

TŪHANA

BUSINESS AND HUMAN RIGHTS LIMITED

Productivity Commission Inquiry into Economic Inclusion and Social Mobility – A Fair Chance for All

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Tūhana Business and Human Rights

Tūhana Business and Human Rights works with businesses, government and private and not for profit organisations on responsible business conduct (RBC) issues, including those relating to agricultural supply chains. Over decades of work on business and human rights we have developed a deep understanding of the authoritative international business and human rights frameworks and guidance that governments—including New Zealand’s, have adopted, and agreed to promote to business enterprises, worker organisations and others.

We welcome the Productivity Commission’s Inquiry into Economic Inclusion and Social Mobility – A Fair Chance for All, and appreciate the opportunity to comment on the Commission’s “Improving Economic Resilience – Issues Paper” which aims to identify policies and interventions that can enhance the resilience of the economy and living standards to persistent medium-term supply chain disruptions. Our submission is structured around the questions posed in the Productivity Commission’s Issues paper.

Executive summary

1. New Zealand is reliant on a rules-based international order which includes a rules-based trade system. This is central to New Zealand’s engagement with the United Nations and its agencies such as the WTO, ILO, and Human Rights Council, and with other intergovernmental organisations like the OECD. International rules support exports but also our ability to import critical inputs.
2. New Zealand has limited implementation of the international rules on responsible business conduct (RBC) even though the New Zealand government has supported them and in respect of the OECD RBC standards, agreed to promote them for adoption by New Zealand businesses.
3. New Zealand’s supply chains are at risk if the government and business enterprises do not protect against human rights, including labour rights, abuse within their territory and/or jurisdiction by third parties, by adopting RBC standards. Our labour and health and safety laws may protect people in New Zealand operations, but they do not protect people in the supply chains of those operations.
4. New Zealand businesses are exposed these RBC standards where private companies, like Unilever, require all New Zealand suppliers to meet the standards and/or where national human and labour rights due diligence laws require businesses in jurisdictions, like France, Norway, the Netherlands and Germany, to adopt these standards in business relationships. The EU is currently considering EU- wide laws about RBC.
5. It is not surprising that we are seeing requirements for RBC included in recent trade agreements as our trade partners hold New Zealand businesses responsible to implement the rules that the New Zealand government has committed to promote to New Zealand business.
6. The effects of the COVID-19 pandemic and the Russian war against Ukraine have amplified the need to realise greater resilience in food and fertiliser supply chains and underscored the importance of supply chain diversification including from countries considered high risk.¹

7. Shared RBC standards strengthen supply chain resilience and sustainability, contribute to broader value creation, and foster sustainable development. A lack of clear RBC standards exposes supply chains to risk of greater disruption caused by geopolitical action and boycotts organised by other businesses, or social actors.
8. New Zealand is considered one of the easiest countries in the world for businesses to meet RBC standards relating to their onshore operations, in part because these standards are almost always already a matter of legal compliance. Paradoxically, although there has been bipartisan political support in New Zealand for OECD RBC) standards, including human rights since 2011, the Government has only very recently begun to promote RBC to business in New Zealand.
9. This may be based on common misconceptions that adopting RBC standards is a barrier to free trade, or that there are no human rights or labour rights issues in New Zealand. Consequently, New Zealand businesses are lagging behind their counterparts in many of the 61 states that adhere to OECD RBC guidance.
10. Globally, food and fibre, and mining and extractive businesses are leading the way in the adoption and implementation of RBC guidance. Southeast Asian and South Asian countries and businesses are also making solid progress in their work on RBC.ⁱ
11. Thirteen of the top twenty ranked businesses in the 2022 Corporate Human Rights Benchmark Index are food and agricultural products businesses. Many of them source from, or sell, in New Zealand.
12. A number of large New Zealand businesses in the food and fibre sector have, or are currently, explicitly adopting RBC guidance. The broadest coverage of adoption of RBC standards in New Zealand agricultural production is now found in labour supply companies in viticulture, with significant inroads into labour supply companies in apples and kiwifruit. If New Zealand businesses or business associations consider RBC standards as unnecessary, impractical, costly or “PC” we suggest reviewing the work of New Zealand Ethical Employers as an exemplar in this field.
13. In the New Zealand fertiliser industry, the RBC Guidelines have been adopted by three large fertiliser businesses. They have also, according to publicly available information, been adopted by suppliers of inputs for fertiliser and fertiliser around the world. In some cases, businesses are able to reduce the costs of audit and other means of showing compliance, through adoption of the RBC standards.
14. A significant risk to New Zealand supply chains is the ineffective investigation and prosecution of existing New Zealand laws against forced labour, trafficking in persons, sexual exploitation.ⁱⁱ Such laws are part of the ‘smart mix’ of actions governments are guided to take in the UN Guiding Principles on Business and Human Rights. Part of the Government’s duty

