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National Security Group
Department of the Prime Minister and Cabinet
Level 8 Executive Wing, Parliament Buildings
Wellington 6011

SUBMISSION ON THE DISCUSSION DOCUMENT "STRENGTHENING THE RESILIENCE OF AOTEAROA NEW ZEALAND'S CRITICAL INFRASTRUCTURE SYSTEM"

Summary

1. Woolworths New Zealand Limited ("**WWNZ**") appreciates the opportunity to provide feedback on the discussion document "[Strengthening the resilience of Aotearoa New Zealand's critical infrastructure system](#)" ("**Discussion Document**"), the first discussion document released as part of the Department of the Prime Minister and Cabinet's ("**DPMC**") resilient critical infrastructure system work programme ("**Work Programme**"). Recent events have shown how critically important it is to New Zealand that key sectors are able to continue operations during a disaster. Embedding resilience in the system is essential to ensure that New Zealand is best prepared into the future.
2. WWNZ is supportive of the work being undertaken by DPMC and the Work Programme's objective of enhancing "the resilience of New Zealand's critical infrastructure system to all hazards and threats, both natural (such as earthquakes and floods) and man-made (such as cyber security incidents and espionage)".¹
3. WWNZ operates a complex business which employs around 22,000 people across 190 Countdown and Woolworths stores, 72 franchised FreshChoice and SuperValue stores, six distribution centres, online fulfilment centres and support offices. WWNZ partners with more than 1,400 suppliers and makes over 250,000 deliveries per year, with its drivers travelling more than 12 million kilometres a year to keep stores stocked. WWNZ is also part of the Woolworths Group, which has a significant presence in Australia (over 1,000 supermarkets and 179 Big W stores nationwide). Woolworths Group has been involved in similar critical infrastructure protection initiatives and legislation in Australia.
4. WWNZ broadly supports the Discussion Document's inclusion of food and grocery providers as entities that provide essential services in New Zealand.² Our sector plays a crucial role providing groceries to people all around New Zealand, and it is broadly appropriate the sector is recognised as critical infrastructure, as it is in Australia. Distribution centres, in particular, play an important role in the supply chain. WWNZ operates six distribution centres across New Zealand that run at scale to ensure efficient delivery of goods to stores.

¹ Discussion Document, p 7.

² Discussion Document, p 7.

5. WWNZ appreciates the need to prepare for threats and hazards, and supports measures to enable WWNZ and other food and grocery providers to continue to supply groceries to communities throughout New Zealand in times of disruption. WWNZ has first-hand experience in dealing with many of the challenges posed to New Zealand's critical infrastructure in recent years.
6. WWNZ's recent experience during the Christchurch Earthquake, Kaikoura Earthquake, COVID-19 pandemic, Auckland floods and Cyclone Gabrielle, has highlighted the interdependent nature of all aspects of New Zealand's critical infrastructure system. Disruptions to energy, telecommunications and transport infrastructure in particular have an flow on effect on WWNZ's operations. WWNZ supports the drive to raise resilience across New Zealand's whole critical infrastructure system and improve information sharing to ensure that critical infrastructure entities have visibility over any interdependent assets (ie. ports, roads, freight carriers) that are impacted by an emergency.
7. WWNZ endorses the Discussion Document's recommendation for alignment with existing legislation to ensure that any regime addressing the resilience of critical infrastructure is efficient and focuses investment where it is most needed. WWNZ understands that legislative alignment will be considered in another discussion document forming part of the Work Programme.³
8. As well as recognising the need to align with resource management, emergency management and climate change legislation, this aspect of DPMC's Work Programme will need to identify other relevant legislation, in particular other regulatory regimes that a critical infrastructure entity may already be subject to (for example, the Grocery Industry Competition Act 2023 ("**Grocery Act**")). Alignment with existing legislation will be important to ensure consistency and to maximise synergies with existing legal requirements and to ensure that any new monitoring obligations do not duplicate other monitoring obligations (for example, under the Grocery Act).
9. The cost of strengthening resilience is an important aspect to consider as part of the Work Programme. It is important to ensure that these costs are proportionate to the associated resilience improvements and appropriately distributed around the economy.
10. With respect to the national security risks and need for monitoring and enforcement raised in the Discussion Document, WWNZ considers:
 - (a) the Australian Security of Critical Infrastructure Act 2018 should be used as a model for the New Zealand approach to government intervention in cases of national security risks, as it strikes an appropriate balance by allowing Government intervention as a last resort;⁴ and
 - (b) compliance with the requirements for critical infrastructure must be monitored and enforced for reform to be effective.⁵

WWNZ's Resilience Team

11. WWNZ has a team of dedicated, in-house resilience specialists, who are focused on improving WWNZ's processes and response across a range of critical risk factors, from stock replenishment to cyber security. This includes building resilience to natural disasters. WWNZ

³ Discussion Document, p 8.

