

SUBMISSION ON

Accredited Employer Work Visa

11 October 2024

To: Ministry of Business Innovation and Employment

Name of Submitter: Horticulture New Zealand

Supported by: New Zealand Kiwifruit Growers, Vegetables
New Zealand

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OVERVIEW

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Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry of Business Innovation and Employment (MBIE) for the opportunity to submit on the Accredited Employer Work Visa consultation and welcomes any opportunity to continue to work with MBIE to discuss 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

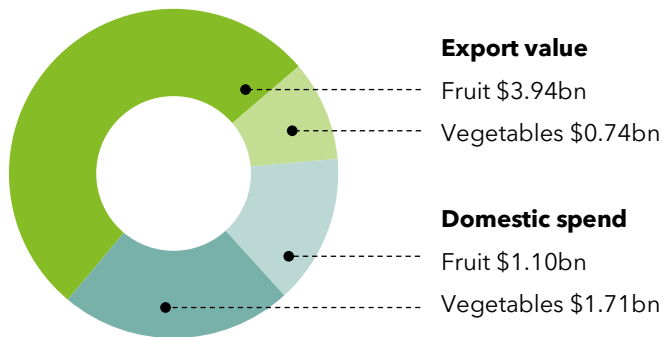
HortNZ represents the interests of approximately 4,200 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

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 \$7.48bn

Total exports \$4.67bn

Total domestic \$2.81bn

Source: Stats NZ and MPI

Submission

The Accredited Employer Work Visa (AEWV) is a key tool that allows accredited employers in New Zealand's horticulture sector to hire skilled migrant workers when there is a shortage of local labour. This visa system is designed to ensure that crops are harvested on time and production levels remain stable, which significantly contributes to the industry's operational efficiency.

The AEWV helps the sector expand and sustain itself by enabling growers to meet market demands through the employment of skilled migrant workers. It also helps address chronic labour shortages, ensuring that there are enough workers to support seasonal operations.

However, despite its benefits, the AEWV presents challenges, particularly in terms of worker exploitation. Dependence on migrant labour can make workers vulnerable, especially given the complexities of the AEWV application process. Issues such as insufficient support, language barriers, and limited awareness of workers' rights can increase the risk of exploitation.

While the AEWV is crucial for addressing labour shortages in skilled roles and sustaining the horticulture industry, it is equally important to implement strong protections to prevent migrant exploitation and ensure a fair and equitable working environment.

1. Accredited Employer Work Visa

While the AEWV is essential in addressing skilled labour shortages and supporting the horticulture industry, HortNZ agrees that priority should be given to hiring New Zealanders first. This is the preferred option for horticulture businesses especially given the high costs and complexity of navigating the immigration system.

While the AEWV addresses labour shortages, it is essential to refine the immigration system to make it more accessible and less costly. Additionally, robust protections must be in place to prevent exploitation and ensure a fair working environment for all workers.

Phase two of the AEWV consultation is focusing on amendments to Accreditation, Job Check, Regional Sector and Seasonal Settings and Compliance. HortNZ has set out whether we support or oppose the proposed options throughout the submission.

2. Accreditation

HortNZ **supports** the proposed tier system and **recommends** that tier one includes employers outside of the public sector however we recommend that reaccreditation is undertaken every three years with the labour inspector undertaking more stringent checks. A framework should be developed to set out what the reaccreditation process entails

HortNZ **supports** third party verification and strengthened accreditation requirements

2.1. Opportunities to Streamline

Would skipping the Job Check for higher-skilled roles and or having longer accreditation incentivise you to meet higher upfront standards?

Yes, however we do also see the job check as a key requirement of the AEWV process, ensuring that a New Zealand worker is not available and suitably qualified to fulfil a particular role before hiring a migrant worker. We would support skipping the job check for high-skilled roles under specific criteria and see this, along with extending the accreditation period, would provide an incentive to employers to meet upfront standards. Below are two examples where we would support skipping the job check:

1. For very high-level roles – eg Commercial Manager level one and two, for employees that are degree qualified and fluent in English and that are paid twice the median wage. Note: all employers should be required to sit an English test or do an English course
2. Where a Tier One employer has a job check approved for a role eg – a supervisor and the employer wants to recruit a second supervisor in their business and the role, job description, pay and offer details of the role remain the same then a second job check shouldn't be required.

For those employers who do not have a proven track record eg - five years as an accredited employer or RSE Employer, HortNZ supports the job check as it is essential for auditing and ensures workers are being placed into the right roles.

