

SUBMISSION ON

Recognised Seasonal Employer policy review

24 April 2023

To: Ministry of Business, Innovation & Employment

Name of Submitter: Horticulture New Zealand

Supported by: NZ Asparagus Growers, Tomatoes NZ, NZ Buttercup Squash, Summerfruit NZ, Onions NZ, Boysenberries NZ, NZ Kiwiberry Growers, Persimmon Industry Council, Vegetables NZ, Strawberry Growers NZ, NZ Feijoa Growers Association, and Citrus NZ

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Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry of Business, Innovation and Employment for the opportunity to submit on the Recognised Seasonal Employer (RSE) policy review and welcomes any opportunity to continue to work with MBIE, including discussion 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 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.

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 individuals through employment and this translates through to 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.



Executive Summary

HortNZ has engaged with growers and employers on the Recognised Seasonal Employer (RSE) scheme since it was first discussed in November 2019. Since the review resumed in 2022, we have consulted extensively with members and facilitated sessions with MBIE across our horticulture growing regions.

There are around 200 RSE employers across horticulture and viticulture. The horticulture industry's value is \$6b across 5,500 growers. However, this in no way reflects farm gate returns or growers' profit at all. In fact, many of our fruit and vegetables growers are increasingly struggling to remain viable - with pressures like ongoing COVID-19 impacts as well as the recent North Island cyclones devastating many of our key growing regions. This, coupled with increasingly complex and costly regulations and policies, is pushing many growers out of producing fruit and vegetables which negatively impacts our food security.

Our growers need long term certainty about RSE labour supply and clear policy direction. For this MBIE policy review to be successful and enduring, we ask that all (current and new) policies and resulting activities are well funded, resourced and supported by Government to ensure the ongoing success of the RSE scheme.

Growers and employers continue to heavily invest in the success of RSE for the wellbeing of both their businesses and the Pacific. We ask Government to do the same and look forward to working with MBIE on the next stages of this review.

Submission

The importance of the Recognised Seasonal Employer (RSE) scheme to horticulture

Horticulture has the largest proportion of workers identifying as Pacific relative to other primary industries, in part due to the Recognised Seasonal Employer (RSE) scheme^{1,2}.

Seasonal workforce peaks mean the RSE scheme is essential for the viability of our horticulture industry. Labour certainty enables growers to follow best practice, which in turn allows for more optimal decision making and provides better outcomes for our industry.

The 2020 Recognised Seasonal Worker survey described that, while the majority of employees in horticulture are New Zealanders, RSE scheme workers make up approximately a third of the seasonal workforce³.

Exploitation concerns versus reality

The success and reputation of New Zealand's horticulture industry is a direct result of its people. If our people thrive, so does the sector. As such, New Zealand's horticulture industry has a zero-tolerance policy for poor behaviour.

Employers participating in the RSE scheme understand their obligation to not only be a good employer, but to create an enduring work environment with a culture of safety and wellbeing. For the most part, RSE employers go out of their way to care for and nurture their people, ensuring workers feel valued and part of an 'extended whanau' with opportunities to learn, upskill, and thrive in our industry.

There is an understanding among RSE employers that poor behaviour has a widespread impact on the credibility of the industry and the RSE scheme as a whole.

Throughout the policy review document, however, there are multiple references to the need to reduce exploitation. As an industry, we strongly encourage and support the need to prosecute those that exploit or take advantage of RSE (or other) workers but remain confident in our assessment that this is in the minority.

We consider there is a need to strengthen and provide more resources to the Labour Inspectorate to enable robust and regular monitoring, compliance, and enforcement so more is known about the extent of the issue within the sector. Then, industry and government can work together to drive out exploitation.

¹ www.mpi.govt.nz/dmsdocument/29273-primary-industries-subsector-workforce-infographics (Published March 2019)

² <https://mpi.govt.nz/dmsdocument/50932-Food-and-Fibre-workforce-Snapshot>

³ www.nzkgi.org.nz/wp-content/uploads/2020/07/RSE-Doc-June-2020-WEB-FINAL.pdf

We see this process as an opportunity to manage inconsistencies between inspectors and regions. Government data gathering would improve our understanding of the scale of the issue and the progress being made.

