

SUBMISSION ON

Worker Protection (Migrant and Other Employees) Bill

1 December 2022

To: Education and Workforce Select Committee

Name of Submitter: Horticulture New Zealand

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OVERVIEW

Submission structure

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Our submission

Horticulture New Zealand (HortNZ) is an industry good organisation working in the interests of its members (commercial fruit, vegetable and berry growers). HortNZ thanks the Education and Workforce Select Committee for the opportunity to submit on the Worker Protection (Migrant and Other Employees) Bill. We welcome any opportunity to discuss our submission.

HortNZ's position is set out in our submission below.

HortNZ wish to make an oral submission to the select committee.

HortNZ's Role

Background to HortNZ

HortNZ represents the interests of 5,500 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruit, and vegetables. The horticultural sector provides over 40,000 jobs, and has a value of 6.95 bn.

There is approximately, 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown for consumption by kiwis.

HortNZ's purpose is to create an enduring environment where growers thrive. This is done through enabling, promoting and advocating for growers in New Zealand.

Executive Summary

HortNZ supports the intention of this Bill to improve compliance and enforcement legislation to deter employers from exploiting migrant workers.

There are seasonal workforce peaks associated with specific horticultural activities, such as harvesting vegetables, fruit picking and pruning. These seasonal employment peaks are part of natural cycle of growing fruit and vegetables. In New Zealand we mostly consume and export unprocessed fruit and vegetables. The perishable nature of these foods, mean that packing and transportation is time sensitive.

Growers are committed to respecting and supporting the dignity, well-being and human rights of their employees and all those who we engage with and whose lives we impact through our supply chain.

We have the following specific comments:

- Ensure there is reasonable grounds for inspection
- Provide for regulatory recognition of assurance schemes such as GAP schemes, which could support the intention of this Bill in an efficient manner.
- Ensure there is a right of appeal

Submission

1. Horticultural Workforce

The horticulture sector provides essential work in the regions with on-the-job training and skills development, which help shape the lives of thousands of New Zealanders every year.

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Most employees in the horticulture sector are New Zealanders. RSE scheme workers make up approximately one third of the seasonal workforce. Work visa holders also make an important contribution.[†]

Our industry has zero tolerance for poor employment practices. Businesses with poor employment practices put our whole sector at risk.

Growers are committed to respecting and supporting the dignity, well-being and human rights of their employees and all those who we engage with and whose lives we impact through our supply chain.

RECOGNISED SEASONAL EMPLOYERS

The RSE² scheme is New Zealand's world class temporary migration scheme which encompasses pastoral care and accommodation.

The RSE scheme was launched in 2007 to help the NZ horticulture and viticulture sectors supplement its local workforce when vacancies were unable to be filled. Employers apply to Immigration NZ to be granted RSE employer status, and following this, apply for an ATR allowing them to recruit workers from offshore to perform planting, maintenance, harvesting and packing. Immigration NZ oversees and manages the RSE scheme.

The RSE Scheme is being reviewed. The horticulture sector is committed to working with our government and the nations that are part to the RSE scheme to ensure the scheme remains world-leading and provides opportunities and

¹ Recognised Seasonal Worker Survey 2020 (www.nzkgi.org.nz/wp-content/uploads/2020/07/RSE-Doc-June-2020-WEB-FINAL.pdf)

² [About the RSE scheme | Horticulture New Zealand – Ahumāra Kai Aotearoa \(hortnz.co.nz\)](http://About the RSE scheme | Horticulture New Zealand – Ahumāra Kai Aotearoa (hortnz.co.nz))

benefits to workers and businesses as well as building positive reciprocal relationships between New Zealand and the participating RSE nations.

2. Worker Protection (Migrant and Other Employees) Bill

Our primary concern is about making sure that good employers can get the employees they need—including workers from overseas - into the country quickly and are able to look after them, pay them well, and run their businesses well.

HortNZ supports the intention of this Bill to improve compliance and enforcement of employment and immigration legislation.

We seek amendments to the Bill to make the Bill more efficient and fairer.

2.1. Equivalence for industry assurance programmes

To support any behaviour change needed we need the system to be efficient and effective.

The horticulture sector is serious about supporting growers and contractors to operate ethically and within the law. The most effective and efficient way to address worker exploitation is with minimum standards and independent certification. Independent certification via Industry Assurance Programmes enables good employers to demonstrate compliance and enables sanctions (e.g. suspension of certification) for employers that are falling below the standard.

The horticulture sector has a number of existing assurance systems that are already used by growers and are recognised by regulators and markets for providing assurance that social practice standards are being met.

The core NZGAP and GLOBALG.A.P. standards include aspects of social practice and supply chain due diligence. For example, NZGAP requires growers to buy products from approved suppliers. This gives reassurance that growers are using legitimate supply chains.

