# SUBMISSION ON

# Feedback on GIA-specific Provisions to the Biosecurity Act Amendment Bill

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**To:** Ministry for Primary Industries (MPI)
**Name of Submitter:** Horticulture New Zealand
**Supported by:** Boysenberries New Zealand; Persimmons Industry Council; Summerfruit New Zealand


**Contact for Service:**

Alexander Bisson
Risk Policy Adviser
Horticulture New Zealand
PO Box 10-232 WELLINGTON
Ph: 022 194 3516
Email: Alex.Bisson@hortnz.co.nz




Horticulture™ New Zealand
Ahumāra Kai Aotearoa

# OVERVIEW

## Submission structure

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## Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry for Primary Industries (MPI) for the opportunity to submit on the proposed GIA specific provisions to the Biosecurity Act. We welcome the opportunity to discuss our submission with MPI and collaboratively work to good biosecurity outcomes.

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

PART 1

# HortNZ's Role

## Background to HortNZ

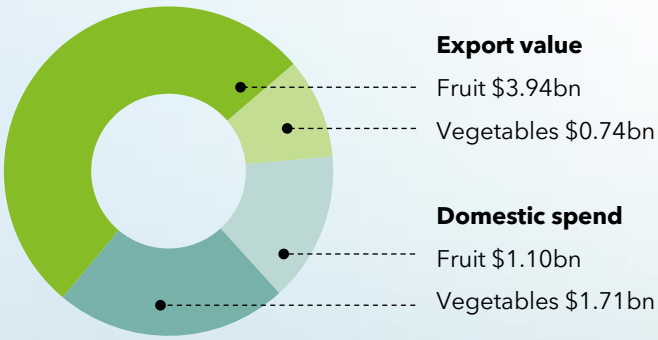
HortNZ represents the interests of approximately 4,200 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs and is valued at ~$7.48 billion (2023/24).

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

## HortNZ's Biosecurity Act 1993 Involvement

On behalf of its grower members, HortNZ takes a significant interest in biosecurity regulations, planning, and operations. As well as advocating on behalf of growers in discussions with MPI and other regulators, HortNZ and other industry groups also work to raise the awareness of fruit and vegetable growers about the roles they can play in helping to keep their farms, orchards and wider New Zealand protected from unwanted pests and diseases.

PART 2

# Executive Summary

HortNZ broadly supports the following recommendations: proposal 14, to maintain the status quo on cost-share provisions under the GIA Deed; proposal 15, to enable cost-recovery from non-signatory beneficiaries following a biosecurity response; proposal 37, not to progress provisions to create a single biosecurity-focused cross-industry organisation in the primary legislation; and proposal 38, to include liability provisions to protect GIA partners.

We also support the recommendation to advance broader GIA improvements, modify and grow the GIA partnership (proposal 36), outside of the Biosecurity Act Amendment Bill project. Further, we believe the inclusion criteria under the GIA Deed should be reassessed and amended to enable broader participation—particularly by smaller industry sectors that are willing and able to join the partnership. We also note the current lack of detail on structure, implementation, management, thorough analysis and intended outcomes. However, we do not oppose inclusion of enabling provisions in the Act that would allow for these aspects to be addressed in the future.

We support a clear process and powers for the Minister to "officially unrecognise" partners from the GIA who voluntarily withdraw. However, we would support the extension of the original proposal to 'involuntarily unrecognise' or 'remove' a GIA partner under the conditions that specific 'removal criteria' and a defined 'removal process' are developed and administered within the GIA framework and not within primary legislation. We do not support the Minister holding sole authority in this manner. Instead, we propose a possible process, and controls based on super majority voting outcomes by all GIA partners, specified criteria, an official removal request through the GIA Secretariate and possible 'veto' rights to the Minister.

PART 3

# Submission

## 1. General comments

We largely support the proposed recommendations, which broadly align with the positions outlined in our submission to the proposed amendments to the Biosecurity Act. However, we consider that some proposals are not developed in sufficient detail to be included in primary legislation or do not need to be linked into primary legislation as that may impact the agility of actions in the future.

Further, we consider that the inclusion criteria under the GIA Deed should be reassessed and amend to enable other parties, especially smaller industry sectors that are willing, to join the partnership. If the primary legislation changes are required to make the Deed more agile, then the inclusion of provisions to the Act make sense, but we must prevent mandated actions that may have negative impact in the future.

## 2. Proposal-specific comments

### 2.1. HortNZ and affiliated industries support the following recommendations

- retain the status quo on the GIA cost-share review framework (proposal 14);
- not to progress provisions for the creation of a biosecurity-focused cross-industry organisation into primary legislation (proposal 37);
- to include legal liability provisions to protect GIA partners during responses (proposal 38); AND
- to cost-recover levies from 'non-signatory beneficiaries' (NSBs) after a biosecurity response event (proposal 15B). However, we want to reiterate that any industry or sector representative organisations must not collect or expected to collect these levies on MPI's behalf due to conflict of interest concerns. Further, cost-recovery needs to consider the economic impact to the NSBs - NSBs ability to pay and sustain – and the ability for NSBs to join the GIA partnership.

