

# **SUBMISSION ON** Health and Safety Regulatory System Reform

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**To:** Ministry of Business Innovation and Employment

**Name of Submitter:** Horticulture 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 provide feedback on the Health and Safety Regulatory Reform consultation and welcomes any opportunity to continue to work with MBIE to discuss our submission.

The details of HortNZ's submission and recommendations are set out in our submission below.

# HortNZ's Role

## Background to HortNZ

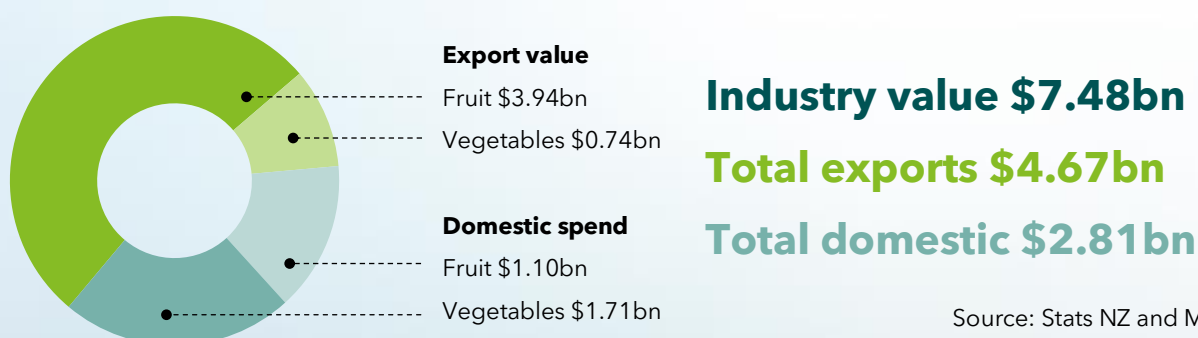
HortNZ represents the interests of approximately 4,200 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

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.



# Submission

## 1. Horticulture Industry

Horticulture encompasses a wide range of businesses and activities related to the production of fruit and vegetables. These businesses can operate independently or be part of larger operations:

- **Postharvest:** Processes and activities (sorting and grading, packaging, storage and transportation) that occur after crops are harvested but before they reach consumers.
- **Growers:** Individuals or companies that grow and harvest crops (growers often work closely with postharvest facilities)
- **Industry Bodies:** Organisations that represent the collective interests of growers and other stakeholders eg - New Zealand Kiwifruit Growers Inc. (NZKGI) and Vegetables NZ. Industry bodies generally advocate for policy changes and industry standards, provide research, education, and resources to improve industry practices and facilitate communication and cooperation among growers and other entities in the supply chain
- **Labour Contractors:** Supply seasonal workers to growers for tasks such as pruning, picking, and packing
- **Horticulture Management Companies:** Managing horticulture operations on behalf of growers. They oversee the operational aspects of production and ensure the operations are managed efficiently. These companies often serve as intermediaries between growers and postharvest facilities, facilitating the smooth transition from orchard to market.

These businesses often have overlapping health and safety shared responsibilities and will manage health and safety requirements comparative to the size and scale of their business.

## 2. General Comments

### 2.1. Health and Safety at Work Act

The New Zealand Health and Safety at Work Act (HSWA) 2015 is generally considered a fit for purpose piece of legislation aimed at improving workplace safety however there are a number of areas where the Act requires refinement:

- **Complexity and burden on business:** Many small and medium-sized business have argued that the act is too complex, placing an undue compliance burden on them. They often lack the resources and personnel to manage the extensive paperwork and procedural requirements, which can be costly and time-consuming
- **Cost of compliance:** The financial burden of meeting health and safety requirements can be burdensome. These costs include not just initial implementation but also ongoing maintenance of safety standards

- **Employee Responsibility:** While employers have significant responsibilities under the Act, there is a perception that employees themselves are not held accountable enough for unsafe actions
- **Interpretation of the Act:** The HSWA imposes a primary duty of care on "Persons Conducting a Business or Undertaking" (PCBU), which includes employers, self-employed people, and organisations. However, subcontractors, suppliers, and even workers themselves also have obligations under the Act. This can lead to some ambiguity in terms of responsibility, especially in complex work arrangements involving multiple PCBUs which is the case in the horticulture industry

