

# SUBMISSION ON HSNO Act Proposed Amendments

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**To:** Ministry for the Environment

**Name of Submitter:** Horticulture New Zealand

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# OVERVIEW

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A-Lighter-Touch Programme

# HortNZ's Role

## Background to HortNZ

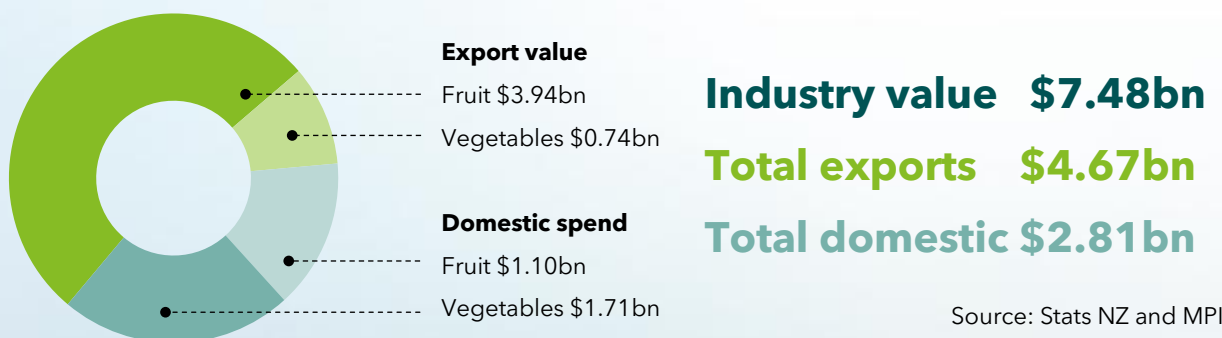
HortNZ represents the interests of approximately 4,200 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

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.



## HortNZ's involvement with crop protection regulation

On behalf of its grower members HortNZ works to help ensure that the regulatory settings and services that affect the availability and affordability of crop protection products in New Zealand are appropriate, workable, and cost-effective.

# Executive Summary

Horticulture New Zealand (HortNZ) appreciates the opportunity to provide feedback on the proposed amendments to the Hazardous Substances and New Organisms (HSNO) Act.

While we acknowledge the Ministry for the Environment's (MfE) efforts to enhance regulatory processes, transparency, proportionality, certainty, and efficiency, we request further consultation once additional details become available to ensure meaningful industry input.

We also see the Omnibus Bill as an opportunity for MfE to include additional amendments to the Act beyond the Review recommendations and modernise the Act. This will demonstrate MfE's proactive approach in enabling New Zealand to leverage rapidly advancing technologies and scientific developments to better protect ecosystems while supporting growers. This will align well with the current government policies, such as *Unlocking New Zealand's potential - Going for Growth*. Overall, we recommend:

- Revising the precautionary approach in the Act to ensure the EPA considers the full range of risks outlined in the HSNO Act, along with the likelihood of these risks occurring.
- Amending the HSNO Act to improve the biopesticide application pathway, including enabling joint reviews with international regulatory agencies (e.g., Australia's Pesticides and Veterinary Medicines Authority).
- Clarifying the time-limited conditional approval pathway to effectively mitigate key risks to human health, the environment, and manufacturers while aligning with the requirements and processes under the ACVM Act.
- Collaborating with MPI-NZFS to ensure the HSNO and ACVM Acts enable **one single** secondary regulation for setting and reviewing statutory timeframes.
- Avoiding including stipulations in the primary or secondary legislation on how a levy payer should cover levy costs.
- Facilitating access to biological solutions to support sustainable horticulture in New Zealand.

# Submission

## 1. General Comments

### 1.1. Request for Additional Consultation

Alignment with MfE's aim to: Increase transparency and clarity related to functions and processes under the Act.

HortNZ requests MfE to conduct additional consultation once the details of the proposed changes are available, and prior to them being introduced as a Bill. While the current proposals outline the areas of the HSNO Act that will be amended, few details are provided about the actual amendments being proposed. Therefore, it is hard for us to provide meaningful feedback.

### 1.2. An Urgent Need to Amend the Precautionary Approach in the HSNO Act

Alignment with: MfE's aims to:

- Improve the process for assessing applications for hazardous substances and new organisms.
- Increase transparency and clarity related to functions and processes under the Act.