We have already provided detailed justifications to these points in our submission on the proposed amendments to the Biosecurity Act.

#### 2.1.1. COMMENTS TO MPI'S QUESTIONS TO PROPOSAL 14

##### 2.1.1.1. What improved definitions or other minor changes could assist GIA operation?

We have already commented on definitions and minor changes in our submission on the proposed amendments to the Biosecurity Act. For the GIA to operate most effectively and efficiently, it must be able to react and adapt to changes in a timely manner and ideally independent of any mandated structures and restrictions in the

primary legislation. These changes and operational improvements should be driven by the partners. While provisions in the Act may help, we are conscious of the possible risks that too many changes in the Act ultimately may hinder the necessary agility the GIA partnership needs under the Deed. Operational efficiency of the Deed should not be dependent on the Act.

#### 2.1.2. COMMENTS TO MPI'S QUESTIONS TO PROPOSAL 15

##### 2.1.2.1. Do you have any further comments on the proposal?

To prevent a conflict of interest, industry representative and advocacy organisations, such as HortNZ, shall not collect or shall not be made responsible to collect levies for response cost-recovery. It is also important to consider the financial feasibility and ability of a small sector, which most NSBs are, to pay.

##### 2.1.2.2. Would you like to be directly involved in levy design discussions over the coming weeks?

Yes. We would like to actively participate in these discussions at every level, as HortNZ represents most of the horticulture industry.

#### 2.1.3. COMMENTS TO MPI'S QUESTIONS TO PROPOSAL 37

##### 2.1.3.1. How interested are partners in advancing this idea separately from the Biosecurity Act Amendment Bill project?

As explained in our submission, HortNZ already acts as cross-industry organisation on matters of biosecurity. Given that this idea has not been fully developed - cost-benefit analysis and value proposition remain outstanding, - there are currently too many unanswered questions and uncertainties to provide informed comment at this stage.

However, HortNZ would be interested in being involved in further discussions and developments if any.

### 2.2. HortNZ and affiliated industries have some concerns on the following proposals/recommendations

While the industry largely supports the recommendations to progress aspects on how to grow and modify the GIA outside of the current Biosecurity Amendment Bill (proposal 36) and to amend section 100ZA to provide certain powers to the Minister to officially 'unrecognize' a GIA partner (proposal 43), we do have some concerns and comments on specific aspects. In particular, we do not support the proposed provision for the Minister to hold sole authority to 'remove' or involuntarily 'unrecognize' a GIA partner, such a proposal completely undermines the foundations of GIAs, which is joint decision making in partnership between signatories and Government.

#### 2.2.1. MODIFY AND GROW THE GIA (PROPOSAL 36)

Industry partners have a clear desire to modify and grow the GIA to maintain flexibility in the future although, these changes should be driven by the GIA partnership itself but

not through legislative mandate. We have already provided detailed comments to this point in our submission to the proposed amendments to the Biosecurity Act.

We do not oppose that legislative provisions are included into the Act that enable future changes and developments. Therefore, we support that aspects of this proposal are further investigated and progressed outside of the biosecurity amendment bill project.

### 2.2.2. COMMENTS TO MPI'S QUESTIONS TO PROPOSAL 36

#### 2.2.2.1. Is legislative change needed, or can we accomplish the outcomes we want within the current GIA Deed framework?

We are not opposed to legislative provisions, but only if necessary. Our preference, however, is that these matters are dealt with in the Deed. That will ensure that decision making is joint.

For example, if legislative changes are required to enable the creation of multiple Deeds, whether as sub-deeds under the current Deed or entirely independent Deeds, then we would expect MPI's legal team to provide these information and details how the Act could accommodate this level of flexibility and future-proofness.

The same example can be applied to all aspects of this proposal.

#### 2.2.2.2. What extra controls and feedback would we need to ensure transparency and equity if the levy scope is extended?

The current levy collection and use system has well-defined, proven and widely accepted controls. We do not see any further need to add additional controls.

As principles, it is essential that any levy is transparent in how the collected levy are and will be used. There must be clear accountability of who administers the levy, how it is collected and used as well as equity in resource allocation. The public must be informed on the purpose and any proposed changes, and must have the opportunity to comment, support or oppose such changes. We expect that the Office of the Auditor-General Guidelines on Setting and administering fees and levies are adhered to, including the regular reporting on the levy, it's use and the performance of services it funds (i.e. the tangible outputs and outcome that have been delivered for levy payers in the fiscal period).

