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Submission on the Organic Products Bill

Submitter: Horticulture New Zealand Incorporated (HortNZ) and Certified Organic Kiwifruit Growers Association (COKA)

Supported by: New Zealand Kiwifruit Growers Incorporated, Summerfruit NZ, Onions New Zealand, Vegetables New Zealand, Process Vegetables New Zealand, Potatoes New Zealand, Hawke's Bay Fruitgrowers' Association Incorporated, Katikati Fruitgrowers Association, Teviot Fruitgrowers Association, Te Awanui Huka Pak Limited, Lawson's Organic Farms Ltd, Bostock NZ, Osbourne Ward, Seeka Ltd

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Introduction

HortNZ, COKA and the organisations listed in support of this submission, support the development of the Organic Products Bill, and the underlying premise that any business labelling or advertising a product as organic must comply with an organic standard.

This is an important piece of legislation to establish, the introduction of specific regulation will serve to protect the integrity of organics and support the well-functioning organics system in New Zealand. It will also position New Zealand on a par with the majority of other organic markets around the world (for example in Europe and the United States, a producer must be certified organic to market their product as organic). The New Zealand Organic sector has been advocating for a regulatory regime for a number of years, this is an opportunity to create a fit-for-purpose regime which contributes positively to the organic sector by offering certainty to producers, trading partners, and consumers.

To support the organics sector, the Bill needs to introduce a system that legitimises the current organics framework in a way that is familiar to organic growers, easy to use and administer, and does not "reinvent the wheel". A robust legal framework is an important foundation for the regulations and standards to follow.

This submission provides specific comments on a number of sections of the Bill as well as comment on the overall legislative design. In summary, the key changes requested by our submission are:

- 1. Amend the legislation to utilise the well-established third-party certification model, rather than an additional requirement for government approval of organic producers.**
- 2. Representation of the organics industry in a decision-making role needs to be built in through provision for an Organic Governance Group**
- 3. A definition of organic production principles needs to be provided in the legislation.**

Key Comments on the Bill

1. Amend the legislation to utilise the well-established third-party certification model, rather than an additional requirement for government approval of organic producers.

The Bill currently before Select Committee delegates all decision making to the relevant ministry chief executive:

- For third party agencies: approval is required for every Recognised Agency and Recognised Person, the Bill enables these parties to assess producers before approval, and on an on-going basis for compliance.
- For organic operators, they must be assessed by a Recognised Agency (akin to current third-party certification) and then apply for approval to the relevant Ministry, who must consider the assessment a Recognised Entity provides.

This creates a two-step approval process which is inefficient, unfamiliar to the sector, and will add additional cost.

We seek that the Bill enables Recognised Agencies to approve (or certify) organic producers, in addition to their compliance role.

The proposed process is overly complex because the relevant Ministry both approves the agency/person/class of person to be a Recognised Entity, and also each organic producer. In lieu of seeking approval from the relevant Ministry, we propose that organic producers would have to register with that Ministry (to enable oversight, public register etc.) and that registration role delegated to the Recognised Agency¹.

Approved third party agencies are the best placed (in terms of expertise and experience) to undertake the role of 'certification', with the necessary safeguards and process in the legislation/regulations to ensure integrity of certification, and enable the relevant ministry to maintain oversight over the system as a whole.

We disagree with the justification for government approval of every Recognising Entity and every organic producer that "*Restricting the decision making power to the relevant ministry only will better secure consumer confidence and protect New Zealand's trading reputation*". Review comments within the Regulatory Impact Assessment acknowledges that the approach is different to current practice, unfamiliar and unexpected, and that the impacts are not fully outlined (and will need to be informed by consultation).

The implementation approach in the Bill is more administratively complex, will cost organic producers more and the stated benefits (greater protection for New Zealand's trading reputation, increased confidence in claims for consumers, greater consistency in decision making) would in our view also be achieved under a well-designed certification model:

- Additional cost is inevitable through introducing an additional approval step, and cost recovery mechanisms of a more complex system (e.g. through a levy).
- Introducing a more complex system is inefficient, and will have no additional benefit.
- New Zealand already has an established organics market where large numbers of producers are operating under various internationally recognised organic standards, and already has successful trading relationships with a number of other countries.
- The current third party certification model has utilised existing organic technical rules administered by MPI to successfully facilitate trade into countries that have a government to government relationship.