In addition to the amendments that have been proposed, HortNZ considers that there are strong reasons for amending the Precautionary Approach outlined in the Act. The current definition is being very stringently applied by the EPA, which is leading to adverse consequences for growers and the EPA itself. An example is unnecessary, and impractical conditions were proposed to be added to a new active Sivanto Prime approval when a risk is assessed as low, and the likelihood of adverse effects is minimal. As a result, (1) the product becomes effectively impossible to use in the field, rendering it inaccessible to growers, and (2) proposing conflicting application conditions, which provide no spray time window for the new active, causing reputational damage to the EPA and prolonging decision-making time (please see case study below).

If the Precautionary Approach continues to be applied in this way, the crop protection toolbox for New Zealand's growers will slowly be depleted and they will be less able to protect crops from pests and diseases. The consequence of this is that over time New Zealand's horticultural production will reduce, which directly opposes this government's wish to boost exports and would also threaten domestic food security and resilience.

HortNZ suggests that recent EPA assessments and reassessments have taken an overly cautious approach to assessing risks that is disproportionate to the actual risks posed by the responsible use of this product and does not consider the likelihoods of the risks occurring. This could potentially be one of the fundamental causes of increasing processing time and the current backlog of applications.

We strongly urge MfE revising the approach to ensure it considers the full range of risks listed under the purpose of the HSNO Act along with the likelihoods of these risks occurring.

**CASE STUDY: STRINGENT APPLICATION OF PRECAUTIONARY APPROACH  
RENDER SIVANTO PRIME INACCESSIBLE TO THE GOWERS**  
**SIVANTO PRIME MEMO**

*Example 1. Conflicting Application Conditions*

Page 26: "To mitigate the potential transitory effects of flupyradifurone (key active of Sivanto Prime) to bees, foliar applications are to be made in the early morning or evening when bees are not actively foraging, namely from 2 hours prior to sunset until sunrise."

*This condition suggests that Sivanto Prime should be applied in the early morning or evening, BUT not be applied during the day.*

Page 234: "Sivanto Prime must not be applied if there are hazardous surface temperature inversion conditions present at the application site during the time of application. Surface temperature inversion conditions exist most evenings one to two hours before sunset and persist until one to two hours after sunrise."

*This condition implies that Sivanto Prime should not be applied in the evenings, at night, and early morning.*

**Imposing these conflicting requirements base on precautionary principle create a scenario where there is no viable window for growers to apply Sivanto Prime.**

*Example 2. Unnecessary and Impractical Condition for Leafy Vegetable*

Bird Risk Management (Page 21):

A risk via the consumption of drinking water was identified following application of Sivanto Prime to leafy vegetables. Therefore, additional controls limiting access to contaminated drinking water and precautionary statements are proposed to minimise any potential risks to birds following use of Sivanto Prime.

"To protect birds, cover the crop for up to 3 days after application on leafy vegetables (from the start of filling of the head)."

*This condition raises important questions:*

- *How likely is it that birds will drink water from leafy vegetables that happen to be sprayed with Sivanto Prime?*
- *Covering crops for three days is not only costly but can also damage the vegetables, impacting yield and quality.*

**The precautionary requirement to cover crops introduces an unnecessary burden that could render the product inaccessible for leafy green growers.**

We recommended that the EPA, when imposing conditions, consider not only the level of potential risk but also the likelihood of that risk occurring in the field, and the practicality of the condition.

It was fortunate that after consultation and public hearing, two of these conditions were removed from the final decision. However, this showcases the detrimental consequences of precautionary approach to:

- The EPA: Increasing assessing time and slowing down decision making during the approval process, and causing reputational damage, and,
- Our growers: Losing access to effective crop protection tools that have been used by our overseas competitors.

### 1.3. Need to Amend the HSNO Act to Improve Biopesticide Application Pathway

Alignment with:

- MfE's aim to improve the process for assessing applications for hazardous substances and new organisms.
- Ministry for Regulation recommendation 7. Increasing the reliance and use of assessments by international regulators while still considering aspects unique to New Zealand to improve efficiency.
- The Review's intent of streamlining the products approvals pathway, are relatively less complex.

We strongly recommend that MfE amend the Act to enable an efficient and effective approval pathway for biopesticides, including microbial pesticides, biochemical pesticides, and plant-incorporated protectants. This could include establishing a process for the joint review of biopesticide products with international partners like the Australia Pesticides and Veterinary Medicines Authority, which would streamline agency resources and promote international biopesticide registration. This approach has been taken by the USA EPA and Health Canada's Pest Management Regulatory Agency.