⁴ Discussion Document, p 43.

⁵ Discussion Document, pp 44 - 46.

has developed considerable expertise in emergency response and implementation of business resilience measures.

12. WWNZ's resilience systems came to the fore in the COVID-19 lockdowns. Throughout the COVID-19 pandemic the WWNZ teams continually learnt from experience and then adapted processes to implement those learnings. This flexibility enabled us to continue to supply essential food and groceries to the people of New Zealand, and ensured that WWNZ was prepared for, and could respond effectively to, future waves of COVID-19.

Grocery sector as critical infrastructure

13. The Discussion Document recognises food and grocery providers as entities that provide essential services in New Zealand.⁶ Many parts of the grocery sector may meet the description of "critical infrastructure" set out in the Discussion Document⁷ as the sector involves assets, systems, networks, and services that are essential to the functioning of society and to New Zealand's safety, security, and economy. In our operating model, distribution centres play a particularly critical role, as these are the hubs through which the vast bulk of our products are channelled through to supermarkets.
14. Certain food and grocery categories supplied by WWNZ to its customers are essential goods - these include fresh and long-life products, water, pet food, cleaning products, potable water and personal care products. Ensuring the supply of food and grocery categories is fundamental to the functioning of society. This was seen most recently during the Auckland Floods, Cyclone Gabrielle and the COVID-19 lockdowns, where supermarkets continued to provide essential goods to affected communities.
15. In a crisis, WWNZ has the breadth of capacity, access to resources, and the capability to effectively deliver the food and potable water to communities in need (providing roads are open). The same capabilities that enable WWNZ to distribute grocery goods efficiently outside of emergencies enables WWNZ to understand the most effective way to move the most goods possible when resources are constrained (which they inevitably are in a crisis). WWNZ also has the benefit of a centrally coordinated national network, which allows it to reallocate resources to different priorities depending on the nature of a hazard or threat.
16. For example, there was widespread impact to supermarkets in affected areas following the Auckland Floods and Cyclone Gabrielle. Transport carriers were not able to access the Coromandel, Gisborne, Hawkes Bay and Raglan due to road closures. This impacted eight of our stores, with some of these stores being the only supermarkets in their respective communities.
17. WWNZ worked closely with the National Emergency Management Agency, Civil Defence agencies and Waka Kotahi New Zealand Transport Agency to move significant amounts of food and water to supply cut-off communities, such as Gisborne, at short notice. WWNZ was able to reopen its Gisborne store with cash-only transactions, while working with government agencies and other stakeholders to restore EFTPOS machines as fast as possible. WWNZ also worked closely with the New Zealand Police to ensure team and customer safety throughout this time.
18. To supply Napier / Hastings with essential goods during the first critical days of the crisis, WWNZ trucks delivered approximately 150 tonnes of groceries the first day and 250 tonnes of groceries each day for the second and third days following Cyclone Gabrielle.
19. The Discussion Document proposes that certain critical infrastructure that have a number of connections with other critical infrastructure, and are therefore crucial to the overall stability of

⁶ Discussion Document, p 7.

⁷ Discussion Document, p 11.

the infrastructure system, be identified as significant critical infrastructure.⁸ The Discussion Document raises the potential for additional, more stringent requirements to apply to significant critical infrastructure.⁹ WWNZ supports this proposal.