The Act requires that all PCBUs ensure, so far as is "reasonably practicable," the health and safety of workers and others. The term "reasonably practicable" is not clearly defined in specific terms but generally refers to taking steps that are appropriate to the nature of the risks. This leaves room for interpretation, and disputes may arise as to whether certain precautions were practical or necessary

- **New and emerging risks:** Changes to the ACT do not keep up with changes to new and emerging health and safety risks which are continuously evolving due to changes in technology, the environment and work practices. Regulation needs to adapt quickly to ensure business are clear on what risks these areas propose. New risks and areas for regulation that are relevant to horticulture include:
  - Renewable energy sources
  - Artificial intelligence
  - Robotics
  - Climate change-related risks, such as disaster preparedness and working in extreme weather conditions.

These emerging risks highlight the importance of evolving health and safety policies to address the dynamic nature of work and environment-related hazards.

## 2.2. WorkSafe Guidance

Improving WorkSafe guidance is essential for ensuring that both employers and employees clearly understand their roles and responsibilities in maintaining a safe workplace.

The current WorkSafe guidance does not sufficiently cater to the horticulture industry. The horticulture guidance material<sup>1</sup> available on the WorkSafe website include:

- Keep safe, keep growing: How to be healthy and safe in horticulture
- Bird scaring methods: An introduction to risk management

Concerningly, the current guidance material for forklifts - [The Approved Code of Practice for the Safe Use of Forklifts](#) hasn't been updated since May 1995 and does not reflect current New Zealand Health and Safety Legislation.

The [WorkSafe 2017 Endorsing Guidance and Education Products Policy](#) sets out an approach to support external parties to develop high quality health and safety products that fill a gap in the system. Since the inception of the policy, WorkSafe has endorsed only seven pieces of guidance.

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<sup>1</sup> [Horticulture | WorkSafe](#)

HortNZ recommends that WorkSafe conduct a thorough evaluation of its framework and process for endorsing guidance and enhance its support for adopting industry-developed guidance.

## 2.3. Regulations

MBIE should be provided with adequate resources to finalise and implement the full set of Phase II Regulations—covering plant and structures, hazardous substances, and hazardous work—ensuring they are enacted and in effect by 2028 if not before.

In parallel with advancing Phase II regulations, it is recommended that MBIE work with WorkSafe and other key stakeholders to identify emerging health and safety risks. This will help lay the groundwork for the development of a comprehensive Phase III regulatory framework.

## 3. Submission

### 3.1. Focus Area One: Businesses are Best Placed to Understand and Manage Their Business

Thinking about just the key actions your business or organisation takes to manage health and safety risks to its workers and others affected by its work:

- a. what are these actions?
- b. why does it take these actions?
- c. do you think these actions are reasonable? (Please explain your answer.)
- d. do you think these actions are effective in managing health and safety risks? (Please explain your answer.)

Managing health and safety risks is essential for any organisation to ensure the well-being of workers. The below provides examples of the steps industry takes to manage health and safety risks:

- **Risk Assessment and Hazard Identification:** Regular assessments are undertaken to identify potential hazards in the workplace (e.g., chemical, physical, ergonomic)
- **Minimise Hazards:** Where possible the introduction of safeguards to mitigate hazards (e.g., machine guards, ventilation systems, safe work practices)
- **Personal Protective Equipment (PPE):** Providing PPE when necessary, such as gloves, helmets, or safety goggles, and ensure workers are trained in their use
- **Training and Education:** This can include machinery training, induction of new workers, reminders on harvest safety and upskilling on new rules and regulations
- **Safety Committees:** It is common for industry to establish Health and Safety Committees – eg - HortNZ Health and Safety Council, Kiwifruit Industry Health and Safety Forum
- **Regular Inspections and Audits:** Health and safety managers (and dedicated staff) routinely undertake safety audits and inspections to ensure compliance with safety procedures and to identify new risks.



- **Health and Wellbeing Programs:** It is becoming more common for industry and in particular post-harvest to offer programs to promote the physical and mental well-being of employees, such as fitness initiatives, mental health support or ergonomic assessments.