Industry schemes provide fit for purpose assurance

The horticulture industry has existing globally-recognised assurance systems that are already used by growers for both food safety and social practice standards. Regulators are already familiar with these assurances, and it is imperative these assurance systems are included within this policy review to minimise duplication and maximise consistency in compliance and interpretation.

Two social practice certifications that are well embedded within horticulture are Global Good Agricultural Practice (GLOBALG.A.P.) Risk Assessment on Social Practice (GRASP) and New Zealand Good Agricultural Practice (NZGAP) Social Practice. These certifications were developed to meet increasing market and global regulatory requirements (e.g., Australian and UK Modern Slavery Acts). They have been widely adopted in horticulture to meet export market requirements since 2016, and local market requirements since 2019. Both are independently (third-party) audited with certificates issued by approved Certification Bodies (SGS and AsureQuality).

As of February 2023, over 45,000 workers in horticulture are covered by a Social Practice Certification.

GlobalG.A.P. GRASP(V2)⁴

GlobalG.A.P.⁵ is a set of global standards for Good Agricultural Practice. GRASP(V2) is the GlobalG.A.P. Risk Assessment on Social Practice Version 2. Most retailers globally require G.A.P. from suppliers, and GRASP(V2) from 1st January 2024. Version 1 is well embedded.

GRASP(V2) is in place with many growers. For instance, around 900 grower systems within kiwifruit already have GRASP(V2) implemented and 100% of pipfruit growers.

Version 2 of GRASP covers sections entitled: Right of association and representation, GRASP(V2) worker representation, Complaint process, Producer's Human Rights Policies, Access to labour regulation information, Terms of employment documents and forced labour indicators, Payments, Wages, Working age, child labour and young workers, Compulsory school age and school access, Time recording systems, and Disciplinary procedures.

The National Interpretation Guidelines that will accompany V2 have been developed in consultation with The Ministry of Innovation and Employment (MBIE).

⁴ [www.globalgap.org/export/sites/default/content/galleries/Documents_Other/220928_Presentation_GRASP\(V2\)-v2_en.pdf](http://www.globalgap.org/export/sites/default/content/galleries/Documents_Other/220928_Presentation_GRASP(V2)-v2_en.pdf)

⁵ www.globalgap.org/uk_en

NZGAP Social Practice Add-on⁶

Over 620 growers (in 2022) were registered to be assessed to the Social Practice add-on. This assurance covers sections entitled: Policies and declarations, Employment agreements, Remuneration, Training, Employee representation, Accommodation, Complaints procedure and Contractors and other workers.

The adoption of existing GAP Social Practice certifications will ensure the entry bar for RSE is raised and that government agencies can have increased confidence that employers are meeting agreed and consistent expectations. The workload for the labour inspectorate can be redirected due to the independent auditing system, freeing those inspectors up to focus on the “bad actors” who are in breach of the RSE scheme standards and other legislative areas.

Increasing costs stifle growth

With one third of New Zealand’s horticulture work force comprised of RSE workers, the industry has been able to grow over the past 15 years and introduce permanent roles for New Zealanders.

Without the RSE scheme, a sustainable workforce and continued growth of the horticultural industry would cease to exist. Absence of the scheme would likely reduce returns to growers and increase the impact of compliance and labour costs – quickly making the business model unviable. The NZ Government Fit for a Better World productivity target⁷ is to add \$44b in export earnings over the next decade. For the horticulture sector to help achieve this goal, our industry must be confident that the RSE scheme is future-proofed and that the costs to employers associated with the scheme are sustainable.

With RSE making up a third of the horticulture workforce, the effects of the wage threshold increase from October 2023 (minimum wage + 10%) introduces inequality with the recruitment or retention of existing New Zealanders and adds enormous unbudgeted cost to growers’ businesses. There is an immediate and strong need for an impact exercise to be undertaken to better understand the flow-on effect of such increases and others proposed throughout the review document.

It should be noted, however, that an efficient experienced worker will make at least this wage. Paying employees more, regardless of efficiency, experience or training, increases costs without increasing productivity and reduces incentives for the best performers. These increased costs may render producing some horticultural crops unviable.