ⁱ W mar Internat ona , a S ngapore based bus ness, wh ch operates n New Zea and and s a supp er to New Zea and agr cu ture was ranked second n the 2022 Corporate Human R ghts Benchmark Index. Word Benchmark ng A nce, Corporate Human R ghts Benchmark: ava ab e [here](#).

ⁱⁱ We wou d be happy to prov de our subm ss on to MBIE on the proposed modern savery and labour exp o tat on eg s at on for further deta .

is to provide effective remedy to those subjected to abuse. The US Government's 2021 Trafficking in Person's report found the New Zealand Government was failing to properly investigate and prosecute laws relating to forced labour and trafficking. As a result, it downgraded New Zealand to Tier 2 in its Trafficking of Persons report.²

15. The New Zealand Government appears to be responding to US Government criticisms of the investigation and prosecution of forced labour and trafficking—an improvement which has been welcomed by New Zealand businesses that have adopted, or are in the process of adopting, RBC guidance. The ability to assure customers of New Zealand food and fibre businesses that labour supply chains are being managed responsibly is critical for customers offshore and onshore that have adopted RBC standards.
16. We would be happy to provide the Commission with more detail on the global businesses operating in New Zealand, or buying New Zealand product that require suppliers to show they are meeting RBC standards. We have assisted small to medium sized New Zealand businesses in labour supply to meet these standards and have also assisted larger New Zealand businesses.
17. We agree with David Skilling's view in his paper prepared for the Inquiry that fertiliser and its mineral and energy inputs are among a small number of strategically important products which should be considered as a supply chain resilience risk (largely because of New Zealand's high import dependency and a lack of options for substitution).³ There are lessons in our WW2 history (discussed below) as to why.
18. We are concerned to ensure the Inquiry considers the OECD Guidelines for Responsible Business Conduct⁴ the Government has accepted, and the Roadmap to Global Food Security –Call to Action⁵ it has endorsed. The Roadmap is now supported by over 103 countries including New Zealand. The International environmental and human rights standards that New Zealand has adopted—or agreed to promote, as baseline RBC standards for New Zealand businesses, are in firmly in scope of the Inquiry because their implementation affects the resilience, efficiency and sustainability of supply chains.

What supply chain disruptions and trends are you worried about?

Sourcing mineral and energy inputs for fertilisers and imported fertilisers

1. The geopolitical and other risks facing New Zealand supply chains require coherent government policy. We stress that this does not mean avoiding trading with countries. It means understanding the adverse human impacts on people that trade between businesses may be causing, contributing to, or linked to by a business relationship, and taking steps to prevent or mitigate that harm.
2. The Commission's work should consider the risk of incoherent government policy (investment, trade support, government procurement, foreign policy etc.) and the risk of unintentional consequences of siloed, or biased thinking by banks, investors or sustainability rating agencies

focused on ESG methodologies which are not grounded in the UNGP and in particular the “smart mix” encouraged by UNGP 3.⁶

3. We are concerned by an apparent absence of cross-governmental understanding of supply chain resilience in New Zealand related to critical minerals needed for agribusiness that cannot be sourced domestically.
4. MBIE has studied “critical minerals” that might be mined in New Zealand but there has not been a similar study undertaken on the “critical minerals” for New Zealand’s export industries. We understand that this work is now underway. David Skilling also notes that fertiliser may be an area where explicit supply chain risk management could be an option. An option prior to such a step would be a more “NZ Inc” approach along the lines of the smart mix of measures contemplated in UNGP 3.⁷
5. In particular, we support the following observations in David Skilling’s paper:
 - a. That decarbonising industry through the use of green hydrogen would significantly reduce New Zealand’s exposure to the import of liquid fuels (as well as coal and other energy imports) and that a supply chain perspective strengthens the argument for a more rapid electrification/decarbonisation process.⁸
 - b. That New Zealand’s exports which contain imported fertiliser inputs are an area of exposure to upstream supply chain disruption because of high import dependency.⁹
 - c. That “there is a potential role for government in supporting firms” to take additional actions to ensure resilience against supply chain shocks. This is precisely sort of “smart mix” approach recommended by the UNGP. We support the suggestion that “New Zealand’s government and businesses should be looking for opportunities to work with friends to ‘bulk up’ in ways that strengthen its resilience to supply chain shocks.”¹⁰
6. The concerns David Skilling raises regarding “aggressive economic sanctions being imposed on China” or Western importers being under pressure to “substantially reduce imports from China”¹¹ are mitigated in relation to food and fertiliser by the Roadmap for Global Food Security).