In support of this recommendation, we note that the USA EPA has assessed the risks of biopesticides to be inherently lower than those posed by traditional pesticides. In particular, USA EPA considers that biopesticides:

- Can decrease risks to human and environment without affecting yield.
- Are often less toxic than conventional pesticides.
- Can be effective in very small quantities.
- Decompose quickly in the environment.
- Are targeted towards specific pests, which helps to protect beneficial insects such as bees.
- Can be used in a manner that helps to prevent development of pest resistance.
- Enables improved residue management by growers and other users<sup>1</sup>.

For these reasons, USA EPA generally requires less data to register a biopesticide than to register a conventional pesticide, and the review times are shorter for biopesticides.

In New Zealand, regulatory uncertainty, high costs, and unclear timeframes continue to hinder access to biological crop protection products. This is having the perverse environmental outcome of trapping our growers into using older, riskier, broad-spectrum pesticides. This is compounded by the limited financial incentives for manufacturers to try to register biopesticides here, due to slower commercial returns than conventional pesticides, and New Zealand's small market.

If New Zealand is serious about protecting its environment, then it is time to modernise the HSNO to enable New Zealand to utilise the rapidly developing field of biopesticide technologies and not become a global blackspot for the continued use of outdated products.

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<sup>1</sup> [US EPA - Biopesticide Oversight and Registration at the U.S. Environmental Protection Agency](#)

## 2. Specific Comments

### 2.1. Time-Limited Conditional Approvals - Considerations and Concerns

We appreciate MfE's efforts to introduce innovative approaches to granting quicker access to novel actives.

We support the intent of this pathway. We consider that provided that the time limited conditional approval is granted when approved regulators have approved an active, using a risk-based assessment, and that New Zealand adopts all compatible conditions of international regulators this should be sufficient to managing the risks to human health, ecosystem and economy during the time-limited period. However, for this pathway to be affective, the applicants would need to have confidence that control condition imposed after New Zealand full assessment is not significantly more stringent than the international regulators. It is important that this pathway and the requirements and processes under the ACVM Act are aligned

We are also concerned about the requirement that applicants must provide evidence that a product demonstrate benefits to New Zealand. This criterion appears to be asking manufacturers to demonstrate efficacy, which is assessed under the ACVM Act. Furthermore, no manufacturer is going to invest in a registering a product in New Zealand that brings no benefit to the users because there'll be no reason for people to purchase the product. However, it is unclear how benefit to NZ would be assessed, and whether that infers a nationally significant benefit threshold is required to access the path or whether a benefit to product user would be sufficient - in which case it is an unnecessary test.

The length of time of the approval period should also be addressed. We would recommend that the temporary approval lasts from the date of submission for full approval to the EPA until a full assessment decision is made.

### 2.2. Concerns Regarding Statutory Timeframes in Secondary Legislation

We appreciate the effort to increase transparency and reduce uncertainty by setting statutory timeframes in secondary legislation rather than in the Act. It is beneficial for applicants to have visibility into where their application is in the approval process and when they can expect a decision.

However, simply establishing statutory timeframes in secondary legislation is not enough. To truly enhance efficiency, implementing a transparent tracking system—such as a dashboard similar to Immigration New Zealand's visa application tracker—would better streamline the process.

From our understanding, this change would appear to give regulators the ability to reset the statutory timeframes if they are failing to meet them. Rather than enabling the regulator's ability to increase the timeframes to match their output, we recommend conducting an independent review to understand the underlying causes in the delays and identify process improvements. The responsible ministers should be responsible for

ensuring that agencies implement the recommendations from the independent review and should consider what targets are appropriate for measuring performance.

Aligning statutory timeframes with overseas regulatory agencies may set unrealistic expectations, potentially compromising the quality of assessments or setting regulators up for failure. Are there comparable overseas regulators that could serve as benchmarks? Many international regulators operate with greater resources, more advanced models, and better tools. The industry was generally satisfied with approval timelines between 2013 and 2015, when the average processing time for the most complex HSNO application was 402 days<sup>2</sup>. We recommend as a starting point this timeframe is considered as a possible valid and attainable benchmark for setting statutory timeframes.

We recommend that MfE and MPI-NZFSZ to work together to amend the HSNO Act and ACVM Act to enable one single secondary regulation to set and review statutory timeframes. This will increase efficiency and alignment.

### **2.3. Emergency Provisions**

We acknowledge and appreciate the effort to address the use of chemicals in emergency situations. Having access to effective active is essential to manage biosecurity emergencies. This different risk and benefit profile of emergency situations, warrants a specific and targeted regulatory response.

However, without clarity on operational policy, the scope of expanded situations, and how emergency approvals will be eased in the Act, we cannot fully assess the impacts/benefits of these changes to our growers. We request that MfE seek and incorporate adequate industry input when developing these amendments.