Terminology

Throughout the policy review, we agree that there is a strong need for clarified terminology. The use of terminology such as “adequate” or “standard” has led to disparities around New Zealand in the implementation or understanding of some of the original policy. It is critical

⁶ www.nzgap.co.nz/NZGAP_Public/Programmes/Social_Practice/NZGAP_Public/Programmes/Social_Practice.aspx?hkey=3cfee387-1912-4c46-96a1-c442ee876404

⁷ <https://fitforabetterworld.org.nz/about/our-roadmap>

that MBIE clarify any differences or ambiguities in the terminology used so that the requirements are transparent and not subject to interpretation. Specifically, the following terms and areas require further clarification and/or stipulation in the policy review:

Contractor versus employer

It is important to distinguish between direct employment and contracted employment or labour contractors for reasons set out below:

- Direct employment
 - The RSE worker is directly employed by the company where work is being undertaken
 - The employer (an industry member) is directly in control of the work pattern and location
 - The employer pays the worker directly
 - This is an immediate cause and effect relationship. The worker works, is paid for their services, and the employer can recoup any justifiable reimbursements on a regular basis
- Labour contractors / contracted employment
 - The contractor is indirectly in control of the work pattern and location. This is governed by the industry member to whom they are contracted and provide labour services.
 - The contractor pays the worker directly but invoices the industry member, ordinarily on a monthly basis.
 - There is a delay relationship with debt recovery. The contractor pays upfront for items such as flights, visas, transport, etc., but is unable to recoup quickly due to standard 30 or 60-day payment terms with the industry member.
- Presently, it is the responsibility of the individual grower (direct employer) to ensure the legitimacy of the contractor, their practices and the eligibility of their contracted workers. This is a very time consuming and onerous process.

GRASP OR NZGAP SOCIAL PRACTICE ADD-ON RECOGNISED AND A PREREQUISITE

We strongly propose that a requirement of either GRASP(V2) or NZGAP's Social Practice add-on is recognised by the regulator as a robust method of demonstrating compliance with the scheme requirements.

The industry assurance programme could then be used to assist growers in identifying contractors that meet the standard. Some sectors could determine that they would only engage with accredited contractors.

Leveraging off existing and well embedded industry assurance schemes will provide a robust method of monitoring compliance across the scheme and increase efficiency of delivering a scheme with lesser risk of exploitation. Using industry assurance means increased resource to inspect employers through the GRASP / NZGAP add-on as part of a wider regular audit.

Accommodation Providers

It is also important in this policy review to acknowledge that there are also a few variables within accommodation providers; they cannot be viewed as being the same:

- Owner / operators of accommodation units - with no direct link to the RSE / employer
- Employer owned / operated accommodation units - with employed RSEs
- Home-stays / billeted accommodation (independent or within families)
- Labour contractor owned / operators of accommodation units - with contracted RSEs

There can be no “one size fits all” approach to accommodation, however the approach should remain consistent and fair.

Discussion Questions

System-focussed: Cap

35.a Multi-year cap

AGREE

Multi-year planning by the grower could be undertaken, allowing capital expenditure projects to be ventured into with more confidence. A minimum of three years would be required, and it would need to be aligned with the proposed caps from the Pacific nations. To achieve a multi-year cap, application compliance to NZGAP’s Social Practical Add-on or GRASP(V2) would be required.

35.b Retain the current (status quo) approach

DISAGREE

35.c Use a labour supply/demand model

DISAGREE

35.d Use available data as a base to inform engagement with stakeholders to balance the factors for consideration in setting a cap

DISAGREE

35.e Government and industry agree on a workforce plan which includes targets/performance measures for industry

UNDECIDED

This has potential but also runs the risk of short-term employment fluctuations within New Zealand dictating the long-term horticultural outcome.

35.f Remove the cap and allow the number of RSE workers required each season to be determined by industry demand

STRONGLY AGREE

It is our preference to remove the cap. The scheme will self-regulate, limited by expenses to be incurred by the employer or the number of beds available. A methodology such as the Labour Market Test could regulate a no-cap environment. It further reduces any distortion in numbers requested, as they could not be accommodated (i.e. for an ATR to be viable – employers must have accommodation for them). If perception is key here, then a high cap could be introduced (which would never be reached), as per the Working Holiday Scheme, which has proven history.

We further suggest that the Cap and Allocation categories are combined as they are integrally linked.

System-focussed: Allocation

43.a Multi-year allocation process

AGREE

This goes hand-in-hand with the multi-year cap giving growers confidence in future planning. Multi-year allocation could be removed from a grower as a sanction.