In addition, there are existing Social Practice modules including the GLOBALG.A.P Risk Assessment on Social Practice (GRASP) and the NZGAP Social Practice add-on. These add-ons have increasingly required by customers. For example, 100% of Apple and Kiwifruit growers have the GLOBALG.A.P GRASP add on. All growers selling to Countdown are required to demonstrate they meet Countdown's responsible sourcing requirements. GLOBALG.A.P. GRASP and the NZGAP Social Practice add-on are recognised as meeting this standard for Countdown.

The GAP schemes have assurance processes in place to verify records and documents from employers include wages and time records, leave records and employment agreements.

We seek that the legislation recognises assessment and certification by approved Industry Assurance Programmes or equivalent assurance systems.

If Industry Assurance Programmes like GLOBALG.A.P. GRASP and NZGAP Social Practice were recognised, this would enable employers to provide evidence of certification to meet the requirements in 275A (1) and (2).

Alternatively, Immigration NZ could check the public GAP databases which list certified employers, or with appropriate systems and permissions, the the GAP scheme could proactively share information on certified employers with Immigration NZ, demonstrating that relevant employee records had been checked.

The proactive supply of information of all those who have be certified as meeting 275A (1), would enable immigration officers and the labour inspectorate to focus on those employers who have are not certified under an approved assurance system.

The approach we propose is similar to the approach in the Food Act 2014, where GAP is formally recognised as an equivalent pathway to meet the requirements of the Act.

NZGAP SOCIAL PRACTICE ADD-ON

This is an optional add-on for businesses that are NZGAP, NZGAP GLOBALG.A.P. equivalent or GLOBALG.A.P. certified. This enables growers to demonstrate they meet both locally and globally recognised social practice standards for markets and regulators and has been developed to include all relevant New Zealand regulatory requirements, with support from MBIE (employment services) who have assisted in interpretation of legislation. NZGAP Social practice add-on requires that employers must provide evidence of employment agreements, job descriptions, pay records, breaks, leave etc.

The NZGAP Social Practice Standard also includes globally recognised social practice requirements that are included in other social practice standards such as GRASP. NZGAP has internally reviewed the NZGAP Social Practice add-on against GRASP to ensure that the standards are aligned. NZGAP plans to attain formal benchmarking and recognition of the Social Practice add-on as equivalent to other global social practice standards when those recognition pathways become available (e.g., GRASP). Certification enables employers to demonstrate that they have good social practices in place for their workers, and enables them to supply product to multiple wholesalers, retailers, and markets.

NZGAP have assurance processes in place to ensure workers are paid what they should be, and social practice standards ensure workers are well looked after. This is not just about hourly rates but also working conditions. This is in early stages of the roll out but is being rapidly taken-up by growers.

GLOBALG.A.P. GRASP ADD ON

GRASP is the GLOBALG.A.P. Risk Assessment on Social Practice. It is a voluntary, farm-level social/labour management tool for global supply chains.

Growers can assess, improve, and demonstrate their responsible social practices through a simple but robust evaluation checklist of four main topics: workers' voice human and labour rights information, human and labour rights indicators, and child and young workers protection. Legal labour requirements such as minimum wage, age of legal employment, or working hours differ from country to country. National interpretations guidelines are developed in New Zealand by the NZ GLOBALG.A.P. National Technical Working Group.

NZGAP CONTRACTOR STANDARD

This has been developed specifically for contractors providing services to NZGAP, Social Practice add-on, GLOBALG.A.P. and GRASP certified growers or supply chain operators. Using NZGAP certified contractors is a means for growers and other supply chain operators to demonstrate the contractors they engage have met the requirements of these standards at both a production and social practice level.

The common practice of using contractors, especially for seasonal tasks, means that certification is an effective pathway for contractors to demonstrate compliance to growers, and for growers to engage the services of contractors with confidence.³

Outcome sought

- We seek a process for recognition certification by an approved Industry Assurance Programme or equivalent assurance system, that enable good employers to demonstrate they are meeting their legal obligations in an efficient manner.

2.2. Enforcement and resourcing

We support a more proportionate and efficient enforcement toolkit for immigration officers and labour inspectors to deal with lower-level offending.

Natural justice requires there is a process for appeals of infringement offences.

https://www.nzgap.co.nz/NZGAP_Public/News/Contractor_Standard/NZGAP_Public/News/Contractor_Standard.aspx?hkey=cd558d15-cf00-4dab-8f4a-2df446816e75

Our primary concern is with achieving greater progress on enforcement of the existing law for more serious offences. We are concerned that the powers under this legislation may draw MBIE resources and attention away from the focus that is needed on enforcing the law for more serious offences.