Are there other or better ways for employers to demonstrate they pose fewer employment or immigration risks

Yes. Through social practice certification which refers to a set of standards and guidelines designed to ensure fair and ethical labour practices within the horticultural industry. This certification focuses on the well-being of workers, adherence to labour laws, and social responsibility however social responsibility won't deal with immigration risks.

The horticulture industry relies on industry assurance programmes such as **GLOBALG.A.P. GRASP (Global Good Agricultural Practices Risk Assessment on Social Practice), New Zealand GAP (Good Agricultural Practice)** and **New Zealand Ethical Employers**. Information on the GAP schemes is attached as Appendix One.

These programmes were established over 25 years ago by growers and industry groups who were committed to enhancing food safety, worker welfare and sustainability practices in the horticulture industry.

GAP programmes are independently audited, self-management assurance schemes. Growers who are GAP certified must meet relevant standards, and in doing so can demonstrate that the necessary practices are in place to meet regulatory and market requirements.

Industry assurance programmes operate alongside regulators, performing separate but complementary functions to achieve the desired outcomes.

GLOBALG.A.P. and NZGAP have particular add ons that focus on social practice and contractor standards:

The GLOBALG.A.P. Risk Assessment on Social Practice (GRASP)

GRASP¹ is an add-on for the evaluation of workers' well-being at farm level. It covers major social responsibility topics: workers' voice, human and labour rights information, human and labour rights indicators, and child and young workers' protection. GRASP is a certification tool developed to help producers in the horticultural sector assess and improve their social practices and includes:

¹ <https://www.globalgap.org/what-we-offer/solutions/grasp/>

- **Labour Standards:** Evaluates working conditions, including wages, working hours, and treatment of workers
- **Health and Safety:** Assesses workplace safety measures and practices to ensure the well-being of employees
- **Social Responsibility:** Encourages ethical practices within the supply chain and promotes fair treatment of all workers
- **Risk Assessment:** Provides a framework for identifying and managing risks related to social practices in agricultural operations
- **Certification:** Offers a way for growers to demonstrate their commitment to social responsibility, which can enhance marketability and consumer trust.

GRASP is particularly relevant for producers seeking to comply with international standards and improve their labour practices. GRASP has also been adapted as an add on to NZ GAP.

NZGAP Contractor Standard

The NZGAP Contractor Standard² enables contractors to demonstrate compliance and supply services to both NZGAP and GLOBALG.A.P. certified growers. By choosing to use a certified contractor, there is less due diligence burden on growers because the contractor is vetted and regularly audited to New Zealand and international worker welfare standards. NZGAP Contractor Standard certification gives growers assurance that their contractor is fully compliant.

Those certified to the NZGAP Contractor Standard can demonstrate in a credible and transparent way that they are an ethical employer and meet recognised social practice standards and employment laws.

NZ GAP Social Practice

The NZ GAP Social Practice³ add-on is an extension of NZ GAP specifically designed to address labour and social practices within the horticulture industry. It was developed in response to growing demands for greater accountability regarding the treatment of workers, ensuring that farms and businesses meet ethical standards related to employment and worker welfare.

New Zealand Ethical Employers (NZEE)

Addresses human rights challenges in the agricultural supply chain and is a voluntary member-based organisation. NZEE provides an additional layer of education, support, and systems that create a framework to support businesses to demonstrate that they are operating ethically and commit to continual improvement. All members commit to adopt human rights policy and workplace standards.

What third parties could we utilise to check or endorse employers on Immigration NZ behalf?

Becoming an accredited employer is an online process with over 90% of applicants being approved⁴. Immigration New Zealand assesses applications to ensure the criteria is met.

The review process involves:

- Checking compliance with employment laws
- Reviewing financial stability
- Conducting a “fit and proper person” test

²https://www.nzgap.co.nz/NZGAP_Public/Contractor/NZGAP_Public/Programmes/NZGAP_Contractor_Standard.aspx?hkey=8f479087-5a27-483c-850c-0c27e265f081

³ <https://chatgpt.com/c/66f9ef14-ed68-800a-bf4d-c61bd7c6b7b1>

⁴ Immigration New Zealand

- Verifying a genuine need for migrant workers.