43.b Retaining the pre-2022 process

DISAGREE

43.c Industry led allocation

DISAGREE

The process may be consistent with meat and seafood sector agreements, but this does not guarantee its success when translated into horticulture. Industry bodies do not have the resources to implement this.

43.d 2022 National Labour Governance Group agreed process

DISAGREE

43.e Performance-based allocation criteria to determine the increase in allocation

UNDECIDED

Both the availability of New Zealanders (which will differ regionally and seasonally) and the ability to undertake the more physical nature of horticultural tasks are limitations and would not easily be captured in metrics for these criteria.

However, it is agreed that penalties to allocation should be imposed for those that have breaches.

The development of any performance-based allocation system would need to be done in consultation with industry and employers. There is no one-size-fits-all approach (e.g., it is easier to employ many New Zealanders in a packhouse than it is for a standalone horticultural operation). Any indicators would also need to encompass the number of permanent New Zealanders and be scalable as to the size and type of operation. Indicators would also need to align with goals set by the Aotearoa Horticulture Action Plan.

To achieve any allocation in place, compliance to NZGAP's Social Practical Add-on or GRASP(V2) would be required.

It is our preference to have no cap and therefore no allocation, thus removing the elevation or inflation of numbers mentioned in the policy review document.

System-focussed: Labour Market Test

54.a Maintaining the Status Quo

DISAGREE

The LMT is too subjective, time consuming and inconsistent across regions.

54.b LMT Removal

UNDECIDED

This will underpin aforementioned criteria for managing a cap (or no cap), so it is important that something universal is implemented.

54.c Standards-based approach

UNDECIDED

If multi-year caps or allocations are in place, then this should not introduce an annual stumbling block.

54.d Accreditation only approach

DISAGREE

Additional compliance (and the associated cost) is not acceptable to industry.

54.e RSE standard of employment

DISAGREE

It would not be economically feasible to replicate specific parts of the RSE standard of employment across the New Zealand workforce (e.g., accommodation, transport availability or other pastoral care provisions).

It is important to ensure that an effective New Zealanders-first approach is maintained by industry, but this needs to be more holistic than the present LMT process.

New Zealanders employed encompasses FTE, and it is imperative that any calculation captures all New Zealanders employed regardless of WINZ status or the route to employment that they took (directly or indirectly).

Clause 52.c. of the original MBIE document concerns us with the phrasing “Privacy waivers”. Whilst we recognise the need for the ease of transferring information between INZ and MSD (and encourage the minimisation of duplication), it is imperative that no privacy short cuts are taken nor personal information compromised.

System-focussed: Compliance

65.a Establish more clearly what constitutes a breach of RSE requirements ‘other than of a minor nature’

AGREE

A clearly defined table of breaches (including minor) and sanctions should be created with the input of industry, industry bodies, and regulators.

Failure to maintain compliance to NZGAP’s Social Practical Add-on or GRASP(V2) should also be considered as a major breach (e.g. suspension of certification).

Zero tolerance for non-compliance for major breaches (HSAW Act, Holidays Act, exploitation, etc.) as per current legislative requirements.

65.b Establish a scale of breaches of RSE requirements

AGREE

As above point 65.a

65.c Establish clear process for how complaints and how issues are to be addressed

AGREE

Complaint mechanisms should be flexible enough to include those required with assurances held by the grower (i.e., GRASP(V2)) to minimise duplication in how and where to lodge a complaint. A clear escalation process should be recognised upon receipt of a complaint that could affect the RSE status of an employer.

There needs to be special attention paid in this area to ensure the privacy of any information or other data gathered as a result of a complaint, and the right to anonymity of the complainant with no retribution.

65.d Increase RSE worker voice and agency in understanding rights, raising concerns and getting resolution

AGREE

As above, but with consideration for those whistle-blower style complaint methods already in place and embedded in (particularly larger) organisations.

65.e Enhanced inspection regime

SOMEWHAT AGREE

Recognition of compliance to existing systems such as NZGAP's Social Practice Module or GRASP(V2) would remove the additional burden that would be required with an increased or enhanced inspection regime. However, we do support the need for greater resources within the Labour Inspectorate to focus on those with non-compliances or breaches.