The industry takes these steps to identify risks, minimise accidents and manage safety. The cost of poor health and safety management can be significant for a business, affecting both financial performance and overall operational efficiency.

While these are reasonable steps a business can undertake and are effective in managing health and safety risks, the guidance developed by WorkSafe to help a business manage its health and safety is dated and needs to be completely reviewed.

How well does your business or organisation understand its work health and safety obligations?

The horticulture industry has invested considerable effort in promoting safe working practices and ensuring the delivery of competent health and safety advice through the development of skills, knowledge, and ongoing professional development.

The businesses that make up our industry range from small one or two people operations to significant business with hundreds of staff. Larger business that have resources to employ dedicated health and safety staff will have a good understanding of work health and safety requirements. This may not be the case for smaller operators. Good quality guidance plays a crucial role in helping businesses understand their health and safety requirements.

An example of where HortNZ has partnered with government to develop resources to help horticulture business understand their health and safety obligations is the jointly funded HortNZ and ACC Grow Home Safe programme<sup>2</sup>.

Thinking about just the key actions the business or organisation takes:

- a. about how much would it cost per year to comply with your health and safety obligations? (If you are unable to estimate an annual cost, can you give some examples of spending to meet your obligations?) , how much time?

The time a business spends on health and safety depends on several factors, including the size of the business and the complexity of operations. The two examples below set out the annual expenditure an orchard management company and a postharvest facility spend on health and safety and the time commitment required from both and employer and employee perspective.

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<sup>2</sup> <https://www.hortnz.co.nz/people-jobs-and-labour/health-and-safety/enhancing-safety-and-wellbeing-in-horticulture/>

**Example one**

Orchard management business with 15-20 permanent staff. 150 seasonal staff at peak times  
**\$250k Health and Safety annual expenditure**

**Staff**

Full time Health and Safety Manager

Full time Health and Safety Administration Assistant

Use of Health and Safety consultants once or twice a year

**Training**

Regular staff training on first aid, chainsaw, tractors, forklift, agrichemicals, hydro ladders use  
30-60 min induction on Health and Safety when joining the business (Up to 200 people per year)

**Meetings**

Fortnightly managers and supervisor Health and Safety meeting for 30mins. 12-15 people attending

Daily toolbox meetings for 10-15 mins led by managers and supervisors. All staff attending.

Board meeting every three months. Health and Safety agenda item 30-60 mins

**Serious Harm Incident**

Serious harm incident occurred and cost over \$20k for legal/consultants getting advice and responding to WorkSafe investigation.

**Example two**

Postharvest facility (two sites) with 200 permanent.1200 seasonal staff during peak season  
**\$500k plus Health and Safety annual expenditure**

**Staff**

Full time Health and Safety Manager

Full time Health and Safety Advisor

Full time Health and Safety Coordinator

Full time Health and Safety Project Manager

**Training**

30-60 min induction on Health and Safety when joining the business (Up to 1200 people per year)

Regular staff training on first aid, chainsaw, tractors, forklift, agrichemicals, hydro ladders use

**Meetings**

Daily toolbox meetings with all staff

Health and Safety Executive Committee monthly meetings. Two hours. 10 people attending

Three Health and Safety committees over two sites and one orchard. Three hours each per month. 10 attending each meeting



Depending on the business, workers would generally spend around 30 - 60 mins a week on health and safety - eg toolbox meetings, updates and training. Workers will spend time each day checking PPE to make sure safety standards are met.

### **3.2. Focus area two: the law is designed to balance flexibility and certainty**

The HSW Act aims to balance flexibility and certainty. Thinking about the parts of the work health and safety law you frequently engage with, can you provide examples of:

- a. requirements that are too detailed, strict, or inflexible to allow you to comply?
- b. where there is not enough detail or too much ambiguity in law or regulations to help you comply?
- c. requirements that are causing you problems?
- d. requirements that are working well?

Generally the Act is okay however there are concerns regarding the amount of time and energy a business has to put in to comply. The systems seems to be inflexible for the small business owner with seasonal fluctuations which increase employees which increases health and safety requirements. It is unachievable for these employers to complete their obligations. Due to the lack of implementation guidance, there is a risk that the interpretation of the Act can be problematic.