While AEWV employers are subject to checks by Immigration New Zealand to ensure ongoing compliance with accreditation standards, auditing is less frequent or intensive as in the RSE scheme. Two examples of using a third party to ensure checks and endorsement could include (but are not limited to):

Social Practice: Where an employer (not third party) has been certified to an existing approved social practice standard, this should be sufficient in meeting the application requirements. Immigration would only be required to undertake verifying the genuine need for migrant workers. There are several external auditors in the horticulture industry industries that currently audit growers/employers for GRASP. These auditors could be utilised to audit accredited employers to ensure they are following immigration, human rights and social practice in line with New Zealand laws. However this could only take place once benchmarking of existing schemes were undertaken to ensure compliance

Labour Inspectorate: The Labour Inspectorate is responsible for enforcing employment standards, such as ensuring fair pay, safe working conditions, and the protection of workers' rights. Proper resourcing of this function is crucial to its effectiveness in addressing labour exploitation and enforcing compliance with employment laws. The number of inspectors needs to increase to match the growing complexity and scale of New Zealand's labour market. Resourcing the Labour Inspectorate effectively is key to upholding fair labour practices and combating exploitation, particularly for vulnerable groups like migrant workers.

2.2. Defining and Managing Risk for Accreditation

Do current workforce thresholds/requirements for triangular employers affect your sector?

Generally, labour supply companies operating in the horticulture sector do not fall under the triangular employment category. Although there is contact with growers/orchard managers, the workers report to and take instruction from other employees within the same company to which they are employed. This does not meet the definition of a triangular agreement.

In what circumstances are you struggling to attract New Zealanders?

Horticulture in New Zealand is a growth industry leading to an increasing demand for skilled positions such as orchard managers, supervisors, sprayer operators and finance managers. There is a shortage of individuals with the specific skills and qualifications needed for technical roles in horticulture, contributing to difficulties in filling these positions.

Employers are encountering several challenges in attracting local skilled workers particularly in rural areas where many horticulture businesses are situated, making it difficult to attract highly skilled staff who may prefer urban living. The growing demand for skilled labour across various sectors also creates intense competition making it challenging for horticulture to stand out.

We have heard workforce thresholds may not best target the risks we are concerned about - how else could we target these risks?

The AEWV work thresholds are designed to regulate how migrant labour is employed in New Zealand, ensuring fairness in wages, promoting local employment opportunities, and preventing exploitation.

A high amount of the exploitation that occurs is happening offshore and this makes it difficult for employers to identify and manage the exploitation that occurs.

HortNZ supports putting in place a requirement for a workers to sign a declaration that they haven't had help applying for or paid a fee to a third party to apply for or obtain their AEWV visa. There is no current requirement to do this under the existing AEWV declaration requirements.

In addition, HortNZ supports increasing stricter financial penalties for those that breach the AEWV requirements and criteria.

3. Job Check

HortNZ **supports** retaining the current median wage threshold.

HortNZ **does not support** the proposal to strengthen MSD involvement in the labour market test process.

HortNZ **does not support** removing the ability for employers to support an application of a family member for an AEWV.

HortNZ **does not support** preventing employers from changing the skill level during the immigration process.

3.1. Wage Threshold Options

Would maintaining a wage threshold at 10% above the minimum wage impact your ability to hire migrants?

No. The proposed wage thresholds are not supported. The AEWV provides for skilled roles and we support the current median wage reflecting the skills and experience level required. In addition, the AEWV system is designed to ensure migrant workers are not exploited through unfair wages and the current median wage rate is designed to reflect a fair standard of living for workers, especially in the face of rising costs of housing, food, and other essentials.

The proposed changes would see the wage rate comparable to the RSE scheme. RSE workers returning for their third or subsequent seasons must be paid at least a minimum hourly rate of \$25.47 (New Zealand minimum wage \$23.15 + 10%). All other workers must be paid at least a minimum hourly rate of \$23.15 (New Zealand minimum wage).

Table one: Comparison wage thresholds for RSE and AEWV schemes

Scheme	Wage Threshold	Skill level
RSE	1-2 years \$23.15 3 years + \$25.50	Low
AEWV Current	\$29.66	High
AEWV Proposed	\$23.15 or \$25.50 or market rate (whatever is higher)	High

The \$29.66 per hour median wage requirement is a central feature of the AEWV system, ensuring fair compensation for migrant workers.

Note: Since the publication of this consultation, the median wage has risen to \$31.61 which is still supported.

3.2. Labour Market Test Options

Whether there are any other mechanisms that could be used to ensure that New Zealanders are prioritised for vacancies that otherwise would be filled by an AEWV holder?

No. New Zealand's horticulture industry has been facing labour shortages for several years and the industry relies heavily on migrant workers to reduce shortages. The COVID-19 pandemic severely impacted the availability of foreign workers and border closures restricted the usual influx of overseas seasonal workers, exacerbating the shortages. Historically, labour shortages have had a significant impact on the economy, with some crops left unharvested, leading to financial losses for growers. The horticultural sector is vital to New Zealand's export economy.