65.f Incentives for good performance to be developed with stakeholders

DISAGREE

Recognition of compliance to existing schemes (NZGAP's Social Practice Module or GRASP(V2)) offers performance standards already embedded and ensures consistency across all of horticulture without additional compliance or costs being introduced.

It should be noted that it remains important within the policy review not to generalise across the sector for the case of a few bad actors. Industry remains committed to being good employers and will not tolerate those who are not.

We strongly believe that the bad actors (as the minority) should be forced to adhere to the current standards, not that the good actors (as the majority) should have to endure increasing standards when those that are current (e.g., GRASP(V2) and NZGAP's Social Practice Add-on) are above and beyond New Zealand regulatory requirements. These existing schemes are independently audited and would not incur significant additional cost for industry to participate. However, contractors and some growers are currently uncertified.

System-focussed: Flexibility

80.a Multi-entry visas

AGREE

80.b Multi-year visas

SOMEWHAT AGREE

A multi-year visa should be issued with some provisions on the successful continuation of working within New Zealand. Clear parameters would need to be in place to ensure that re-entry is not used detrimentally against workers or teams, and that re-entry is subject to successful completion of each individual seven (or nine) month term (i.e., no health and safety breaches or other misconduct issues). Low performance should not be used as a reason to revoke a multi-year visa by the employer. It would also be paramount to ensure that any workers that are returned home due to misconduct are not able to join another employer in subsequent years with no knowledge of prior misdemeanours.

80.c Visas not tied to one employer

DISAGREE

Employers should have the certainty that teams arriving will stay with them for the duration of their visa. Individual changes to the employer status that might trigger the need for a visa change would be dealt with by INZ, (and this process should be improved to make it easier and more time-efficient). Likewise, requesting to transfer to another employer should also be triggered by the worker via INZ to ensure appropriate transfer is achieved. Keeping to one employer is in line with a standard Working Visa issued. The risk with opening up the visas to "any" employer gives rise to the possibility of poaching and the loss of recouping debts by the employer.

However, employers should have freedom within their region to move their workers to other RSE accredited employers if needed, and MBIE should adopt a simple notification process. This should be at the sole discretion of the employer.

80.d Removing the requirement for a new Agreement to Recruit when a worker changes roles or locations within a region but remains with the same employer

AGREE

An employer should be able to decide the best use of the workforce that they have in order to maximise production and harvest. However, the ruling of New Zealanders first and other RSE requirements should take precedence before this transfer could happen, and the employer should be transparent in the process they undertook before moving a worker within the region/role.

80.e Allowing workers to be removed between regions without a new Agreement to Recruit

AGREE

As above, for the same employer with the same conditions.

80.f Enabling the conditions of a RSE visa to be varied when a worker changes employers

AGREE

Subject to clear and approved limitations on when a worker can change employers (i.e. human rights breaches, loss of accreditation or RSE status, severe weather effects on the original employer's property or harvest, etc.).

In addition to flexibility requests, we have identified that the following flexibility options should be pursued:

- The removal of the 30-hour minimum requirement. This causes considerable administrative resources and should be averaged over a longer time period (such as the entirety of the visa) to allow for the ebbs and flows of a season, and the need for workers to rest after heavy peaks.
- The ability to submit a full years' worth of ATRs at once, to smooth out the peaks and troughs of RSE administration on the employer.
- MBIE should urgently implement a portal based system for applications to avoid unnecessary duplication and delays associated with the current paper based system.

Worker-focused: Accommodation

92.a Updating the RSE accommodation standards

AGREE

In consultation with RSE workers, accommodation providers and RSE employers/industry should ensure that there is consistency in interpretation and, where the removal or addition of something is required, that an acceptable and achievable phase out/in period is implemented. It is important that a multitude of accommodation types are considered (from homestays or billeting through to large, communal villages). It is also important to minimise any changes required to existing accommodation to avoid considerable and unnecessary expense to accommodation providers/employers.

Proposed changes that should not be removed from the standard include: the provision for drying of clothes year-round (not just outside), lockable toilet cubicles (regardless of gender), adequate ventilation for gas cooking and the use of bunk beds.

The accommodation standards should reflect legislation in place for the appropriate style of accommodation (i.e. temporary or portable housing that is only occupied for a part of the year). Consideration should also be made to the standard of the accommodation, not the style (e.g., a holiday park).