### 2.2.3. POWERS TO THE MINISTER TO 'UNRECOGNISE' GIA PARTNER (PROPOSAL 43)

HortNZ supports the recommended provisions to the Act to add a power for the Minister to officially 'unrecognise' a partner from the GIA partnership if that partner voluntarily withdraws. However, we are wondering why legislative changes are required and this matter cannot be managed within the framework of the Deed.

The suggestion to extend these powers to include the involuntarily removal of a partner from the GIA partnership that meets certain criteria requires further investigation. We would support it under the conditions that specific 'removal criteria', a defined 'removal process' and possible 'resolution process' are developed and administered within the GIA framework and not within primary legislation. These criteria and the process must

be well defined, transparent, contestable and have specific controls in place to prevent misconduct.

Further, the Minister must not be solely responsible for that outcome but rather enact that power in response to an official request by the GIA, as final step of a defined process.

#### 2.2.3.1. We propose a removal process for consideration

We propose a process, that the Minister must not 'involuntarily unrecognise' a GIA partner without the official request from the GIA Secretariate, as result of the defined assessment process and the majority voice of GIA partners. Details should be worked out within the GIA framework. In summary, the process should include the following steps:

1) **Request for removal**

   Any GIA partner may formally request the GIA Secretariate to initiate an investigation to remove another partner, provided that specific 'removal criteria' have been met.

2) **Initiate of the removal process**

   Upon receiving a valid request, the GIA Secretariate initiates the defined 'removal process'.

3) **Investigation and assessment**

   The GIA secretariate investigates the claim, assesses whether the specific 'removal criteria' have been met and engages in mediations with the accused GIA partner. This includes:

   - Giving the partner an opportunity to respond
   - Engaging in a possible 'resolution process', if deemed appropriate.

   If the 'removal criteria' are not met, the process is paused, and further consultation or mediation must be undertaken.

4) **Vote to remove partner**

   If the 'removal criteria' are deemed met, all GIA partners should vote on the proposed removal. A supermajority is required to proceed.

5) **Request for official removal**

   If the vote passes, in favour to remove the accused partner, the GIA Secretariate submits a formal request to the Minister to officially remove the partner (referred to as 'involuntary unrecognition').

6) **Ministerial decision**

The Minister reviews the request and supporting evidence. The Minister shall consult with the GIA Secretariate directly.

- If satisfied, the Minister proceeds with the 'involuntary unrecognition'.
- If not, the Minister may exercise 'veto' rights and reject the request, if the argument is considered insufficient. This serves as a safeguard against potential unjust majority decisions.

7) **Official unrecognition**

If the Minister approves, the Minister officially 'unrecognises' the partner from the GIA.

#### 2.2.3.2. We propose controls for the Minsters powers for consideration

The Minister should not hold sole authority or responsibility for this removal process and should rather enact the final step of officially 'involuntarily unrecognise' a partner from the GIA. Further, a set of controls to the Ministers powers must be implemented.

To maintain transparency and separation of powers, neither the Minister, the Minister's administrative staff or the Ministers ministry (MPI) should assess the 'removal criteria' and make the final decision. This may be seen as a conflict of interest, given that MPI is a partner under the GIA Deed. Therefore, we propose the following controls to be considered:

- The Minister must only enact the powers to officially 'involuntarily unrecognise' a GIA partner upon the official request from the GIA Secretariate and must not act in absence of that request.
- The Minister shall only consult with the GIA Secretariate on this matter.
- The Minister shall have the right to 'veto' the request.
- The Minister must not have the powers to initiate the 'removal process'.

### 2.2.4. COMMENTS TO MPI'S QUESTIONS TO PROPOSAL 43

#### 2.2.4.1. What would be reasons to remove a partner?

In addition to the statements above, criteria to be considered in the 'removal process' may include:

- GIA partner repeatedly fails to fulfil GIA responsibilities and accountabilities.
- GIA partner does not meet minimum requirements, repeatedly.
- GIA partner does no longer meeting the joining criteria and no mediation option can be identified.
- the GIA partner acts in a manner that puts other GIA partners at risk and/or actively blocks response actions.
- GIA partner does not follow generally accepted good biosecurity practices, repeatedly.
- GIA partner demonstrates illicit behaviour.

- May shall not include if the GIA partner openly questions action or opposes actions decided by other GIA partners.

#### 2.2.4.2. Should the other partners be able to request the Minister to act?

A defined process (see our proposed process) for this action must be developed within the GIA. Only the GIA Secretariate shall manage that process and request actions from the Minister.

#### 2.2.4.3. How should the Minister consult?

The Minister should only consult with the GIA Secretariate that has assessed the request to remove a GIA partner against established removal criteria (see our proposed process and controls).

The Minister may consult with further parties, like the accused partner or independent committees or specific technical groups if deemed necessary.