Regulations need to be relevant and fit for purpose. New regulations were developed with the Health and Safety Reform Bill (which later became the Health and Safety at Work Act 2015) with a second phase planned to address three key areas:

- Plant, structures, and hazardous work at heights
- Hazardous substances
- Hazardous work.

These regulations were expected to closely follow the implementation of the Phase 1 regulations. According to MBIE's 2015 Regulatory Impact Statement: [Additional decisions to improve New Zealand's Workplace Health and Safety Regulatory Framework](#), "The second phase will be developed and consulted on in a staged fashion over a period of two years, commencing in the first half of [2015]. Phase two will consider other work-related matters and will soon be developed and consulted on." Progress on these regulations stalled and will now be progressed over the next ten years.

### **3.3. Focus Area Three: Worker Engagement and Participation**

Does your business or organisation have:

- elected health and safety representatives
- informal health and safety representatives or champions
- a health and safety committee
- a system for regular health and safety communications

- regular meetings where health and safety is discussed
- regular health and safety briefings, eg 'toolbox'
- meetings other worker engagement and participation practices (please specify)

The scale of the business and number of employees will determine how the above is put into practice. While postharvest, labour management companies and industry bodies will generally do most of the above (see response to question 3.1) smaller operations may find alternate ways to undertake these.

From your experience, either for a business or as a worker, do you think workers are doing enough to keep themselves and their colleagues safe?

In an environment where a good health and safety culture exists and where workers who receive adequate training stay aware of safety protocols, and understand the risks involved in their tasks, these workers tend to take more steps to protect themselves.

The Puataunofu<sup>3</sup> "Come Home Safely" educational programme which was designed to engage and educate Pacific people working in higher risk industries was a success but it wasn't resourced well and therefore the programme wasn't utilised as much as wanted or as frequently as needed.

### **3.4. Focus Area Four: An Effective Work Health and Safety System Needs an Effective Regulator**

In what ways have you interacted with WorkSafe or another health and safety regulator? Thinking of each interaction in question did you get what you needed to comply with your health and safety obligations?

General interactions with WorkSafe seem to be restricted to seeking information and advice on guidance policy matters and interactions with WorkSafe inspectors and investigators.

There are examples where queries to WorkSafe have resulted in different responses depending on the person you are interacting with and vague, incomplete responses.

Would you describe your interactions with the regulator as useful, reasonable, and timely

While interactions are relatively reasonable, there is a concern that WorkSafe is primarily focusing on an enforcement rather than an education approach.

Which third parties authorised by the regulator or regulations have you interacted with?

Compliance certifiers and auditors would be the main third-parties industry would engage with.

Do you know what consequences you would face for not complying with your health and safety obligations? Do you think these consequences are appropriately balanced and reasonable? Please explain your answer.

Responses ranged from 'yes very aware' to no 'more education required'. These responses are directly related to the size and complexity of a business. A larger business with a

<sup>3</sup> <https://www.WorkSafe.govt.nz/managing-health-and-safety/businesses/puataunofu/>

dedicated health and safety team or manager is going to have more education around consequences than a one- or two-person business.

There is a view that the consequences are not appropriately balanced – eg - WorkSafe ability to determine the difference between informal implementation within the business vs negligence.

### **3.5. Focus Area Five: The Objective of The Work Health and Safety Regulatory System**

Do you think the threshold at which work-related risks need to be managed is:

- Over-cautious
- About right
- Under-cautious

The threshold for managing work-related risks is generally considered to be about right however ongoing assessment and adaptation is key to ensure a fair threshold. This would involve regularly reviewing risks and controls and allowing businesses to improve safety measures based on new information or changing circumstances.

## **4. Conclusion**

HortNZ appreciates the opportunity to provide insights on the Health and Safety Regulatory Reform. Through this submission, HortNZ has highlighted the critical aspects of the Health and Safety at Work Act (HSWA) that affect the horticulture sector, focusing on challenges like regulatory complexity, cost burdens, and the evolving nature of health and safety risks. HortNZ strongly advocates for enhanced, industry-specific guidance, greater flexibility within regulations to accommodate varied business sizes and seasonal operations, and a more balanced, educational approach from WorkSafe. Addressing these areas will improve compliance and support a healthier, safer work environment for workers.