92.b Requiring employers to provide workers with recent photos and details of accommodation

DISAGREE

We agree that a robust pathway for raising concerns about the accommodation is already in place (as with general complaints or concerns). Providing photographs is unnecessary and may cause delays to the recruitment process, particularly for those employers with multiple accommodation sites or types. This could be encouraged but not mandated. It is also often impossible to provide exact photos of bedrooms to a worker as allocation to a particular room often happens after they arrive. Thus, the room they are assigned may look different than the original photo.

92.c Introducing a methodology to assess the reasonableness of proposed accommodation costs/cost increases

SOMEWHAT AGREE

In consultation with industry and accommodation providers, the term “reasonable” needs to be defined (as price rises will differ from style and type of accommodation and upgrades or maintenance needed). It is also important that the current accommodation price freeze is removed as a matter of urgency and accommodation providers are able to introduce those reasonable increases appropriately. It should be noted that any improvements or upgrades will result in an increase in accommodation costs to workers.

The Pacific voice is strongly missing from this area. It is important that the workers' viewpoints are taken into consideration in terms of what they would like in their accommodation. Their cultural requirements must be respected, and a more Western style of living should not be imposed without their direct involvement.

Worker-focussed: Health

109.a Consider whether partial or full access to publicly funded healthcare is possible

AGREE

Full access with the same conditions as a New Zealand worker (i.e., NZ surcharges, not overseas patient surcharges). There must be a specific Pacific focus to ensure that a proactive holistic approach is offered.

However, it is important that a cost-benefit analysis be entered into to distinguish whether full publicly funded healthcare would be advantageous to the worker (with an increased tax rate) versus standardised insurance.

109.b.i Define "acceptable" health insurance in policy according to higher standard

AGREE

With agreed parameters for acceptable increases in premium each year (e.g., upon discovery of a pre-existing condition, etc.) and a standard at which it is defined what is or is not declined at claim stage.

109.b.ii Mass procure the best deal for health insurance

AGREE

We can see the advantage in MBIE/MoH mandating what insurance does or does not cover, so that price is not the decider for which cover to take.

109.b.iii Require employers to cover part or all of the health insurance

DISAGREE

This should be an individual company decision.

109.b.iv Mandating health insurance information

AGREE

Or an outline of the medical services available (including ACC). This is often done by employers individually, so it is important that the method of delivery is reviewed to increase understanding and awareness.

109.c. Remove the blanket ban on HIV positive applicants

AGREE

There is no provision within the proposals for mental health support or the ability to access services. This is an important area that needs addressing with the health section, not just the onus being on Pastoral Carers to provide access to/support. The concepts of Fonofale, other Pacific models of health⁸ or Ola Manuia capturing physical, mental, family, culture and spiritual health are crucial for this section to be a success.

It is also important that any cost analyses or health condition analyses consider the elongated period of time within which RSE workers were stranded within New Zealand during COVID-19. This has the potential to distort the perception of need.

Worker-focused: Worker rights and exploitation risks

123.a Guidance to employers

AGREE

New Zealand is not immune to cases of worker exploitation. The horticulture sector is serious about supporting our growers and contractors to operate ethically and within the law. The most effective way to address worker exploitation is with stipulation of minimum standards and industry certification such as NZGAP's Social Practice module or GRASP(V2). The national interpretation guidelines have been developed in New Zealand by the GAP National Technical Working Group with input from MBIE and other stakeholders to ensure that areas such as these are interpreted correctly within the New Zealand context. There is a need to develop RSE specific guidelines, to support the use of NZGAP's Social Practice module or GRASP(V2) for demonstrating compliance. HortNZ stands ready to be part of a working group with MBIE and others on this as a matter of urgency to enable swift adoption.

123.b Streamlined processes for INZ to transfer workers to another RSE employer in cases of exploitation

AGREE

123.c Increase RSE worker voice and agency

AGREE

⁸ <https://www.healthnavigator.org.nz/healthy-living/p/pacific-models-of-health/>

The independent support and advice needs to be culturally appropriate and community led.

123.d Support package for RSE workers

AGREE

In line with above comments, but it should be consistent in its presentation and content and offer services that are culturally appropriate.

