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Ministry of Business, Innovation & Employment

Email: modernslavery@mbie.govt.nz

Submission on Modern Slavery and Worker Exploitation Discussion Document

The Institute of Directors (IoD) appreciates the opportunity to comment on the Ministry of Business, Innovation & Employment's (MBIE) discussion document A *Legislative Response to Modern Slavery and Worker Exploitation* ('Document').

Key points

- The IoD generally supports MBIE's set of proposals on modern slavery, including legislation applying to all entities in Aotearoa New Zealand on a graduated basis. However, we are concerned that the regulatory approach outlined could result in the emergence of an undue compliance focus that does not achieve the stated outcomes. To counter this, we propose 1) underpinning the regulatory framework with an ethical approach that aims to build ethical capability within organisations. This would enable organisations to effectively and sustainably integrate an ethics perspective into their systems and processes and allow for greater likelihood that intended outcomes are achieved; and 2) policy and associated legislation that allows for organisations to respond dynamically to the greatest risks in their supply chain.
- Adopting an integrated and systemic approach that builds board and organisational capability to dynamically respond to modern slavery, backed by greater transparency and due diligence requirements is more likely to lead to wider culture and behavioral changes by businesses and customers. This approach will more likely achieve the intended policy outcomes.
- Best practice governance has the potential to have a positive impact on the reduction of modern slavery in supply chains as it provides a context for better decision-making. A

About the Institute of Directors

The IoD has over 10,000 members, is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community. We believe in the power of governance to create a strong, fair and sustainable future for New Zealand. Our role is to drive excellence and high standards in governance. We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities. Given the size, diversity and spread of our membership many of our members' and the organisations they govern will be directly affected by the introduction of modern slavery transparency, disclosure and due diligence requirements and many more will be impacted in the future. Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good governance.

meaningful modern slavery response requires an entity-wide commitment and leadership from the top. An approach focused on enhancing an ethics based culture and responding to societal norms is likely to result in better outcomes.

- Modern slavery presents a strategic opportunity for organisations to consider their social license to operate and position themselves more effectively on economic, social and governance (ESG) matters. For example, a board may consider whether an ethical approach and transparency of the supply chain will form a core part of the organisation’s purpose, brand and reputation with investors and customers/beneficiaries.
- Pressure for transparency in supply chains is starting to come from institutional investors, funders and insurers as it addresses risk and provides customers with an opportunity to make an informed decision. The regulatory framework needs to build on this trend to ensure organisations can remain sufficiently flexible to respond to areas of greatest risk rather than encouraging a ‘tick-box’ compliance approach.
- The IoD supports a graduated approach, including ensuring that different enforcement mechanisms and penalties are proportionate to the size of the entity and the harm that is addressed or avoided. Entities should be allowed a period of time to provide for greater internal disclosure and initial remedial action prior to public disclosure.

Role of directors and boards on modern slavery issues

Boards and other governance roles have a key role in combatting modern slavery within complex global and local supply chains. Boards are tasked with determining the purpose of the organisation, setting the strategic direction, building an effective governance culture, holding the executive to account and ensuring effective compliance. A board identifies the issues facing the organisation and setting policies to mitigate their impact.

Increasing transparency and scrutiny on human rights and supply chains means directors need to be engaged and informed to ensure they set the right expectations, achieve buy-in and proactivity throughout the organisation for achieving the agreed outcomes. Resources need to be applied to the areas that can make the greatest difference.

Building interest in, enacting and enforcing policies to mitigate modern slavery is key to ensuring that brands and profits do not suffer as it enables the building of trust and confidence with investors and broader stakeholders.

General comments on modern slavery proposals

The IoD welcomes the set of proposals on modern slavery. Modern slavery is a heinous crime and there’s no place for it in businesses or other organisations.

We generally support the approach outlined in the discussion document, including legislation applying to all entities in Aotearoa New Zealand on a graduated basis. We agree New Zealand’s approach needs to align with global best practice to maximise impact. However, we also note there is currently limited evidence globally on the effectiveness of different approaches for combatting modern slavery.

We are concerned that the regulatory approach outlined could result in the emergence of a ‘tick-box’ compliance approach that does not achieve the high level outcomes we want to see for combating and

addressing modern slavery. To counter this, we propose the need to underpin the regulatory framework with an emphasis on building ethical capability within organisations to ensure organisations can make a real difference.

Building ethical capability

In addition to a regulatory approach, we consider it just as important to focus on developing the capabilities of boards and organisations to dynamically respond to societal challenges, such as modern slavery, from an ethical perspective.

The *Four Pillars of Governance Best Practice* states that running an organisation with consistent integrity and high ethical values is simply “good business”. Such organisations attract the best people, the most sought-after customer/beneficiary and supplier relationships, and investment opportunities. Goodwill, consistent good reputation and attraction of potential staff are all outcomes of ethical behavior. An ethical culture can also contribute to improving employee engagement and commitment.

Harnessing and supporting board and organisational culture and instincts to operate ethically supported by the ability and willingness to develop strategies to strengthen financial and non-financial performance are part of the incentives for organisations to respond positively to expectations to address modern slavery.

For these reasons, an integrated and systemic approach will likely deliver the intended policy outcomes. This broader approach includes education on values and ethics, as well as input from other human rights and ethically-focused agencies and NGOs. An approach like this, backed by greater transparency and due diligence requirements, is more likely to lead to wider culture and behavioral changes by organisations and customers by reaching deeper into supply chains and targeting the source of the problem.

This more systemic approach could be supported by director development in ethics and understanding supply chains. A number of the IoD’s director development offerings already include ethics modules within the Company Directors’ Course and recently released Advanced Directors’ Course. These could be augmented with a focus on board oversight of supply chains to take into account modern slavery and climate change considerations.