The proposed approach will discourage active participation – which will be detrimental to the sector.

The current voluntary regime and most international organics regimes are based on third party certification of businesses – this is a well-tested and commonly used model. The Bill's proposed

¹ Similar to the role of NZGAP under the Food Act, whereby a business can give NZ GAP permission to register their business with MPI.

approach is also dissimilar to other legislation in New Zealand, for example the Food Act, Animal Products Act and Wine Act, which require independent evaluation, registration and thereafter verification (by an independent body).

We also seek amendments to the way the Bill approves Recognised Entities.

The Bill provides for Recognised Agencies, Recognised Persons and Recognised Class of Person (collectively termed Recognised Entities). It is important for the integrity and credibility of the system as a whole that 'Recognised Entities' are independent and uphold the organic standard. In the current system, organic certification is provided by reputable third-party agencies however organic certification is not mandatory, and the critical extra aspect that this Bill provides is the regulation of who can market/claim their product is organic.

Our key concerns with the proposed approach in the Bill are:

- The Bill requires that Recognised Agencies be approved, but also every individual as a Recognised Person – this is very costly and duplicative, and does not align with international practice.
- The Bill enables any person to apply for approval as a Recognised Person. The likelihood of an assessment being impartial and without vested interest is reduced when an individual is hired by a 'customer', as compared with an accredited third-party agency with management procedures in place. As quoted in ISO/IEC 10765², "*The value of certification is the degree of confidence and trust that is established by an impartial and competent demonstration of fulfilment of specified requirements by a third party*".

We seek that the Bill only provides for the approval of Recognised Agencies, and that the Bill does not specify that each person within a Recognised Agency be approved as a Recognised Person.

While there may be some value in requiring new auditors (as individuals within a third-party agency) to be registered, this results in little benefit after the first year (however this practice results in significantly higher cost). ISO/IEC 17065 accreditation is international best practice in organics for third party certifying agencies and is referenced in most international organic standards and regulations. This International Standard specifies requirements which are intended to ensure that certification bodies operate certification schemes in a competent, consistent and impartial manner (for example, certified agencies have an impartially committee, certification decisions taken by a different person(s) from those who have carried out evaluation). ISO/IEC 17065 accreditation is given to agencies, not individuals.

The Bill enables regulations to be made prescribing matters in relation to applications for approval, recognition, or renewal of recognition; this enables further detail to be added as and retains the ability to require each individual to be recognised, if necessary. Clause 29 states that recognised entities are accountable to the relevant chief executive, this provides a necessary safeguard.

We wish to make the following recommendation(s):

- a. Amend the process for approval of organic producers to enable the 'approval' decision to be delegated to the Recognised Entity – as per a prescribed process set out in regulations.
- b. Remove the requirement for an organic producer to seek approval from the relevant ministry.
- c. Require registration of organic producers with the relevant ministry (which would be actioned by the Recognised Agency).
- d. Amend the clauses that enable approval of Recognised Entities to enable recognition of third-party agencies only (Recognised Agencies), rather than individuals as a Recognised Person (acting as an independent, or the individuals within the Recognised Agency).
- e. Retain the ability for Recognised Agencies to undertake ongoing compliance – as per a prescribed process set in regulations.

² ISO/IEC 17065:2012 Conformity assessment — Requirements for bodies certifying products, processes and services

2. Representation of the organics industry in a decision-making role needs to be built in through provision for an Organic Governance Group

New Zealand already has growing organic sector, with established standards³ which enable organic certification. It is important that the regime established by this legislation builds on the existing expertise and experience within the organic sector.

Before making regulations, which prescribe an organic standard, the Minister must be satisfied that:

- a) *there is a demand from the relevant sector to develop the standard; and*
- b) *the sector has the competence and capacity required to assist in the development of the standard; and*
- c) *making the standard will meet the purpose of this Act; and*
- d) *there has been consultation with the persons and organisations that the Minister considers appropriate.*

For other regulations, the relevant Minister must be satisfied “*that there has been consultation with the persons and organisations that the Minister considers appropriate, unless the regulation is making an amendment that the Minister considers to be minor or technical in nature*”.

