

SUBMISSION ON

Health and Safety at Work Amendment Bill

17 March 2026

To: Education and Workforce Committee

Name of Submitter: Horticulture New Zealand

Supported by: Potatoes NZ

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OVERVIEW

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Our submission

Horticulture New Zealand (HortNZ) thanks the Education and Workforce Committee for the opportunity to submit on the Health and Safety at Work Amendment Bill and welcomes any opportunity to continue to work with the Committee to discuss our submission.

HortNZ wishes to be heard in support of our submission.

The details of HortNZ's submission and decisions we are seeking are set out in our submission below.

HortNZ's Role

Background to HortNZ

HortNZ represents the interests of approximately 4,300 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

There are 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 to serve the domestic market.

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



Industry value \$7.54bn
Farmgate value \$4.89bn
Export revenue \$4.99bn
Domestic spend \$2.55bn

Source: HortNZ Annual Report 2025

Executive Summary

New Zealand's horticulture sector includes a mix of small, medium, and large businesses. Many horticulture businesses experience significant seasonal fluctuations in staffing levels and typically maintain a core permanent workforce. However, during key seasonal periods businesses often require a substantially larger workforce to complete labour-intensive tasks within short timeframes.

To meet these seasonal labour demands, growers commonly engage workers through a range of ways, including seasonal employees, Recognised Seasonal Employer (RSE) workers, seasonal visa holders and labour contractors.

As a result, horticulture workplaces frequently involve multiple PCBUs operating at the same site, with different businesses responsible for various aspects of work. Workforce numbers can increase significantly for short periods, even though the scale of the underlying business may remain small for most of the year.

These seasonal workforce patterns mean the horticulture sector is well placed to benefit from the proposed small PCBU framework, provided the provisions recognise seasonal labour fluctuations and the use of contractors while maintaining a strong focus on managing critical health and safety risks while still ensuring that non-critical risks continue to be appropriately identified and managed.

Submission

1. Small PCBU

HortNZ supports the introduction of a small PCBU category that recognises the realities of seasonal fluctuations. Many horticulture businesses experience significant fluctuations in workforce numbers throughout the year due to harvest and seasonal labour demand. The proposed approach, which assesses worker numbers over nine months of the financial year, is a practical way to ensure businesses are not automatically treated as large PCBUs simply because of short peak periods.

Focusing health and safety systems on critical risks also aligns with the practical operation of many horticulture businesses, where the most significant safety issues arise from activities such as machinery use, vehicle movements, hazardous substances, and working at height. A clearer emphasis on preventing serious harm has the potential to simplify compliance for smaller businesses without reducing the importance of managing high-risk activities.

However, there are several practical considerations that would benefit from clarification.

1.1. Seasonal Workforce Fluctuations

The nine-month test is intended to accommodate seasonal industries, but further clarity will be needed on how worker numbers should be counted where labour is supplied through contractors or labour hire arrangements. Further clarity is also needed on how the 'reasonable expectation' test should be applied where workforce numbers vary significantly from year to year depending on crop volumes and seasonal conditions.

Without clear guidance there is a risk that businesses may struggle to confidently determine whether they qualify as a small PCBU.

1.1.1. COUNTING WORKERS WHERE LABOUR HIRE OR CONTRACTORS ARE USED

Many horticulture businesses rely on labour contractors to supply workers during peak periods such as harvest. In these situations, workers are often technically employed by the contractor but are working at the horticulture business.

The Bill refers to the number of 'workers carrying out work in any capacity'. This wording appears broad and may include contractors, labour hire workers, and seasonal workers. However, it is not entirely clear how these workers should be counted when determining whether a business qualifies as a small PCBU. For example:

- Should workers supplied by a labour contractor be counted toward the grower's worker total when determining whether the business qualifies as a small PCBU?
- If a contractor provides a team that moves between multiple horticulture businesses during the season, which PCBU should count those workers for the purposes of the threshold?
- How should worker numbers be assessed where multiple PCBUs operate at the same workplace, such as growers, labour contractors, and specialist service providers?

Without clear guidance there is a risk that horticulture businesses may unintentionally exceed the threshold.

1.1.2. MULTIPLE PCBUS OPERATING IN THE SAME WORKPLACE

It is common in horticulture for multiple PCBUs to operate within the same workplace. For example, an orchard may involve:

- The grower (landowner or operator)
- Labour contractors supplying seasonal workers
- Machinery contractors
- Spray contractors
- Packhouse operators.

Each of these entities may be a separate PCBU with its own workforce.

The introduction of a small PCBU category raises questions about how responsibilities interact where some PCBUs are small and others are not. For example: A grower may qualify as a small PCBU, while a labour contractor operating on the same site may be a larger PCBU.

While the Health and Safety at Work Act already includes duties to consult, cooperate and co-ordinate between PCBUs, guidance will be useful to explain how the small PCBU provisions operate in workplaces where multiple businesses interact. In particular, consideration may be needed as to whether greater clarity within the Act is required where multiple PCBUs are operating on the same site.