While there are efforts to recruit more local workers, many New Zealanders are reluctant to take on the physically demanding seasonal work. The rural location of farms and orchards also increases the issues in attracting domestic workers.

Your views on the strengths and weaknesses of the options outlined, and any impact that a strengthened Labour Market Test would have on your business and/or engagement with MSD.

The labour market test is a safeguard that ensures employers in New Zealand make genuine efforts to hire local talent before resorting to hiring migrant workers. While it helps protect local employment opportunities, it can be burdensome for employers in industries facing chronic labour shortages. For horticulture, going through the labour market test process can delay hiring, especially during peak demand periods. In some regions or sectors, there may be a clear lack of available local workers, making the labour market test seem redundant or unnecessary. Advertising jobs, managing the recruitment process, and preparing documentation for the labour market test can be expensive for employers, particularly small businesses.

The proposed option strengthens MSD participation in the labour market test process which is surprising given that the requirement for employers to engage with MSD is resource intensive for the ministry with little impact on placing jobseekers into AEWV vacancies⁵.

What do you consider would unacceptable reason for an employer to decline a Jobseeker and why?

Unacceptable reasons for declining a job seeker often stem from biases, stereotypes, and practices that undermine fairness and equality in the hiring process. This could include discrimination (gender, ethnicity, religion, sexual orientation, appearance).

3.2.1. ADDITIONAL OPTIONS

Have you heard of instances of the AEWV being used to support family members to come to New Zealand?

⁵ Accredited Employer Work Visa Review: Phase Two Consultation Document

Yes. Because of the duration of the AEWV, there are instances where a worker has applied to bring family into New Zealand. This has been for genuine reasons and supported by the employer.

Are there any reasons why the skills and experience requirements for a role might change mid-way through an immigration process?

Yes. One of the reasons the skills and experience requirements for a role might change mid-way through the process is because an employer can't find anyone to fill the role and therefore the skill level needs to change - eg - changing from finance manager (skill level 1) to bookkeeper (skill level 4). Being able to adjust the required skills during the immigration process ensures that businesses can respond to real-time challenges while still meeting workforce demands.

What works well about the current Job Check process?

The current job check process does help to eliminate a level of exploitation by confirming that the job being offered to a migrant worker is genuine and that the employer has made reasonable efforts to recruit local talent before seeking overseas workers.

It also ensures that the job description is prescriptive and sets out exactly what the worker will be expected to do. Having the position, roles and responsibilities spelled out assists the Investigator or MBIE if an investigation is required and an employer may be exploiting an employee.

HortNZ recommends using the same system for RSE as it is highly effective.

Are there any other pain points or issues within the Job Check you do not think these options address (e.g. job token duration)?

Yes. The job check is a slow process for employers to navigate (due to scrutiny because of exploitation). There have been some instances where employers have been waiting for up to six months for the job check process to be completed.

The job check is designed to protect migrant workers and prevent exploitation by ensuring that jobs offered to migrants meet New Zealand's legal standards, including fair wages and working conditions. However, despite these safeguards, issues of migrant exploitation can still arise if the job check process is not properly enforced or if employers fail to meet their obligations often due to factors such as:

Inadequate Monitoring and Enforcement: While Immigration New Zealand conducts audits and compliance checks, some employers may still find ways to evade scrutiny, leading to cases of underpayment, overwork, or poor working conditions. If monitoring is not sufficiently thorough or frequent, some employers may violate employment standards without immediate consequences

Power Imbalance: Migrant workers are often more vulnerable to exploitation due to the power imbalance between them and their employers. They may feel compelled to accept poor working conditions or lower wages due to their immigration status, fear of losing their job, or uncertainty about their rights. In some cases, workers may be unaware of New Zealand's labour laws or fear retaliation if they report exploitation, further exacerbating their vulnerability

Misleading Job Offers: Some employers may comply with the job check process on paper but engage in unethical practices after the worker arrives, such as changing job terms, underpaying workers, or forcing them to work excessive hours.

Migrant workers might be promised one thing during the recruitment process but find themselves in worse conditions once they start working

While the AEWV system includes protections, there are still risks of exploitation, particularly for vulnerable migrant workers. Enhancing the resourcing of the Labour Inspectorate will significantly improve the ability to carry out essential inspections and ensure compliance.

4. Regional Sector and Seasonal Settings

HortNZ **supports** retaining the short-term seasonal visa but recommends keeping it separate from the AEWV

HortNZ **supports** regional variations particularly for rural settings

HortNZ **supports** removing the 12-month reapplication standdown

HortNZ **does not support** increasing pastoral care requirements

4.1. Seasonal Visa Pathway Options

How long does a season last?