20. While food and grocery supply chains are dependent on other infrastructure, other types of critical infrastructure are not typically reliant on supermarkets, so the flow-on effects of disruption to food and grocery infrastructure on other critical infrastructure are likely to be relatively limited. Therefore, although WWNZ considers food and grocery infrastructure to be critical infrastructure, most aspects of the food and grocery supply chain would likely not be considered to be significant critical infrastructure. However, food and grocery distribution centres could be considered to be significant critical infrastructure, depending on how this term is defined, and the appropriateness of any associated requirements and / or criteria. WWNZ understands that there will be further opportunity to consider the categorisation of significant critical infrastructure at a later stage in the Work Programme.
21. WWNZ supports the recognition in the Discussion Document of this interdependence, and the need to address risks of disruption in one sector cascading and degrading services in another.¹⁰

Principles underpinning DPMC's Work Programme

22. WWNZ supports the Work Programme principles set out in the Discussion Document, such as:¹¹
 - (a) *Resilience measures are intended to apply to all critical infrastructure, irrespective of ownership.*¹² WWNZ agrees that there should not be a distinction between public and private critical infrastructure in the context of resilience and emergency management.
 - (b) *Critical infrastructure entities are best placed to understand and manage the risks facing their organisations, but the Government can assist through raising awareness of hazards and threats, supporting critical infrastructure entities to make rational investments, and providing minimum standards in areas where market forces do not deliver the optimal level of resilience.*¹³ WWNZ considers this is a sensible approach as over-regulation can lead to inefficiencies and ineffectiveness, thus undermining the key objectives of the Work Programme. Targeted Government assistance will assist critical infrastructure entities in investing in, and implementing, measures the entity sees as necessary to deliver an optimal level of resilience.
 - (c) *Resilience should be enhanced at the least cost to businesses, consumers, and government by using non-regulatory mechanisms where possible and taking advantage of existing sector-based regulatory regimes wherever possible.*¹⁴ In WWNZ's view it is important to ensure critical infrastructure entities are not subject to duplicative regimes or unnecessary regulation, and the additional cost to businesses, consumers and governments are kept at a minimum. The need to align with other legislation is discussed further below.
23. The Government has proposed three criteria for the next phase of the Work Programme, which WWNZ understands will be the identification of specific options for amending New Zealand's

⁸ Discussion Document, p 36.

⁹ Discussion Document, pp 36 - 39.

¹⁰ Discussion Document, p 13.

¹¹ Discussion Document, pp 8 - 9.

¹² Discussion Document, p 8.

¹³ Discussion Document, p 8.

¹⁴ Discussion Document, p 9.

regulatory and organisational settings for critical infrastructure resilience, and testing these options against this criteria. These criteria are:¹⁵

- (a) the effectiveness of an option in enhancing resilience;
- (b) the regulatory burden on critical infrastructure entities that an option would impose (as any increase in regulatory burden will result in increased cost for end-users and government, and / or lower quality services); and
- (c) the impacts on the complexity of the regulatory system of an option (and consequently the impact on the cost to Government).

24. WWNZ supports the use of these option criteria in the next phase of the Work Programme.

Costs

25. The Discussion Document suggests that the near-term costs of strengthening resilience should be shared between shareholders, employees, customers and Government.¹⁶ However, the allocation of these costs (by proportion, and over time) will need to be carefully considered as part of the Work Programme. WWNZ supports the Discussion Document's identification of compliance burden as a criterion for assessing options and suggests that the following factors should be taken into account as part of this assessment:

- (a) the distribution of costs across Government (local and central) and industry;
- (b) any distorting effect that the proceeding with a particular option could have on markets;
- (c) the extent to which the option incentivises investment in greater resilience (for example, through tax credits, or a greater commitment to Government support following a disaster for businesses who have chosen to invest); and
- (d) the overall cost of the option, and as noted in the Discussion Document, the extent to which proceeding with a particular option may increase prices for customers.¹⁷

26. For example, significant costs may arise from any increase in seismic rating requirements for buildings associated with critical infrastructure. If regulations required existing supermarkets and distribution centres to be retrofitted to meet Level 3 on the Building Importance Scale of the Building Code, this would add significant cost. However, if a new Level 3 requirement was introduced over time and only for new builds, compliance costs would likely be lower. There is little point in building a highly resilient (eg Level 3) supermarket building if there is no electricity, telecommunications or transport links for supply.

Alignment with other legislation

27. WWNZ applauds the intent of the Discussion Document to minimise the potential burden and timing of any new regulatory requirements that may arise as a result of the Work Programme.¹⁸ This includes recognition that many critical infrastructures are already performing well and may not have to significantly increase their expenditure to meet any new requirements, and the proposal to time the introduction of any new regulatory requirements to align with businesses' existing investment plans, to the extent possible.¹⁹

¹⁵ Discussion Document, pp 9 - 10.