Additionally, we recommend that risk assessments and consultations for approvals for anticipated emergencies be conducted during non-crisis periods so that they are available to use at the start of an emergency. This will ensure that potential risks to human health and the environment are effectively and rapidly mitigated when the products are used.

### **2.4. Hazardous Substances Levy**

From the information provided it is not possible to ascertain what the specific functions are that would be recovered under a levy or how the Treasury Guidelines have been applied to justify this.

In the consultation materials MfE's assumes that levy costs will be passed down the supply chain, this would inevitably raise production costs for our growers. This may also increase the costs of food for New Zealand consumers - - who due to our geographic isolation are highly depending on locally grown fresh foods. However, vegetable growers are price-takers, due to lack of retail competition and the perishable nature of the product. Therefore, may be that while the levy costs are past from the applicant to the growers, the levy costs may not be recoverable from consumers, placing increased costs on the horticulture sector, and in particular the domestically focused vegetable sector which is already a low margin industry.

It is important the Stage 1 Cost Recovery Impact Statement consider the impact on the producers of fruits and vegetables. We would appreciate the opportunity to review the

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<sup>2</sup> [Agricultural-Horticultural-Products-Regulatory-Review-full-report.pdf](#)

Stage 1 Cost Recovery Impact Statement once it is complete, and prior to the Bill being introduced. We

We note that across Government there are several projects underway seeking to shift cost from the Crown onto industry. At the same time as Government is asking industry to pay ever more in regulatory compliance costs, Government is also asking industry to invest in growing the economic contribution the horticulture sector is making to New Zealand.

Any proposal to set in place a levy must be considered in the context of the cumulative impact of increasing regulatory compliance costs and the impact on Government economic growth goals. Unlike other countries, such as the USA and Australia, which have a single regulator for hazardous substances and a single levy, New Zealand has two—EPA and MPI-ACVM. Given that MPI-ACVM already charges a levy, this should be considered when enabling the EPA to impose one in the HSNO Act.

If a levy is put in place, we consider legislation should be clear that the levy will not recover investigation and enforcement costs. These costs are public goods, that is, it is not possible to exclude someone from being investigated/having enforcement action taken against them for non-compliance, and the benefit of an investigation/enforcing the law is not rival i.e. it is enjoyed by all New Zealanders. Furthermore, there should be clear caps for setting up a levy and for its future increases specified in the Act.

Before legislation enables the recovery of costs associated with standards development/management it is important that Cabinet is assured that the nature of the market lends itself to the levy being operationalised equitably. Where a market has low barriers to entry/exit, market participation can be highly changeable. In markets with low barriers to entry/exit it would be inequitable to recover the costs of standard setting on the basis that those entering the industry after the standard has been set will 'free ride'.

Where markets have high barriers to entry/exit (i.e. electricity generation) and thus the market participants are stable, the free rider issues associated with recovering 'club goods' such as standards are not as prevalent.

In summary, Horticulture New Zealand does not support the Act empowering the making of a levy without further information on how the levy will be used and consideration of the impact of the levy in the context of the cumulative impact of Government costs on industry.

## **2.5. Changes to New Organisms**

Based on the information provided in the slide pack, the proposed changes to the new organism's framework remain unclear. Again, we are unable to provide tangible feedback.

However, we request MfE consider improving the pathway to approve microbial pesticides when make changes to New Organisms in the HSNO Act. Currently the application of microbial pesticide if it is classified as New Organism, involves a significant investment and a prolong process.

For example, the A-Lighter-Touch project (the use of biopesticides and biological control agents into crop protection programmes) involving Plutex, a bioinsecticide already registered overseas for diamondback moth control, highlights these challenges. If classified as a New Organism, the estimated cost for generating the required New Zealand-specific registration data, including host range testing, is approximately

\$800,000. One of the findings of this project, is that even organisms that are already in New Zealand may be deemed “new” until deregulated, and of course there is a process to follow to deregulate an organism. Such high regulatory barriers discourage the introduction of biological crop protection products, limiting sustainable pest management options for growers.

## **2.6. Minor and technical amendments**

The slide pack does not include any information on the minor and technical amendments; therefore, we are unable to provide feedback at this stage. We request further consultation once more details are available. Some of these amendments could have significant impacts on the crop protection tools available to our growers, particularly the 'delegation of non-notified reassessment decisions' and the 'Fixing ambiguity of modified reassessment procedure.' Until further details are provided, we do not support these changes.