HortNZ represents 20 fruit and vegetable product groups. The length of a season varies on the type of crop and can range from a few months to a year. The below table provides an overview of approximate harvest times for the product groups HortNZ represents. This doesn't include pruning, planting and spray programme durations.

Picture one: Main harvest periods for horticulture crops

Crop	Harvest	Crop	Harvest
Apples	February to May	Kumara	November to April
Avocado	August to February	Onions	January to May
Boysenberries	December to February	Passionfruit	March to May
Broccoli	All year	Persimmons	April to June
Cabbage	All year	Potatoes	November to April
Cauliflower	All year	Process Vegetables	November to March
Carrot	September to April	Strawberry	October to March
Citrus	June to September	Summerfruit	December to March
Feijoa	March to June	Squash	March to May
Kiwi berry	March to April	Tamarillo	March to May
Kiwifruit	March to July	Tomatoes	December to April
Kumara	November to April		

How many workers do you tend to bring in for the season and in what roles?

The number of workers brought in each season to fill specific roles varies based on the year's crop production and the availability of New Zealanders to fill those positions. Over the 2022 - 2024 period there have been 1146 AEWV⁶ issued for skilled horticulture workers.

How skilled/experienced are they?

The AEWV is primarily designed for skilled workers with the focus on filling positions that require specialised skills, qualifications, or experience, therefore it is expected that workers have the appropriate skill level for the advertised role.

Do you tend to bring the same workers back year on year?

No. The AEWV is typically issued for a maximum duration of three years and therefore workers aren't generally brought back year on year. This would generally occur within the RSE scheme. The below table sets out the AEWV duration over the last two years.

Table three: Durations of AEWV issued from 2022-2024⁷

Type of Visa	Valid Period	2022\2023	2023\2024	Total
Accredited Employer	Less than 12 months	28	101	129
	12-24 months	9	14	23
	more than 24 months	621	707	1328
Total		658	822	1,480

The current AEWV system requires that visa holders stand down for at least 12 months after the end of their current visa before being eligible to reapply under the AEWV scheme. This has serious potential to cause labour shortages in higher skills roles within the horticulture industry. The current system means that 3 - 5 years of investment from the employer in training, development and experience is lost for at least 12 months, if not permanently. There needs to be a pathway to residence or similar for AEWV holders to increase the return on investment which is key for the success of the industry.

Some workers have moved their entire life to New Zealand and have worked for employers for multiple years. They have become more skilled in their roles and have employers have significantly invested in training these workers who are important to overall operations. With the stand down period, it would mean having to train other workers for years just to get them to the same level as existing AEWVs who have committed years of service to a business.

What challenges are there for you in meeting your seasonal labour demand locally?

Meeting seasonal labour demand for horticulture can present several challenges particularly if there is a low unemployment rate and labour shortages. The challenges are set out below:

⁶ Immigration NZ

⁷ Immigration NZ

Limited local workforce: Many regions have a limited pool of local workers willing to undertake seasonal, often physically demanding jobs. Factors such as low unemployment rates and the preference for stable, year-round employment can exacerbate this issue

Geographic isolation: Some regions may have a higher demand for labour during harvest seasons, while the local workforce may not be available or willing to relocate temporarily for these jobs

Seasonality of Work: Seasonal jobs often have specific windows of demand, which makes it challenging to recruit workers who may have other commitments or prefer more stable employment opportunities

Lack of Skilled Workers: Certain roles require specific skills and there may be a skills gap among the local workforce, leading to difficulties in finding suitable candidates

Perception of Working Conditions: Seasonal work can often involve long hours, exposure to adverse weather conditions, and physically demanding tasks, which may deter potential workers

Employment Stability: The temporary nature of seasonal jobs may not be appealing to workers seeking long-term, stable employment, leading to high turnover rates

Wage Expectations: Seasonal workers may have wage expectations that exceed what employers are willing to pay, especially if they can find alternative employment that offers more stability or higher pay

Cost of Living: The rising cost of living in certain areas may make seasonal jobs less attractive to local workers, particularly if they need to travel or relocate for work

Accommodation Issues: Finding affordable and suitable accommodation can be a barrier for seasonal workers, especially those traveling from other regions

Would you be willing and able to meet pastoral care requirements? Or would you be willing to pay a higher wage rate to offset the need to meet these requirements?