¹⁶ Discussion Document, p 25.

¹⁷ Discussion Document, p 25.

¹⁸ Discussion Document, pp 25 - 26

¹⁹ Discussion Document, p 26.

28. WWNZ agrees with the Work Programme objective to enhance "alignment between other regulatory regimes relevant to critical infrastructure resilience, including (but not limited to) resource management, emergency management, and climate change response".²⁰ Other legislation in addition to those aforementioned, for which alignment will be important, include regulatory regimes that a critical infrastructure entity may already be subject to.
29. Many of the sectors involving critical infrastructure are already highly regulated under other legislation. This includes the grocery sector, which is now regulated by the Grocery Act and related legislation. Alignment with applicable legislation will also be important to ensure consistency and to create synergies between existing legislation and any new legislation. There is potential to, for example, use similar definitions to simplify compliance for relevant entities. In the case of supermarkets, the existing concept of a "regulated grocery retailer" (from the Grocery Act) could be used, if appropriate, to define who within the food and grocery sector must comply with critical infrastructure requirements.²¹
30. Another area where overlapping regimes could apply is information sharing. WWNZ supports the Government's view, expressed in the Discussion Document, on the importance of a shared understanding of hazards and threats between government and critical infrastructure entities in order to enhance resilience.²² WWNZ agrees there is a need for greater information sharing, despite the success of tools like advisories, alerts and cyber defence services provided by CERT NZ and the GCSB's National Cyber Security Centre.²³
31. Similarly, there would be efficiency benefits for captured entities if disclosure requirements between existing legislation and new legislation supporting infrastructure resilience were aligned (to the extent that this is possible and appropriate). In the grocery sector, for example, it may be helpful to align any disclosure requests with those already being made by StatsNZ and the Commerce Commission, to the extent possible.
32. In WWNZ's view, leveraging and aligning with existing legislative requirements will allow the greatest efficiencies within the emergency management and resilience system. This will enable investment to be focussed where it can be best utilised, into improvements which enhance resilience.
33. As well as maximising regulatory alignment, WWNZ suggests that the Work Programme should focus on ensuring that sector-specific regulation provides adequate certainty to businesses and does not impose requirements that undermine investment in resilient infrastructure. For example, significant regulatory uncertainty arose when forced divestment of supermarkets was being actively considered. The concept of forced divestment in the grocery sector raised supply chain resilience concerns, as the existing model has proved essential during times of crisis (for example, through adjustments of store stock allocations, optimising deliveries, enforcing purchase limits, working with suppliers, and moving team members to other parts of the business). It is important that sector-specific regulation is consistent with any resilience-enhancing regulation developed as part of the Work Programme.
34. Grocery providers like WWNZ need to have visibility of any interdependent assets (such as ports, roads, freight carriers) that are impacted by an emergency. This includes how service disruption may cascade across the infrastructure system and the vulnerabilities that it may create for other sectors. Scenario planning and evaluation of outcomes from actual events offer a practical way to identify key information to share. This could form part of a programme to test resilience and run scenarios.

²⁰ Discussion Document, p 8.

²¹ Grocery Act, section 5.

²² Discussion Document, pp 28 - 32.

²³ Discussion Document, p 28.

35. An issue in the aftermath of Cyclone Gabrielle was the lack of robust information on whether or not roads were open for convoys. There was differing information being provided by the transport companies and Waka Kotahi New Zealand Transport Agency, which made coordination challenging. Training exercises that involve key stakeholders from the private and public sectors may help to resolve these issues. Contrastingly, COVID-19 provided a good example of various critical infrastructure entities working together effectively, sharing information and providing mutual assistance. WWNZ worked collaboratively with other critical infrastructure (such as electricity infrastructure providers) in order to plan for future waves of COVID-19 and minimise the potential impacts on the New Zealand food supply.
36. Additionally, to ensure the critical infrastructure resilience system is efficient and coherent, it is important that any information-sharing regime is aligned with the requirements on critical infrastructure entities under other legislation, such as those relating to privacy and competition law. An official system for information sharing would assist given competition law concerns that arise from direct information sharing between competing businesses.