It remains important that the employers that breach worker rights are held to task and accountable for their actions.

Worker-focused: Pastoral Care

135.a Lifting and clarifying the pastoral care standard

AGREE

This needs to be in close consultation with industry, workers, and other stakeholders (such as accommodation providers, existing pastoral care providers and labour contractors).

A baseline of acceptable care should be established.

However, it is strongly opposed that food be a part of the pastoral care standard. It is not the place of industry or the employer to dictate what food is provided to adult workers (of any culture, background or visa type). Any provisions for food should be an individual agreement made between workers and their pastoral care team/employer.

135.b Requiring employers to complete pastoral care plans

AGREE

It should be acknowledged that the pastoral care requirements should be scalable depending on the size and style of the business/accommodation and the numbers of workers under their care.

135.c Requirements for pastoral care workers

SOMEWHAT AGREE

It should be reflective of the business and their culture, along with the other cultures that they are providing pastoral care for. This cannot be prescriptive.

However, we would like to see pastoral care employment options for RSE workers so that they can tailor their own care environment that is most appropriate to them within their teams.

135.d Establishing a dedicated advice and support mechanism for RSE employers

SOMEWHAT AGREE

There should be provisions for combined pastoral care in areas where combining of resources and/or facilities can be achieved

Worker-focused: Deductions

145.a A standardised template deductions form

DISAGREE

145.b Specifying in policy a restricted set of allowable deductions

DISAGREE

Clarification of the terminology for “reasonable” deductions should be introduced, but it could be counterproductive to set a policy of allowable deductions if the policy prevented deductions that support RSE employers using their access to capital to benefit RSE workers who have less access to capital – but through their wages can pay upfront costs back.

145.c Specifying over a time period for deductions to be recovered

DISAGREE

The timeframe for retrieval should be mutually agreed between the employer and the worker and reflective of the upfront investment the employer has made.

Fair retrieval of deductions are audited in line with the requirements set out in GRASP(V2) or NZGAP’s Social Practice add-on.

145.d Specifying in policy a maximum limit as a percentage of a worker’s wage

DISAGREE

145.e Clarifying cost-sharing arrangements in policy

AGREE

In consultation with industry and workers. It is important to ensure that no matter what employer the worker is employed by, the expectation of shared or individual costs is the same.

145.f Further prescription for areas of particular issue, such as flights

REQUIRES FURTHER THOUGHT AND MBIE ANALYSIS

There is more benefit in negotiating a scheme-wide flight cost, negating the need for expensive flexible flights (e.g. group schemes often have one change allowed free of charge). There are limitations around bulk booking ahead of time, etc., due to needing names or specific dates. Logistically this foresight is not often practical due to the uncertain nature of the start of harvest and being at the mercy of the weather, natural disasters and more.

145.g Status quo in policy but provide operational guidance to the LI on assessing “actual, reasonable and verifiable” expenses

DISAGREE

However, the terms “actual, reasonable and verifiable” expenses do require clarification.

Worker-focussed: Benefits

159.a Requiring an increase in minimum pay rates over time

DISAGREE

The Minimum Wage Act ensures that this pay increase occurs. Refer to earlier comments about the 10% increase for October 2023 being unacceptable to industry.

It is unnecessary to add another level of complexity to minimum wage increases that occur over time and only relate them to one visa type - swinging the pendulum benefits against Kiwi workers.

Most growers spend at least over 50% of their costs on labour. Increasing labour costs without increasing production or the price paid for crops to growers would stifle business. Food production (and therefore food security) in New Zealand would decrease.

159.b.i Training and skills development - Facilitative

AGREE

Facilitative and flexible, including the utilisation of Red Cross, Vakameasina and Puatanofa training (WorkSafe) in a more collaborative way within regions (rather than company to company, it could be district to district).

159.b.ii Training and skills development – Mandatory

SOMEWHAT AGREE

Training is already a requirement of NZGAP's Social Practical Add-on or GRASP(V2).

Training is important for workforce development and is a benefit of the scheme. However, training needs to be relevant to work being undertaken.

159.c Facilitate access to workers' Pacific superannuation schemes

SOMEWHAT DISAGREE

There are many variables that could affect the success of this.

- 1) Is there a superannuation scheme in the Pacific nation country?
- 2) Does the worker have a bank account to which these funds could be remitted?
- 3) Is an existing scheme one that the worker wants to be a part of?