No. The pastoral care requirements under the AEWV are designed to ensure that migrant workers are not only employed legally but are also supported and integrated into New Zealand society. Employers must provide practical assistance with housing, healthcare, and orientation, while also fostering a work environment that promotes fair treatment, safety, and well-being. Wages should be based on the position and market rates paid for the skill required to complete the job. We would not support paying a migrant worker more than a New Zealand worker to cover pastoral care requirements.

4.2. Sector or Region-Specific Settings

Where do current or proposed settings pose challenges for your sector/region?

Becoming an accredited employer can be demanding and challenging. The current requirements for applying for employer accreditation under the AEWV can feel overwhelming, especially given limited resources of small to medium sized businesses and the at times urgent need for labour in the horticulture sector. A summary of the challenges posed for the horticulture sector are provided below:

Complex Accreditation Levels

Navigating the two levels of accreditation—standard and high-volume—can be daunting for a small business and the complexity can be a deterrent from even starting the accreditation journey

Financial Burden

The application fees associated with obtaining accreditation are a significant concern for small business owners. These costs can strain tight budgets especially considered with other operational expenses

Lengthy Processing Times

The recent changes to the AEWV, which have resulted in longer processing times, exacerbate the challenges. Businesses rely heavily on timely access to migrant labour, especially during peak seasons and delays in processing applications can leave a business understaffed and struggling to meet production demands, ultimately affecting business viability

Advertising and Engagement Requirements

The requirement to advertise job openings and engage with MSD complicates the hiring process. The stipulated advertising periods—14 to 21 days—further extend the hiring timeline, which is not always feasible in the fast-paced horticultural industry

Ongoing Compliance Obligations

Once accreditation is achieved, the ongoing obligations to notify authorities of changes in key personnel and migrant worker statuses can be challenging to manage.

In addition to the above, employers in more remote or rural regions, where labour shortages are particularly acute, find it challenging to meet the AEWV criteria for hiring migrant workers due to geographical isolation and a smaller local workforce. The current settings do not allow regional variations to address this.

5. Compliance and Assurance Options

HortNZ **supports** the proposed options to prevent migrants being charged excessive fees by agents with the **exception** of the proposed job check requirement.

HortNZ **supports** the proposed settings for migrants whose employment has ended.

5.1. System Compliance and Assurance

5.1.1. PREVENTING MIGRANTS BEING CHARGED EXCESSIVE FEES BY AGENTS

There are, and continue to be, instances where accredited employers are recruiting migrants and charging significant fees to obtain an AEWV. In one case, an accredited employer travelled to India to recruit workers to come to New Zealand and charged each worker between NZ\$40-75k for an AEWV. There have also been instances where workers are being forced to sign non-disclosure agreements which prevents them from making a complaint.

It is noted in the AEWV consultation document, which is not page numbered, that *'it is unlawful for an employer to charge a premium for a job under New Zealand employment law, this does not extend to payments collected and retained by recruitment agents'*.

The Wages Protection Act 1983 states:

12A No premium to be charged for employment

- (1) No employer or person engaged on behalf of the employer shall seek or receive any premium in respect of the employment of any person, whether the premium is sought or received from the person employed or proposed to be employed or from any other person.

HortNZ has obtained legal advice which provides it is unlawful for recruitment agencies to charge a premium under Section 12A(1) of the Wages Protection Act 1983. This section explicitly prohibits any employer or third party from receiving a premium in exchange for employment services, including the facilitation of work visas such as AEWV.

The statement made by MBIE suggesting that recruitment agencies can lawfully charge these fees is misleading and should be corrected to reflect the legal restrictions. Allowing these premiums not only breaches the Wages Protection Act but also contributes to potential exploitation of both employers and migrant workers, who may be coerced into paying extra fees under the false assumption that they are legally required.

The **AEWV scheme in Aotearoa New Zealand: A Human Rights Review**⁸ released in August 2024 raised concerns about human rights abuses affecting temporary migrant workers in the AEWV scheme. Commentary in the report states, "The scheme's policy settings, however, are contributing to workers being exploited for profit with insufficient access to effective redress" and "Additionally, the Commission identified the need for the scheme to adequately protect workers against human trafficking and modern slavery"

Key recommendations include:

- A full review of the AEWV scheme to ensure it has a strong focus on Te Tiriti o Waitangi and human rights. This is necessary to eradicate exploitation and minimise human rights risks present in the scheme
- Untying the AEWV visa from a specific accredited employer so workers can more easily change employers if they wish
- Requiring and enforcing ethical recruitment standards
- Providing better support and effective redress for migrant workers experiencing human rights risks and violations
- More and better scrutiny of and accountability for accredited employers
- Promoting and funding initiatives that have a proven record of protecting workers' human rights
- Implementing modern slavery legislation to better protect migrant workers from human trafficking and exploitation.

