (<https://www.ibanet.org/article/BB90AD4E-A017-4285-B6ED-CDB0FCEA9641>), bemoans the failure of global legislation to address slavery and exploitation (although to be fair this is largely due to legislation lacking teeth and a lack of consistency across jurisdictions).

The organisation Anti-Slavery International, in its article Effective Monitoring Systems (<https://www.antislavery.org/take-action/companies/monitoring-forced-labour/>), notes the

focus should not solely be on auditing, compliance and penalties, but on encouraging companies to work with their suppliers and take a genuine approach to partnership.

Is it best to impose universal obligation across all businesses, or is it best to focus efforts on those sectors where the risk is well known and at its highest? The discussion document states that “independent reviews of transparency regimes put in place in Australia, the EU and the UK show us that most organisations are not putting in place effective measures to address modern slavery. We have no reason to expect that New Zealand organisations would do any better without stronger incentives and government action”.

It is easy to generalize, 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. To that end, a “carrot” approach works far more effectively than a “stick” approach.

### **Domestic Slavery and Exploitation**

The examples of New Zealand based slavery and exploitation identified in the consultation document have largely arisen in the labour hire/contractor sector, and largely where the person or business committing the offences are from the same nationality as those who are being exploited. That is often how an early sense of trust has been established. We have seen this in a few cases in horticulture, but many cases in the liquor and international student sectors.

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 is unlikely to be cost effective, we submit that domestic regulation or increased government endorsement of a formal certification programme that already exists would go a long way toward addressing modern slavery and exploitation challenges within New Zealand.

### **An example labour hire certification programme that could be relevant for NZ businesses**

StaffSure is an example certification programme owned and operated by the [Recruitment, Consulting & Staffing Association of Australia and New Zealand \(RSCA\)](#), which represents labour hire in Australia and NZ.

RSCA’s StaffSure certification programme was developed in 2018 to address the issue and make sure employers are certified to comply with minimum employment entitlements, as well as immigration and visa laws.

Some of CCNZ’s recruitment and labour hire associate members subscribe to this certification programme, which is still in its infancy with around 35 businesses subscribed.

StaffSure combines criteria around business integrity and process with independent auditing, and looks at six key business integrity elements:

- That the business is owned and run by Fit and Proper Persons
- The business ensures all workers receive appropriate and legal employment entitlements
- The business is financially secure and can operate sustainably
- A safe work environment is provided for all workers
- All immigration and visa laws are complied with
- Any accommodation supplied by employers or clients is suitable and the rent is fair

More information on the StaffSure certification programme is available at <https://www.staffsure.org>.

### **Industry best practice guides**

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 sharing information and developing or contributing to best practice guidelines for the small, medium, and large businesses defined in the proposal document helping them understand and implement systems contemplated under the proposed legislation.

### **Infrastructure Sustainability Council (ISC)**

The [Infrastructure Sustainability Council](#) Modern Slavery Coalition was formed in 2019, creating a platform for a group of companies from the infrastructure sector to work together to address Modern Slavery through their supply chains and by delivering practical support and tools. It aims to shift the focus from reactive compliance to transformational leadership.

Members of CCNZ who are also members of the Coalition include McConnell Dowell, Downer, Acciona, Ventia and Fulton Hogan.

The Coalition work programme focuses on building an awareness of modern slavery throughout the sector; building capability in people, supply chains and systems; and piloting impact delivery beyond disclosure.

We recommend that MBIE consult further with the ISC before making any final decisions on the pathway forward. It is conceivable that between the work that the ISC Coalition is doing, and CCNZ best practice development, much of the monitoring and reporting expectations can be accommodated.

## Responsibilities

To summarise the proposed framework:

- Responsibility 1 (all entities) – Take reasonable and proportionate action if they become aware of modern slavery in their international operations and supply chains, or modern slavery or worker exploitation in their domestic operations and supply chains
- Responsibility 2 (small and medium entities) – Undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities where they are the parent or holding company or have significant contractual control
- Responsibility 3 (medium and large entities) – Disclose the steps they are taking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains
- Responsibility 4 (large entities) – Undertake due diligence to prevent, mitigate and remedy modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains

The expectations of Requirement 1 appear to be reasonable. The difficulty is determining what is “reasonable and proportionate”. What is reasonable and proportionate to one entity may be unreasonable and disproportionate to another. 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?

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).

Responsibility 2 appears reasonable for those New Zealand entities which are a parent or holding company or have significant contractual control.

The prescribed disclosure approach outlined in Responsibility 3 makes sense, but we submit that 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.

Under Responsibility 4, we submit that 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.

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

## Thresholds

The proposed sales/turnover thresholds are as follows:

Small = less than \$20m

Medium = \$20m to \$50m

Large = over \$50m

Based on the Statistics New Zealand Annual Enterprise Survey 2020, there would be 495,486 enterprises deemed to be small; 2,181 medium; and 1,443 large.

We submit that while the lower threshold appears reasonable, the gap between the small and large threshold is too narrow, and in typical survey ranges would be wider.

We recommend that the thresholds be amended as follows:

Small = less than \$20m (would capture 495,486 enterprises)

Medium = \$20m to \$100m (would capture 2,970 enterprises)

Large = over \$100m (would capture 654 enterprises)

Even with this adjustment, smaller businesses with less resources and most likely less capacity and capability will be required to undertake due-diligence and reporting. They will need adequate support to complete the requirements.

Allocating our membership at 31 March 2021 to these bands, approximately 362 members would be deemed small, 22 medium and 9 large.

## The “carrot” or the “stick”

Too much of New Zealand’s legislative and regulatory framework is based on compliance, enforcement, and punitive penalties. Businesses are being crushed under this weight.

Of course, 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 the work that ISC is doing, giving businesses a key role in defining their work programmes in this area, widening the threshold gap, regulation of the labour hire/contracting sector, and not just focusing on punitive measures but rewarding good behaviour.

We would be happy to discuss this submission further with you.



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