

Submission to the Ministry of Business, Innovation and Employment on the:

Consultation on Modern Slavery and Worker Exploitation

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi
13 June 2022



IN UNION, TOGETHER.
union.org.nz

This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 300,000 members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

Table of Contents

1. Summary of Recommendations.....	3
2. Introduction.....	4
3. Modern Slavery.....	4
4. Worker Exploitation.....	4
5. Duties	5
6. Reporting duties and a public register	6
7. National Contact Point and Codes of Conduct	7
8. Enforcement	7
9. Conclusion.....	8

1. Summary of Recommendations

CTU recommends that Government:

- 1.1. Introduce legislation to combat Modern Slavery and Worker Exploitation in domestic and international supply chains.
- 1.2. Define Modern Slavery with reference to international standards including ILO Conventions.
- 1.3. Extend the proposed duties to cover worker exploitation in international supply chains, defined as non-minor breaches of employment standards as defined by ILO Conventions and the labour laws and regulations of the country in which the work is done.
- 1.4. Define minor breaches of employment standards as technical breaches that do not cause significant harm to workers.
- 1.5. Establish a general duty to take reasonable and practicable steps to identify and eliminate modern slavery and worker exploitation in supply chains.
- 1.6. Establish specific duties of due diligence and reporting for medium and large entities.
- 1.7. Create a public register of reports and provide for reports to be submitted by other parties including unions.
- 1.8. Support information on the public register by pro-actively publishing thematic reports and advisory notices on risks in specific industries and regions.
- 1.9. Ensure that all duties are enforceable, with penalties for non-compliance and criminal penalties for serious or sustained non-compliance.
- 1.10. Undertake further work to review and strengthen New Zealand's National Contact Point on Responsible Business Conduct.

- 1.11. Consider developing Codes of Conduct for specific industries that would fulfil the duties of due diligence defined in the legislation.
- 1.12. Consider creating a Commissioner of Modern Slavery and Worker Exploitation, to issue advice and recommendations, and with Ombudsman powers to oversee the actions of the regulator and the labour inspectorate.

2. Introduction

- 2.1. The NZ Council of Trade Unions Te Kauae Kaimahi (CTU) supports the development of legislation to combat Modern Slavery and Worker Exploitation.
- 2.2. The CTU has taken an active part in the work on these proposals, including through participation in the Leadership Advisory Group on Modern Slavery. We commend the Advisory Group and officials on the work they have done and look forward to continuing our joint efforts to design world-leading legislation to remove modern slavery and worker exploitation from our economy and supply chains.

3. Modern Slavery

- 3.1. CTU supports the proposals to identify and eliminate modern slavery in international and domestic supply chains.
- 3.2. We support the proposal to define modern slavery as 'including the legal concepts of forced labour, debt bondage, forced marriage, slavery and slavery like practices, and human trafficking.' Each of these terms will require further definition to provide clarity, with reference to international standards including ILO Conventions.

4. Worker Exploitation

- 4.1. The proposed duties should cover worker exploitation in both international and domestic supply chains. Worker exploitation should be defined as non-minor breaches of employment standards, as defined by

ILO Conventions and by the laws and regulations of the country in which the work is done.

- 4.2. In the New Zealand context, employment standards should be defined to include all provisions of the Employment Relations Act 2000, Minimum Wage Act 1983, Wages Protection Act 1983, Holidays Act 2003, Health and Safety at Work Act 2015, Equal Pay Act 1972, as well as the protections against exploitation in the Immigration Act 2009 and the protections against employment discrimination in the Human Rights Act 1993.
- 4.3. The legislation should provide further definition and clear guidance on the meaning of non-minor breaches. A minor breach should be defined as a technical breach of standards that does not cause significant harm to workers.

5. Duties

- 5.1. A general duty should be created to take all reasonable and practicable steps to identify worker exploitation and modern slavery in supply chains. Further to this general duty, further specific duties and standards of due diligence should be specified in the legislation for medium and large entities.
- 5.2. We support the examples of appropriate due diligence provided on p13 of the consultation document. Further work should be undertaken in the process of drafting legislation to codify the principles underlying these examples into generally enforceable standards to apply to medium and large entities. In codifying principles, consideration should be given to adopting elements of the duty of 'due vigilance' applied in France's legislation on modern slavery.
- 5.3. We are proposing that specific duties and standards of due diligence apply to medium entities, in addition to large entities, as it is our view that implementing processes of the kind proposed should be well within the capacity of an organisation with annual turnover in excess of \$20 million.