HortNZ supports the recommendations and in particular, HortNZ supports immediate increased and regular scrutiny of accredited employers by increasing the resources of the regional Labour Inspectorate and a more robust accredited employer application process and entry criteria.

While workers should take personal responsibility to some extent in ensuring they are not being exploited, migrants under the AEWV, are tied to specific employers and if these employers fail to adhere to labour laws or engage in exploitative practices, the workers may fear losing their visa or employment status, limiting their ability to speak up or change jobs.

It is important to recognise that the burden of preventing exploitation does not fall solely on the workers. Employers, immigration authorities, and labour regulators also have a critical role in safeguarding workers' rights. HortNZ recommends that a third-party agent must have New Zealand accreditation and the visa holder must sign an Immigration declaration stating which third party they have used and they have not paid a fee. This declaration would make both the visa holder and the third-party agent accountable, with potential penalties for those found to be non-compliant.

⁸ https://tikatangata.org.nz/cms/assets/Documents/Reports-and-Inquiry/Employment/Accredited-Employer-Work-Visa-review-report-2024/The-Accredited-Employer-Work-Visa-Scheme-_A-Human-Rights-Review-FINAL.pdf

5.1.2. SETTINGS FOR MIGRANTS WHOSE EMPLOYMENT HAS ENDED

Is three months enough time for a skilled worker to apply for a new visa or job change?
If not, what would be

Yes. Three months is adequate time - a worker must take responsibility and keep track of the visa end date and their requirements to notify Immigration NZ.

6. Other Comments

Pathway to residence

HortNZ understands that consideration of residence pathways is beyond the scope of the AEWV review and will likely be included in the review of skilled residence settings in 2025. However, due to shortages of supervisors, sprayer and machinery operators, HortNZ recommends that these roles are placed on the green list as a matter of urgency with eligibility to work towards residency after three years and be exempted from being paid 150 percent of the median wage.

Aotearoa Horticulture Action Plan (AHAP)

AHAP⁹ sets up a framework for collaboration across industry, Māori, research providers and government to achieve the ambitious goal of doubling the farmgate value of horticultural production by 2035 in a way that improves prosperity for our people and protects our environment. The plan was developed collectively and creates efficiencies by allowing the partners to align efforts and investment towards common actions. The key priorities supporting this submission are set out below:

Key priority	Outcome
1.4 Support horticulture with sound policy	Clear direction and setting long term policy to support horticulture
5.1 Establish a coordinated capability framework for horticulture across New Zealand	Horticulture attracts, retains and grows great people through attractive working conditions, accessible opportunities for all and training that meets people's needs
5.2 Enabling right person, right place	Establishing policy settings and legislation to meet labour needs.

Fit for purpose regulatory settings that allow New Zealand growers to have confidence in labour supply will help toward the overarching AHAP goal of doubling farm-gate value by 2035.

⁹ https://www.hortnz.co.nz/assets/About-Us/Aotearoa-Horticulture-Action-Plan/HOR-4619_Horticulture-Action-Plan-FA_web.pdf

Appendix One



Good Agricultural Practice (GAP) certification in the New Zealand horticulture industry (July 2024)



Overview

Good Agricultural Practice (GAP) schemes provide assurance for the safe and sustainable production, packing and distribution of fruits and vegetables in New Zealand. Horticulture businesses who achieve compliance with GAP assurance standards demonstrate that management systems, procedures and practices are in place to meet relevant regulatory and market requirements – so customers can buy with confidence. The two schemes operational in New Zealand are New Zealand GAP (NZGAP, owned by Horticulture New Zealand) and GLOBALG.A.P. (based in Cologne, Germany).

Why GAP?

GLOBALG.A.P. was established in 2007 (originally EUREGAP, founded in 1997) as British retailers working together with supermarkets in continental Europe become aware of consumers' growing concerns regarding product safety, environmental impact and the health, safety and welfare of workers and animals. Many retailers worldwide followed by developing their own sets of standards to help allay consumer concerns, which meant increasing compliance costs, duplication and complexity for growers. As a result, NZGAP was established in 1999 to enable growers to meet the requirements of multiple markets in New Zealand and overseas with one integrated food safety system which is more relevant and accessible for NZ growers.