Food Security

7. Understanding and mitigating disruptions in global food and fertiliser supply chains disruptions is critical to improving global food security (the price and availability of food).¹² Over the last three years, the Covid-19 pandemic has affected food and agricultural inputs supply chains all over the world. New Zealand farmers, growers and other agribusinesses have coped with that disruption. The Russia–Ukraine war and related sanctions and boycotts on trade in food and fertiliser had negative socioeconomic and human impacts internationally. Basic human rights like the right to adequate food have been implicated. The Roadmap for Global Food Security is a response to these disruptions. Discouraging sanctions, boycotts and unjustified trade restrictions on food and key inputs for food in consistent with the Roadmap.
8. Global food security is threatened particularly in the Middle East, Africa and parts of Asia that rely on food imports. Conflict-related disruptions in global food and fertiliser markets affect price

and availability of critical agricultural inputs. A regional conflict in the Pacific or anywhere on which New Zealand is reliant on for key inputs would be significant for New Zealand supply chains.

9. In this context, food security must include supply chain resilience in the availability, price and sustainability of inputs for fertiliser for NZ agriculture.

How can the government help to enhance the resilience of your industry/community to supply chain disruptions?

Promote Responsible Business Conduct Guidance

1. The New Zealand government has agreed as a member of the OECD Council to promote to New Zealand business RBC standards. This includes standards relevant to mineral and agricultural supply chains.
2. Further action is needed by the government to demonstrate its commitment to these standards. The Productivity Commission should seek a briefing from MBIE on the current status and findings of the OECD Peer Review of New Zealand's National Contact Point (relating to the promotion of the NZ governments adoption of the OECD RBC standards and the related grievance mechanism).
3. To ensure that RBC principles and standards effectively enhance global resilience, it is essential to maintain their integrity by applying them consistently across regions and supply chains. Although the conflict between Russia and Ukraine is unique, conflict is a recurring feature affecting many other regions which are part of global value chains. RBC is crucial in reducing conflict-related negative effects and other systemic risks in order to enable businesses to continue to operate and contribute to sustainable development in high-risk areas, where appropriate.¹³

What should the Commission study to learn more about the economic resilience of industries and communities?

International environmental and human rights standards

1. The International environmental and human rights standards that New Zealand adopted or agreed to promote as baseline standards for responsible business conduct for New Zealand businesses are in scope of the Inquiry.

2. New Zealand has since 2011, when a human rights chapter was adopted, repeatedly reaffirmed its commitment to OECD RBC standards and to promote them to New Zealand business. These standards are set out in the Recommendation and Declaration noted below and in many similar documents that New Zealand has been party to since 2011. Since 2011 successive New Zealand governments have largely failed to promote RBC guidance to businesses and within the Government.¹⁴ There has been a general lack of awareness that RBC guidance is guidance for businesses concerned about social licence to operate.¹⁵

The link between RBC standards and trade agreements is not that the RBC standards are a soft trade barrier. The standards are voluntary, however concern that businesses are not adopting the voluntary RBC standards is resulting in nations and regional bodies passing laws requiring compliance with RBC standards. In particular we draw the Commission's attention to the following:

- a. The **OECD Declaration on Transformative Solutions for Sustainable Agriculture and Food Systems**¹⁶ (November 2022) and the related OECD and FAO guidance and the references to sustainable and efficient supply chains and responsible business conduct.
 - b. The **OECD Council Recommendation on the Role of Government in Promoting Responsible Business Conduct**¹⁷ (December 2022) and the **OECD Declaration on Promoting and Enabling Responsible Business Conduct in the Global Economy**¹⁸ (15 February 2023) on the occasion of the Ministerial Meeting on Responsible Business Conduct (RBC).
3. Both the Recommendation and the Declaration above were developed through extensive consultation and an iterative process by the 61 Adherent countries, including New Zealand, to the OECD Investment Declaration (including 13 non-OECD Member country Adherents), and benefitted from inputs from institutional stakeholders (BIAC, TUAC, and OECD Watch). Business New Zealand is affiliated to BIAC and the NZCTU is affiliated to TUAC. A two- year process to strengthen the guidance will end this year.
 4. **The Roadmap for Global Food Security–Call to Action**¹⁹ first formulated in May 2022 is now supported by over 103 countries including New Zealand. The actions in the Roadmap are designed to provide immediate humanitarian assistance, build resilience of those in vulnerable situations, support social protection and safety nets, and strengthen sustainable, resilient, and inclusive food systems.
 5. The parties to the Roadmap noted the 2022 Global Report on Food Crises indicated the number of people facing acute food insecurity greatly increased from 135 million in 2019 to 193 million in 2021 in the 53 countries²⁰ most in need of assistance, and that nearly 40 million people across 36 of the 53 countries experienced emergency levels of acute food insecurity, just one step away from famine.
 6. History tells us that trade sanctions and/or boycotts almost never have the intended outcome.²¹ This is one of the reasons why boycotts or ceasing trade is very much discouraged in RBC guidance. The UNGP and related RBC guidance are largely standards relating to the engagement in business responsibly. The situations in Myanmar, Russia and Ukraine have sharpened thinking on where disengagement is irresponsible.

Annex 1: Relevant OECD standards and documents on responsible business conduct (RBC)

- [UN Guiding Principles on Business and Human Rights \(UNGP\)](#)
- [OECD Guidelines for Multinational Enterprises \(MNE Guidelines\)](#) provide principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards.
- [OECD Due Diligence Guidance for Responsible Business Conduct](#) provides plain-language explanations of the MNE Guidelines' due diligence recommendations to help enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships.
- [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#) provides detailed recommendations to help companies respect human rights, prevent corruption and financial crime and avoid contributing to conflict through their mineral purchasing decisions and practices.
- [OECD-FAO Guidance for Responsible Agricultural Supply Chains](#) was developed to help enterprises observe standards of responsible business conduct and undertake due diligence along agricultural supply chains in order to ensure that their operations contribute to sustainable development.
- [Responsible Business Conduct in the Financial Sector](#) highlights that promoting RBC in the financial sector is vital to building a sustainable global economy, though certain characteristics of the sector, including diverse and extensive business relationships, a complex landscape of regulatory obligations, and the nature of various transactions, can make the practical application of effective due diligence systems challenging. The OECD Centre for RBC has worked to operationalise RBC due diligence for different financial transactions and actors through developing fit-for-purpose guidance.
- [OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector](#) provides practical guidance to mining, oil and gas enterprises in addressing the challenges related to stakeholder engagement related to social, economic and environmental impacts.
- [Frequently Asked Questions: How to address bribery and corruption risks in mineral supply chains](#) provides practical answers on how companies can identify, prevent, mitigate and report on risks of contributing to bribery and corruption through their mineral sourcing.

Endnotes

¹ *Responsible business conduct implications of Russia's invasion of Ukraine, 23 March 2023*, available [here](#).

² US Department of State: 2022 Trafficking in Persons Report: New Zealand, available [here](#). See also, Radio NZ, “*New Zealand not doing enough to stop trafficking, US report says*” available [here](#).

³ Skilling David, *Supply chains to the last bus stop on the planet: An international perspective on strengthening New Zealand's supply chain resilience*, December 2022, pp. 22, 28.

⁴ OECD Due Diligence Guidance for Responsible Business Conduct, available [here](#).

⁵ See Chair's Statements (May 2022) available [here](#); and [here](#) (June 2022). Countries endorsing the roadmap as of June 2022 were Albania, Angola, Argentina, Australia, Austria, Bahrain, Belgium, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canada, Cape Verde, Chad, Colombia, Croatia, Cyprus, the Czech Republic, Côte d'Ivoire, the Democratic Republic of the Congo, Denmark, Djibouti, the Dominican Republic, Ecuador, Egypt, Estonia, Eswatini, the European Union, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Italy, Japan, Jordan, Kenya, Kiribati, Kosovo, Kuwait, Latvia, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Mauritania, Mauritius, Mexico, Micronesia, Moldova, Montenegro, Morocco, the Netherlands, New Zealand, Niger, Nigeria, North Macedonia, Norway, Oman, Peru, the Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Samoa, San Marino, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, Spain, Suriname, Sweden, Switzerland, Timor-Leste, Trinidad and Tobago, Tunisia, Turkey, Ukraine, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen, and Zambia.