Other comments

Proportionate resilience requirements

37. WWNZ agrees it is important that critical infrastructure entities meet a minimum level of resilience.²⁴ To ensure the regime is efficient and effective, it is critical that any resilience requirements imposed are proportionate to the type of entity and risk involved. As a result of the diversity in the types and ownership of critical infrastructures, prescriptive requirements would be unnecessarily complex to develop and enforce and are likely to place unnecessary compliance costs on the organisations subject to such requirements.
38. Instead, WWNZ supports a mix of principle- and process-based resilience requirements. This would take the form of resilience principles that must be met by each critical infrastructure entity and set processes that must be adopted for key requirements. WWNZ envisages New Zealand could adopt an approach similar to the Australian Security of Critical Infrastructure Act 2018, which includes requirements to identify risks to critical infrastructure, create and comply with a risk management programme, and submit an annual report on the risk management approach.
39. WWNZ also supports the option outlined in the Discussion Document to ensure that any resilience reform accounts for regulatory equivalence between overlapping regimes and / or empowers existing sectoral regulators to monitor and enforce any new requirements applied across the critical infrastructure system.²⁵

Government intervention in case of national security risks

40. WWNZ considers the Australian Security of Critical Infrastructure Act 2018 should be used as a model for the New Zealand approach to government intervention in cases of national security risks.
41. WWNZ believes that the Australian regime strikes an appropriate balance between empowering the Government with "last resort" powers, to be used in extraordinary circumstances (with direction powers for all types of national security risks, and intervention powers for cyber-related risks), while safeguarding the use of Government powers, including through criteria for the exercise of the direction power, consultation requirements and review rights.

²⁴ Discussion Document, pp 33 - 34.

²⁵ Discussion Document, p 38.

42. Further, it is important for emergency agencies to maintain a good understanding of critical infrastructure operations to reduce the risk of operational issues when infrastructures face hazards or threats. WWNZ is open to collaborating with emergency agencies to increase their understanding of the WWNZ business, and to develop a range of options that could be implemented as required.

Monitoring and enforcement

43. WWNZ considers compliance with the requirements for critical infrastructure must be monitored and enforced for reform to be effective.²⁶ Without monitoring and enforcement, there is a risk that some providers of critical infrastructure will choose to invest less in resilience than their competitors to provide a short-term competitive advantage through cost savings, to the long-term detriment of New Zealand.
44. In our view, any decision to impose individual liability for breaches of critical infrastructure-related laws should not be taken lightly. Penalties that are imposed on body corporates are successfully used as deterrents in many other regulatory regimes. While WWNZ understands that individual liability would provide an extra incentive to comply, businesses with critical infrastructure obligations are likely to be very complex by their nature, and therefore, breaches of obligations may not be attributable to an (or a few) individual(s). Individual liability may be excessive especially when the regulatory regime is new and may not be entirely well understood by the entities to whom it applies. The risk of individual liability may also deter skilled individuals from working for businesses that are subject to critical infrastructure obligations. This would create issues in attracting important talent to these organisations.

Shipping

45. The COVID-19 pandemic created significant challenges for the grocery supply chain. Another global event, particularly in a different geopolitical context, could lead to some shipping lines bypassing NZ. Moreover, a significant domestic event such as a major earthquake, an event that disables a distribution centre, or significant disruption to roading or train networks would make coastal freight capacity critical to enabling food supply to stores.
46. Some domestic capacity for additional shipping following a major domestic or international event would support ongoing resilience. WWNZ understands that there has been some Government investment in coastal shipping but it is unclear if this will be effective, as the new solutions that have been created do not appear to deliver the core service needs of Auckland, Tauranga and Christchurch.

Consistent Assessment of Seismic Risk

47. At times, there appears to be a wide range of possible engineering assessments of seismic risk for the same property. Greater consistency between engineers will be needed to ensure sufficient certainty exists before investing in critical infrastructure.

Conclusion

48. The objective of the Work Programme to enhance the resilience of New Zealand's critical infrastructure is of vital importance. This first Discussion Document provides an excellent base for further workstreams to identify and implement options for amending New Zealand's regulatory and organisational settings for critical infrastructure resilience. We would welcome the opportunity to discuss this submission and assist the DPMC with developing and delivering resilience proposals and reform.

²⁶ Discussion Document, pp 44 - 46.