1.1.3 REASONABLE EXPECTATION TEST

The Bill says a business is a small PCBU if it 'reasonably expects' to have fewer than 20 workers for at least nine months of the financial year.

At first glance this seems flexible and helpful for seasonal businesses however, it also introduces uncertainty, because the law does not clearly explain how that expectation will be assessed.

For horticulture businesses, workforce numbers can vary significantly depending on factors such as:

- Crop yield
- Weather conditions
- Labour availability
- Market demand
- Unexpected harvest timing changes.

A grower may reasonably expect to remain under the threshold for nine months of the year, but seasonal conditions could result in workforce numbers exceeding expectations.

If the expectation test is assessed after the fact, businesses could face uncertainty about whether they qualified as a small PCBU during the year.

For example:

- A grower may reasonably plan for a three-month harvest period
- Due to weather delays or crop size, the harvest may extend to four months.

Workforce numbers may therefore exceed the threshold longer than originally expected. This raises the question of whether the business should still be treated as a small PCBU because their expectation was reasonable at the time, even if the outcome differed.

Clear guidance would help businesses understand:

- What evidence may be used to demonstrate a reasonable expectation
- How regulators will approach situations where seasonal conditions change unexpectedly.

It would be helpful to confirm that the small PCBU threshold is assessed based on the reasonable expectation at the time, rather than retrospectively based on the final workforce numbers for the year. Without this clarity, businesses may find it difficult to confidently determine whether they qualify as a small PCBU.

2. Definition of Critical Risk

HortNZ supports the intent of the Bill to place greater emphasis on managing critical risks, particularly those that could result in serious harm.

The definition of critical risk in the Bill is broad and appropriately captures risks likely to result in death, serious injury, notifiable incidents, or occupational disease. This would include many of the key risks present in horticulture operations, such as machinery use, vehicle movements, and working at height. While this focus is supported, it is important that the shift toward prioritising critical risks does not result in other workplace risks being overlooked. PCBUs must still remain attentive to identifying and managing a wider range of risks to ensure safe and well-functioning workplaces.

3. Interaction with Other Regulatory Regimes

The Bill clarifies that compliance with other regulatory regimes may count as compliance with the Health and Safety at Work Act (HSWA) for the purposes of managing that risk.

HortNZ supports this approach, as horticulture businesses already operate within a number of regulatory frameworks, including:

- Hazardous substances regulations
- EPA requirements
- ACVM requirements
- MPI food safety regimes.

Guidance will be important to ensure businesses clearly understand when compliance with another regime meets their obligations under HSWA.

4. Approved Codes of Practice

The Bill strengthens the status of Approved Codes of Practice (ACOPs), allowing them to operate more clearly as a recognised pathway for compliance where businesses follow the code.

WorkSafe is currently developing a Roles and Responsibilities ACOP for Agriculture. HortNZ was invited to participate in the working group developing this ACOP, however during the process we were advised by WorkSafe that horticulture was considered to be out of scope, despite horticulture operations sharing many of the same health and safety risks and operating environments as agriculture.

Given the strengthened role ACOPs will have under the proposed amendments, it will be important that horticulture is appropriately covered by sector guidance. Consideration should therefore be given to either extending the scope of the agriculture ACOP to include horticulture or developing specific guidance or an ACOP that reflects the operational realities of horticulture businesses.

5. Definition of PCBU

A PCBU who manages or controls a workplace is the business that has control over the workplace, either fully or partly. This means they are responsible for health and safety risks relating to the workplace, such as the physical environment and how the site is set up.

In horticulture it is common for multiple PCBUs to operate at the same orchard or packhouse. While the grower may manage or control the workplace, contractors and labour providers will also hold duties in relation to the work they undertake. Given the prevalence of these shared workplaces, the current provisions in the Act may not provide sufficient clarity about how overlapping duties should operate in practice when multiple PCBUs are working on the same site.

HortNZ considers that clearer articulation within the Act of how these responsibilities interact would assist businesses to better understand their obligations and apply the legislation consistently where multiple PCBUs operate in the same workplace.

6. Conclusion

To ensure the Act works effectively for seasonal industries such as horticulture, further clarification and practical guidance will be important. In particular, guidance on how worker numbers should be counted where labour contractors are used, how the reasonable expectation test should be applied in seasonal industries, and how responsibilities operate where multiple PCBUs share the same workplace would provide greater certainty for businesses. Given the prevalence of shared workplaces in horticulture, consideration should also be given to whether the Act itself requires further clarification to more clearly articulate how overlapping duties apply where multiple PCBUs operate on the same site.

Addressing these matters will help ensure the proposed changes achieve their intended objective of simplifying compliance for smaller businesses while maintaining a strong focus on preventing serious harm.