- 5.4. All entities should have to take reasonable and proportionate action if they become aware of modern slavery or worker exploitation in their domestic or international supply chains. This should include remedial action to prevent further breaches of standards, or to remove the offending party from the supply chain, as well as to ensure that proportionate redress and compensation is provided to those harmed by the breach of standards.
- 5.5. The CTU supports the recommendations made in the Public Service Association Te Pūkenga Here Tikanga Mahi (PSA) submission on developing substantive duties of due diligence, prevention, and reporting for entities with significant control or influence over other entities. Specific duties for these entities, including contracting parties and franchisors, should be developed and codified in the legislation.

6. Reporting duties and a public register

- 6.1. CTU supports the proposal to require mandatory reporting from all medium and large entities, including details of due diligence processes undertaken, the findings, and the actions taken as a result.
- 6.2. We also support the proposal for creation of a public register of reports. Reports should be made immediately available in a searchable form that allows the public and other entities to search across the register for information by industry, region of production, and type of product, as well as by reporting entity.
- 6.3. In addition to mandatory reporting, small entities and other stakeholders, including unions, should be enabled and encouraged to report on evidence and trends of modern slavery and worker exploitation in domestic and international supply chains. These reports should also be published to the public register.
- 6.4. MBIE should also contribute to the public register by working with other government agencies and international partners to publish thematic reports that identify risks of modern slavery and worker exploitation in particular industries and regions. Specific alerts should also be published

where instances of modern slavery and worker exploitation are reliably identified.

- 6.5. By requiring, enabling and publishing reports in a publicly accessible form, a public register with supporting information from MBIE will contribute to a positive feedback loop of increasing the visibility of modern slavery and worker exploitation. This will enable entities to learn from each other's reports and as a result will expand the range of action that can be taken.

7. National Contact Point and Codes of Conduct

- 7.1. To complement work on Modern Slavery and Worker Exploitation legislation, the CTU recommends further work to review and strengthen the work of New Zealand's National Contact Point on Responsible Business Conduct. This work should include consideration of tripartite governance and engagement strategies for the National Contact Point.
- 7.2. CTU recommends that consideration be given to developing Codes of Conduct for specific industries that would fulfil the duties of due diligence defined in the legislation. Provision for developing Codes of Conduct could be included in legislation in a similar way to the provision for Codes of Good Faith in the Employment Relations Act.
- 7.3. We note that development of Codes of Conduct could give effect to OECD recommendations on due diligence for business and human rights. This work would be able to draw on international examples of industry Codes of Conduct to implement OECD guidelines, including in the Netherlands.¹

8. Enforcement

- 8.1. The CTU supports the proposal that all duties created by the legislation should be enforceable, with appropriate penalties for non-compliance.

¹ OECD. 2018. OECD Due Diligence Guidance for Responsible Business Conduct. <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

- 8.2. Enforcement tools should include infringement notices and enforceable undertakings, backed by further penalties.
- 8.3. Penalties should include fines for non-compliance. Criminal penalties should apply in cases of serious or sustained non-compliance, including personal liability for directors and other responsible persons.
- 8.4. All enforcement action, including enforceable undertakings, should include an element of remediation, both to fulfil the relevant duty and to provide compensation and redress to those harmed by the failure to uphold the duty.
- 8.5. CTU supports consideration of providing for independent oversight through the creation of a Commissioner on Modern Slavery and Worker Exploitation. The Commissioner could be based in an independent agency such as the Human Rights Commission, or as part of a renewed National Contact Point on Responsible Business Conduct if this is established with sufficiently independent tripartite governance. The Commissioner could be empowered to issue advice and findings on instances of modern slavery and worker exploitation and make recommendations to the regulator. The Commissioner could also have Ombudsman powers to oversee reporting and enforcement under the Act, including to take action on complaints and investigate the actions or inactions of the regulator.

9. Conclusion

- 9.1. The CTU supports the creation of legislation to combat modern slavery and worker exploitation in supply chains, including in franchising and contracting arrangements.
- 9.2. We call for further work on standards to cover worker exploitation in international supply chains, including by drawing on ILO Conventions and the duty to abide by minimum employment standards in the country where work is done.

9.3. We congratulate MBIE and the Leadership Advisory Group on the good work in developing these proposals and building consensus on the need for action. The recommendations we have made in this submission are intended to strengthen the proposals in line with the original intent to develop a legal framework of duties to combat modern slavery and worker exploitation. We look forward to working with MBIE and other stakeholders to develop these proposals into world-leading legislation.