A strategic opportunity to (re)define purpose

Modern slavery presents as a number of different types of risks to the organisation (such as reputation, financial and legal).

It also offers a greater strategic opportunity for organisations to consider their relationships with customers and broader stakeholders, including their role within the broader global community. In part, this is because we are in an environment now where there is greater public awareness around an entity’s social license to operate. Effective stakeholder engagement is fundamental to good governance in the modern age. A whitepaper published in 2021 by the IoD and MinterEllisonRuddWatts *Stakeholder Governance: A call to review directors’ duties* outlines the evolving corporate governance landscape in relation to stakeholders. It includes significant developments and trends around the world and in New Zealand, relevant law in New Zealand and also provides guidance for boards.

In that context, pressure for transparency in supply chains is starting to come from institutional investors, funders and insurers as it addresses risk and provides customers with an opportunity to make an informed

decision. The regulatory framework needs to ensure organisations can remain sufficiently flexible to respond to areas of greatest risk. To be effective and continue to attract investment, funding and insurance, New Zealand organisations will need to demonstrate their improvement journey in combatting modern slavery including articulating the strategic choices made.

This means that increasingly, part of doing business in the modern age is to accept the need to apply greater scrutiny to the organisation's supply chain, with the aim of creating a cascade of sustainable practices down the chain. Strategic procurement looks for ethical alignment between entities to produce sustainable supply over time – which should be no more costly.

The emerging pressure from a range of stakeholders, even in advance of policy and legislation, also has implications for the way organisations operate internally. For example, addressing modern slavery concerns in the supply chain could also potentially serve as an internal employee engagement tool that sits alongside practices related to procurement.

Differing duties dependent on size and resources

The IoD supports legislation applying to everyone but differing duties dependent on the size and resources of the organisation, recognising that SMEs have less capacity as well as more informal processes and management structures than larger organisations.

The role of the board and the need for skilled and capable directors is more important now than ever in leading our organisations to a sustainable future. A regime that is perceived as too harsh and demanding too much accountability could have a detrimental effect on the ability to attract and retain quality directors to important leadership positions. We therefore support different enforcement mechanisms and penalties that are proportionate to the size of the entity.

Phased in approach

A phased in implementation process will be important to allow business to develop their systems and processes and enable a level of reporting that is meaningful. Organisations will be at different levels of maturity around auditing their supply chain and non-financial reporting.

Varying levels of organisational awareness

In the 2021 IoD/ ASB *Director Sentiment Survey* report just 17% of respondents said their board has assessed risks and issues associated with modern slavery and worker exploitation in their organisation and supply chain. However this was significantly higher for publicly-listed companies at 43%.

Meanwhile just over half (52%) are confident that their board, staff, business partners and supply chains are familiar with and adhere to their organisation's ethical standards. Again this is much higher for publicly-listed companies at 68%.

Many businesses will not even be aware of the ambit of modern slavery (such as forced marriage) and therefore we support starting with a strong educative approach. Supplementary guidance material will be needed for organisations, particularly SMES that provide good-practice examples. The IoD is keen to raise awareness about modern slavery within the governance community and offer support and training opportunities. We are already seeing some of this in our existing director development offerings which could

be strengthened further.

Challenges mean transitioning over time to new arrangements

There are some real challenges in bringing greater transparency to, and influencing the supply chain. There needs to be a realistic understanding of the challenges for some entities in changing suppliers quickly when modern slavery issues are detected, particularly where there are existing long term contracts in place and/or limited suppliers.

We support a period of time to allow for greater internal disclosure and initial remedial action within organisations, prior to public disclosure. It would also be beneficial if the broader community understood supply chain challenges prior to a public reporting requirement being enforced.

Businesses may find it advantageous to develop audit processes for modern slavery at the same time as climate change and therefore a level of alignment between the regulatory regimes would be appropriate.

Action, expectations and requirements on governance and organisations need to be proportional to harm

We agree that determining whether an entity's action is reasonable and proportionate could depend on a wide range of factors including the entity's size and resources, the nature of the control or influence the entity has over its supplier, good practice in the entity's sector and the degree and type and scale of harm that could result if no action is taken.

Quality of reporting

Transparent and clear reporting on financial and non-financial information, including on environmental, social and governance (ESG) matters is critical to building and maintaining trust and confidence in corporate governance and financial markets. It is vital that reporting is useful and meaningful, and goes beyond compliance, to help drive strategic thinking and performance. One of the challenges for entities is the myriad of reporting expectations and frameworks. It's essential that there is as much as alignment as possible, in particular with any mandatory requirements such as the incoming climate disclosure standards that are currently being developed.

The reporting requirements for modern slavery need to facilitate transparency and verify completed actions while also tracking overall improvement. We therefore support a level of mandatory minimum criteria for modern slavery reporting to enable appropriate oversight.

We also support a central repository of compliance statements to enable peer-to-peer sharing and learning of best practices.

Conclusion

Modern slavery is a heinous crime that needs to be addressed through global collective action. We therefore support the development of an outcomes focused regulatory approach that encompasses an emphasis on building ethical capability within organisations to allow for a dynamic response to on-going societal challenges.

A successful approach should also result in a system that aligns with global trends in governance best

practice, drives strategic thinking and change and provides for a greater level of meaningful disclosure to stakeholders. It is therefore important to ensure the requirements are proportionate to the size of the entity while ensuring sufficient guidance and encouragement for improvement.

We appreciate the opportunity to comment on behalf of our members.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Guy Beatson', with a long horizontal flourish extending to the right.

Guy Beatson
General Manager
Governance Leadership Centre

A handwritten signature in blue ink, appearing to read 'Susan Cuthbert', written in a cursive style.

Susan Cuthbert
Principal Advisor
Governance Leadership Centre