Audited Self-Management Assurance Model

All GAP certified operators are independently audited by certification bodies (e.g. AsureQuality, SGS) who are accredited (e.g. by JAS-ANZ) against ISO standards to undertake assessment and certification activities. Growers must continuously meet requirements of GAP standards to maintain certification. GAP standards are benchmarked to relevant Regulatory and Market requirements so that GAP certification can be accepted as a pathway for growers to demonstrate compliance with those requirements (e.g. Food Safety, Environment, Social Practice).

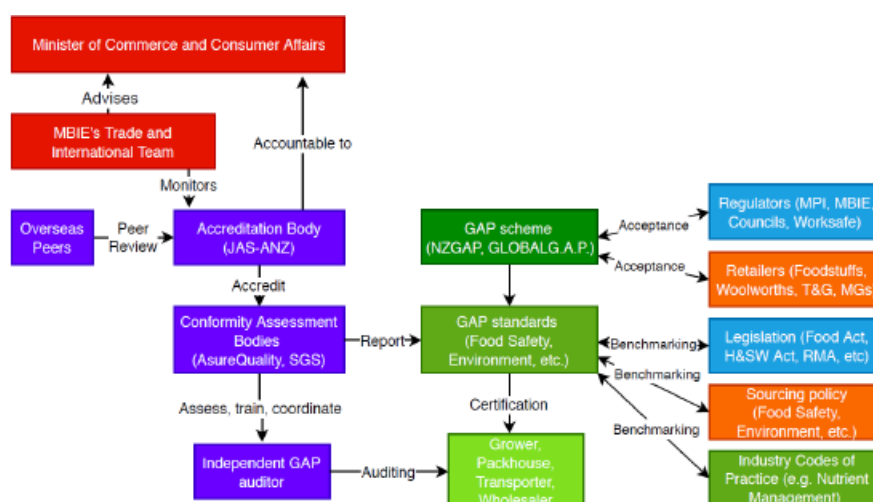


Fig 1: New Zealand Conformance Infrastructure for GAP certification

GAP numbers

There are approximately 3,500 growers certified to NZGAP or GLOBALG.A.P. in New Zealand. All exported fresh produce must be GAP certified to meet market requirements. All Kiwifruit, plus most of the Avocado, Onion and Apple industries are certified to the GLOBALG.A.P or NZGAP GLOBALG.A.P. Equivalent standards due to the market requirements especially in Europe, North America and

Audit costs

Food Safety GAP audit costs range from \$1,000 – \$4,500 depending on the scale and complexity of the business, while audit frequencies vary from annual to three yearly depending on the standard/programme and risk profile of the business. Social Practice and Environmental add-on audits cost range from \$500-\$3,000 depending on the programme plus the market and regulatory requirements, with reporting being a significant driver for increased costs.

Resources:

- **NZGAP** www.nzgap.co.nz
- **GLOBALG.A.P.** www.globalgap.org
- **Food Act recognition** <https://www.mpi.govt.nz/food-safety/food-act-2014/requirements/>

Fact sheet: Good Agricultural Practice (GAP) certification
in the New Zealand horticulture industry v3 (July 2024)

NZGAP and GLOBALG.A.P. have both been approved by MPI as Section 40 Template Food Control Plans for National Programme 1 under the Food Act 2014. The horticulture industry has been involved with the Food Act 2014 for over 10 years from policy development through to the current implementation phase. If growers have registered for Food Act via their GAP provider, their next GAP audit will double as a Food Act verification (audit) thus delivering a more effective system with one auditor up the drive. Current recognition of GAP is however suboptimal due to the piecemeal nature of the pathway enabled under the Food Act. The horticulture sector is seeking a pathway for full recognition of Industry Assurance Programmes like GAP for Freshwater Farm Plans and Food Safety to enable growers to meet regulatory and market requirements via one integrated system.

International recognition

NZGAP is accepted in most overseas markets, while it also benchmarked to GLOBALG.A.P. which in turn is accepted by almost all retailers worldwide.. GAP programmes are also required to be Global Food Safety Initiative (GFSI) recognised for some markets.

Achieving and Retaining Certification

All certified growers are independently audited, and they must continuously meet requirements of GAP standards to maintain certification. Certified growers are required to provide a significant amount of evidence of their practices during the audit process including risk assessments, action plans, records, certificates, documentation, interviews and observations. In general, GAP standards are threshold schemes (i.e. pass/fail) meaning that certain requirements must be met (verified via the GAP audit) before certification can be achieved. If the requirements are not met in full then growers have up to 28 days post audit to make corrective actions. Non-conformance can lead to suspension or cancellation of GAP certification meaning that the grower can no longer trade in markets requiring certification. All certified growers are subject to random audits and targeted audits where triggered.