While we support these provisions, we consider it important to establish within the Bill a representative decision-making body (termed Organic Governance Group in this submission) that would have a role in the oversight of the scheme and the development of organic standards, regulations made under the Bill and the review of any regulations or standards. It is crucial for the long-term success of the regime that the organic sector is provided a voice, that is akin to a decision-making body (as opposed to an advisory function). This would also provide a formalised communication channel between the sector and the relevant ministry (or ministries), providing a two-way feedback loop.

It is important that this group include people who understand the regulation and standard; it is also crucial that producers are included. The Group needs to be able to adapt to the technical requirements of various regulations/processes and market/growing conditions.

In our view, this is important not only to ensure that the framework established through regulations is fit-for-purpose with industry buy-in, but also to respond to real-time implementation issues, such as overseas market access issues or on-the-ground issues, through an agile and collaborative process.

Members of the group could be appointed by the relevant Minister, with sector input. The Terms of Reference, along with a proposed structure and operational guidelines for the Group/Board could be consulted on during the consultation phase for regulation under the Act.

We wish to make the following recommendation(s):

- f. Include in the Bill, provisions requiring an Organics Governance Group be established, consisting of representatives of the organics sector. Provide this group with a decision-making role, alongside the relevant ministry, on regulations (including organic standards) made under the Bill, review of regulations (or Act itself) and as a vehicle to raise and response to implementation issues.

3. A definition of organic production principles needs to be provided in the legislation

The Bill does not provide a definition of ‘organic’. It instead provides for the setting of organic standards in relation to products, or classes of products (as therefore organic is defined by the what the relevant product standard requires).

The 2018 discussion document acknowledged that “*The absence of a single definition means businesses and consumers lack certainty about whether products meet their expectations of ‘organic’*”. A definition is needed to clearly signal the principles which are the foundation of organics.

³ For example, the current OOAP technical standard and voluntary standards set by BioGro, Assure Quality

While the detail (with regards to the production process in the context of the product will be in the regulations), this submission calls for overarching principles of organic production to be included as part of the legislation to provide the necessary context to the meaning the word “organic”. In our view this is important because an organic product is more about the production process which is used, rather than just the qualities of the end product.

There are several instances where the definition can be open to interpretation. Most overseas comparisons explicitly state definitions clearly, and so do other pieces of legislation (for example, the Food Act). We acknowledge that there is no case law in New Zealand defining organic and consider that it would be beneficial to provide within the legislation some principles of what “organic” means in order to assist with interpretation.

We wish to make the following recommendation(s):

g. Include in the Bill, a new clause or definition for principles of organic production, as follows⁴:

"Principles of organic production: Organic products result from a production system that sustains and regenerates the health of soils (or water in the case of aquaculture), ecosystems, and people. It relies on ecological processes, biodiversity, and cycles adapted to local conditions, rather than the use of inputs with adverse effects.

For the purpose of this Bill, a product is organic if it is produced in a way that meets the national organic standard, under regulation created under this Bill."

Additional Commentary

4. Terminology in the bill

The Bill introduces terminology which differs to that in the current organic sector. This creates unnecessary unfamiliarity and complexity for operators.

We wish to make the following recommendation(s):

- h. The Bill reflects terms currently used by the organic sector:
- Certification, rather than approval.
 - Non-compliance notices (Minor and Major) and corrective action requests, rather than improvement notice.
 - Auditor, rather than verifier.

5. National mark

Clause 18 provides for the use of a national mark. It is acknowledged that the Bill clearly enables regulations to be set regarding the use of the national mark (including prescribing the nature and form of the mark, the class of operators who may use the mark and the requirement and restriction on its use – as per Clause 107(d)). However, the actual mechanics of how the national mark would operate appear to be vague and require more explanation.

An organic mark/logo is a key communication tool, that is closely linked to the purpose of the Bill (specifically (a) *increase consumer confidence in purchasing organic products*). It is important to ensure a robust system is in place to ensure both the integrity of a national mark, and to enhance consumer perception.