The NZ court system currently struggles to deal with cases and is running behind schedule due to under resourcing constraints.

Outcome sought.

- Natural justice requires there is a right of appeal
- We accept reducing defences for offences by employers, but there needs to be some scope for defence
- We seek more emphasis on resourcing community outreach to educate and on labour inspectors, rather than too much focus on a desk-based compliance workforce

2.3 Implications for migrants

We are concerned about the consequences for migrants, whose visa status may be impacted, if their employer is found to be employing them in a manner that breaches their visa under Section 359A (b).

We seek that the risk to employees should be minimised so as not to disincentivise whistle-blowing, and to ensure the consequences are proportionate to the offence.

Outcome sought

- Include provisions in the Bill so an infringement offence does not result in deportation liability for migrants.

2.3. Measuring the effectiveness of the proposal

Thought needs to be given to appropriate metrics for measuring success. Measuring the number of people that are certified under approved assurance systems will provide confidence that if only a very small number of worker exploitation cases are discovered, it is not for lack of scrutiny.

Accounting for the number of businesses that are certified under approved assurance systems, will also reduce the risk of the immigration officers being seen to undertake “fishing expeditions”.

We prefer an approach where immigration officers focus on cases where they have reasonable cause and make use of data on businesses certified under

approved assurance systems to support their understanding of businesses who are compliant.

Outcome sought

- Metrics that measure the coverage of robust assurance systems as well as investigations and enforcement would add value.

Submission on Worker Protection (Migrant and Other Employees) Bill

Without limiting the generality of the above, HortNZ seeks the following amendments to the Bill as set out below, or alternative amendments to address the substance of the concerns raised in this submission and any consequential amendments required to address the concerns raised in this submission.

Additions are indicated by bolded underline, and deletions by strikethrough text.

Provision	Reason	Decision sought
New Section 157 of the Primary legislation	There is a need to ensure that an infringement offence under this Bill, does not result in deportation of migrant workers.	(5) For the purposes of subsection (1), sufficient reason includes, but is not limited to,– (a) breach of conditions of the person’s visa, <u>except where the breach is identified under section 359 A (1) (b)</u>
275A Power to access employment documents	A clause requiring reasonable grounds or good faith should be added to this clause to ensure that requests by immigration officers are focused on those cases where there are reasonable grounds for anticipating breaches.	(1) An immigration officer may exercise the power in subsection (2) <u>where the officer believes on reasonable grounds that</u> –for the following purpose

A clause enabling certification by an approved assurance system to be recognised as sufficient documentation would greatly increase the efficiency of the Bill.

If certification by an approved assurance scheme, was enabled, and the NZGAP social practice add-on was approved, this would enable proactive reporting by the NZGAP scheme, where information on certified businesses could be supplied to Immigration NZ. This proactive reporting would enable immigration NZ to focus on investigating those without certification and where there is reasonable grounds for believing a breach may be occurring.

(2) An immigration officer may require a supporting employer to supply a document (or a copy of it) that is—

(a) a wages and time record, or leave record kept in accordance with the provisions of any Act; or

(b) any other document relating to the remuneration or employment conditions of a supported employee (for example, an employment agreement).

(c) Certification by an approved assurance system, that provides assurance that records have been audited that demonstrate the business is compliant with 275A (1) (a) and (b).

New Section:

The wording proposed by HortNZ is aligned with the process under the Food Act. The Food Act enables the GAP system to be used for demonstrating compliance with the Food Act.

Approved Industry Assurance Programme

chief executive's power to approve official assurance system developed by third party

(1) The chief executive may, approve an assurance programme developed by a person other than the chief executive or by an industry body.

(2) The chief executive may give an approval under this section subject to conditions.

(3) An approval must end within–

(a) 3 years from the date of approval; or

(b) a shorter period specified by the chief executive.

(4) The approval must state–

(a) any conditions subject to which the approval is given; and

(b) the date on which the approval ends.

(5) Before an approval ends, the chief executive may issue a new approval approving the assurance system for a period of up to 3 years.

(6) The chief executive may suspend or withdraw an approval

Section 350

We accept strengthening the criteria for possible defences under section 350.

However, removing the defence clauses as proposed in the Bill is significant and should be revised to enable a defence in some narrow circumstances.

350 (3)

It is a defence to a charge under subsection (1)(b) that the employer–

~~**(a) did not know that the person was not entitled to do the work; and**~~

~~**(b) took reasonable precautions and**~~ exercised **significant** due diligence to ascertain whether the person was entitled to do the work.

New Section:

Natural justice requires that there is a right of appeal to an infringement offence

Include a clause to enable businesses to appeal infringement offences under this Act.