⁶ UNGP 3 provides that to fulfil their duty to protect, states need to use a range of approaches. The commentary to UNGP 3 says that states “should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.” States should go beyond enforcing existing laws to “periodically assess the adequacy of such laws and address any gaps” in light of evolving circumstances. A smart mix approach does not simply assume that because a law has been passed the issue is dealt with. We need to see evidence that the law is being used by the government. Available [here](#).

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⁸ Skilling David, *Supply chains to the last bus stop on the planet: An international perspective on strengthening New Zealand's supply chain resilience*, December 2022, p. 28.

⁹ Ibid, pp. 20, 21.

¹⁰ Ibid, p. 27.

¹¹ Ibid, p. 21.

¹² Ben Hassen T, El Bilali H. *Impacts of the Russia-Ukraine War on Global Food Security: Towards More Sustainable and Resilient Food Systems*. *Foods*. 2022; 11(15) :2301, available [here](#).

¹³ OECD. *Responsible business conduct implications of Russia's invasion of Ukraine* [here](#)

¹⁴ See MBIE reports to OECD 2016 to 2020, including on promotion of RBC standards in at "New Zealand Annual Reports to the OECD, available [here](#). MBIE should also be able to provide the 2012 to 2015 reports.

¹⁵ Sustainable Business Council, *Social Licence to Operate Paper, 2013*, available [here](#).

¹⁶ [Declaration on Transformative Solutions for Sustainable Agriculture and Food Systems](#).

¹⁷ [Recommendation on the Role of Government in Promoting Responsible Business Conduct](#).

¹⁸ [Declaration on Promoting and Enabling Responsible Business Conduct in the Global Economy](#).

¹⁹ *Chair's Statement: Roadmap for Global Food Security—Call to Action*, 19 May 2022, available [here](#) and *Chair's Statement: Roadmap for Global Food Security—Call to Action*, 24 June 2022, available [here](#). Countries endorsing the roadmap as of June 2022 were Albania, Angola, Argentina, Australia, Austria, Bahrain, Belgium, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canada, Cape Verde, Chad, Colombia, Croatia, Cyprus, the Czech Republic, Côte d'Ivoire, the Democratic Republic of the Congo, Denmark, Djibouti, the Dominican Republic, Ecuador, Egypt, Estonia, Eswatini, the European Union, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Italy, Japan, Jordan, Kenya, Kiribati, Kosovo, Kuwait, Latvia, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Mauritania, Mauritius, Mexico, Micronesia, Moldova, Montenegro, Morocco, the Netherlands, New Zealand, Niger, Nigeria, North Macedonia, Norway, Oman, Peru, the Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Samoa, San Marino, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, Spain, Suriname, Sweden, Switzerland, Timor-Leste, Trinidad and Tobago, Tunisia, Turkey, Ukraine, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen, and Zambia.

²⁰ The countries most in need of assistance were: Afghanistan, Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, Colombia (Conflict-affected areas), Comoros, Congo, Democratic People's Republic of Korea, Democratic Republic of Congo, Djibouti, Egypt, El Salvador (Dry Corridor), Eswatini, Ethiopia, Gambia, Ghana, Guatemala (Dry Corridor), Guinea, Guinea-Bissau, Haiti, Honduras (Dry Corridor), India (Conflict-affected states, Floods in Assam, Bihar, and Uttar Pradesh), Indonesia (Conflict-

affected areas, Floods in Greater Jakarta, Maluku and North Maluku, and Nusa Tenggara Timur), Iran (Islamic Republic of), Iraq, Kenya, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Namibia, Nicaragua (Dry Corridor), Niger, Nigeria, Pakistan, Palestine, Philippines (Conflict-affected areas, Impact of Typhoons and Floods), Rwanda, Sao Tome and Principe, Sierra Leone, Somalia.

²¹ "Sanctions: The Economic Weapon" David Cortright and George A. Lopez; "Backfire: How Sanctions Reshape the World Against U.S. Interests", Agathe Demarais.