We recommend further discussion with the workers and the Pacific Island nations.

159.d Require employers to directly pay for more of the upfront costs to the RSE worker

DISAGREE

Employers have access to credit that workers do not. It isn't a cost to the grower if deducted from pay overtime. Upfront payments should not be required, but if an employer is willing, then a process that supports upfront payments and deductions should be provided for.

However, requiring employers to pay upfront costs may be uneconomic for smaller employers with less cash-flow. Reducing ways upfront costs can be recouped may make the costs of the scheme too high for the sector.

Increasing costs associated with the RSE scheme very quickly make the scheme unviable to a grower, even with just a few workers. Increases in flight costs from 50 -100% or further subsidising accommodation or food, may force growers to exit the scheme or the sector. The previous suggestion in 54.e that states parts of the RSE provision are offered to New Zealanders would make for an inhospitable working environment and creates unwarranted tensions when two parties completing the same job have wildly different terms and conditions.

Next Steps

The timeline for this review provides limited time for consultation, feedback and discussion. As we have outlined in our submission, we believe there is a need for a more in-depth consultation process involving RSE workers and Pacific nations. Government also needs to undertake deeper insight work (including impact studies) to fully understand the repercussions (to Pacific nations, RSE workers and our horticulture food producers) of the review's proposals.

We request further information on the next steps of this process as it progresses and ask that industry and the Pacific voice are both involved in the decision process of prioritising certain workstreams and/or implementation timelines.

Our industry needs certainty that it can enter the next season with confidence in the RSE scheme and that the costs associated with it are not detrimental to the continuation of their business (e.g., the current accommodation prize freeze is uneconomical). Workers themselves also need certainty that their employment opportunities remain and that any changes to costings incurred at home or in New Zealand are transparent and well-communicated.

Further Consultation Required

HortNZ seeks a more in-depth consultation period particularly for the following areas set out below:

Clause	Stance	Consultation required	Consultation parties to be involved
43.e Performance-based allocation criteria to determine the increase in allocation	UNDEDICIDED	The development of performance-based allocation should be done in consultation with industry and employers. Any indicators would also need to encompass the number of permanent New Zealanders and be scalable as to the size and type of operation. Indicators would also need to be in line with goals set by industry's transformation plan.	Industry, industry bodies, employers
92.a Updating the RSE accommodation standards	AGREE	Need to ensure there is consistency in interpretation and, where removal or addition of something is required, that an acceptable and achievable phase out/in period is implemented. It is important that a multitude of accommodation types are considered. It is also important to minimise any changes required to existing accommodation to avoid considerable and unnecessary expense to accommodation providers/workers	Workers, accommodation providers, employers, industry, industry bodies
92.c Introduce a methodology to assess the reasonableness of proposed accommodation costs/increases	SOMEWHAT AGREE	The term "reasonable" needs to be agreed. It is also important that the current accommodation price freeze be removed, and accommodation providers can introduce those reasonable increases appropriately. It is also important that the Pacific voice is heard so that their viewpoint is taken into consideration, cultural requirements are respected, and a Western style of living is not imposed without their input.	Industry, industry bodies, accommodation providers, workers

<p>135.a Lifting and clarifying the pastoral care standard</p>	<p>AGREE</p>	<p>A baseline of acceptable care should be established in consultation. It is however opposed that food be a part of the pastoral care standard.</p>	<p>Industry, industry bodies, workers and other stakeholders (accommodation providers, pastoral care providers, labour contractors).</p>
<p>145.e Clarifying cost-sharing arrangements in policy</p>	<p>AGREE</p>	<p>It is important to ensure that no matter what employer the worker works for, that the expectation of shared or individual costs is the same.</p>	<p>Industry, industry bodies, employers, workers</p>
<p>159.c Facilitate access to workers' Pacific superannuation schemes</p>	<p>SOMEWHAT DISAGREE</p>	<p>Many variables affect the success of this.</p> <ol style="list-style-type: none"> 1) Is there a superannuation scheme in the Pacific nation country? 2) Does the worker have a bank account to which these funds could be remitted? 3) Is an existing scheme one that the worker wants to be a part of? 	<p>Workers, Pacific Island nations, employers</p>