The Bill appears to enable the use of a national mark to be mandatory or voluntary (with regulations to set out the requirements and restrictions on use – i.e. the regulations could make use of a national mark mandatory for an organic product meeting the organic standard).

⁴ Based on the IFOAM definition

To ensure consistency we consider it important to have one agency 'administer' the national mark (despite the Bill enabling multiple ministries to promulgate organics standards), and that this be set out in the Bill.

We wish to make the following recommendation(s):

- i. Whether in the Bill or subsequent regulations, it will be important to specify:
 - The administration of the National Mark by the Organic Governance Group.
 - The requirements for use domestically, and for organic exports.
 - Whether the use of the National Mark is mandatory, or voluntary.

6. Imports and exports

Clause 45 enables a relevant chief executive may, by notice, approve a foreign organic products regime for products or a class of products described as organic products that are imported into New Zealand, provided 'equivalent or similar outcomes' to organic product regime and that it is 'consistent with purpose of the Act'.

The preface of the Bill states that organic standards would apply to any product sold, labelled, or represented as organic whether imported, domestically produced and sold, or exported. There is potential for an 'grey area' for imported pre-packaged products labelled organic.

Under Clause 8, a person must not describe a product to which an organic standard relates as an organic product unless the product complies with the standard. Under Clause 10(2)(c), a retailer who sells pre-packaged organic products (with packaging intact) does not need to be approved as an operator. Clause 45 states that despite section 10(2)(c), a retailer selling products that the retailer has imported and that are described as organic products in the circumstances set out in that paragraph must be approved as an importer.

Clause 47 provides for official assurances to be issued on application. An organic assurance does not seem necessary if an organic product meets the organic standard as certified by a Recognised Agency. We seek clarification that this is not a requirement.

The detail within the Bill on equivalency agreements is relatively brief, however these provisions will be important to the overall functioning of the regime.

We wish to make the following recommendation(s):

- j. Amend Part 3 (Imports and Exports) to clearly state the requirement that imported product (whether pre-packaged or not) to which an organic standard relates must be approved via clause 45, otherwise it may not be labelled organic.
- k. Clarify that if an organic product meets the organic standard (and is certified by a Recognised Agency) an official assurance is not required.
- l. Whether in the Bill or subsequent regulations, it will be important to specify:
 - How trade will continue whilst national equivalency agreements are being negotiated and implemented.
 - What the verification procedures will be once regulation is implemented for unregulated markets looking to export to New Zealand, and who will control this process.
 - Risk mitigation procedures for these changes to ensure international trade is not adversely affected.

7. Cost recovery

A concern amongst the sector is that the Bill (and regime it provides for) will increase the costs of being organic, and the resulting detrimental impact this will likely have for producers in the sector.

It is acknowledged that the Bill does not introduce any fees, levies, or other cost recovery mechanism, but rather enables regulations to be set to enable costs to be recovered using a range of methods based on a principles-based framework.

While it is accepted that there is a degree of cost involved in the system (and the principle of cost recovery), it is important that the costs faced by Recognised Agencies and organic producers is fair, reasonable, and proportionate. Any additional costs within the system need to be sufficiently justified in terms of the benefits that are delivered to the sector.

Currently there is a levy on export products to recover the costs of the OOAP. Two types of levies are empowered in the Bill; a levy imposed through regulation payable to the relevant chief executive, and a commodity levy under the Commodity Levies Act 1990. There is concern amongst the sector of the additional costs the scheme could result in, noting that organic producers already pay one or more levies on their products. The current commodity levy already funds activities that support organic operations; although we would support a separate targeted organic levy (should this be sought by the sector).

We seek that the approach to cost-recovery is kept simple – and preferably paid at the point of certification/registration, rather than through a number of means (e.g. levies), which would distinguish between the cost/benefits of the scheme for exports compared with goods for domestic sale. This approach would be simpler from an administrative perspective, and align more closely with the benefits obtained from administration of the scheme.

To enhance transparency, we propose that a report detailing the cost recovery review is made publicly available on the relevant ministry's website.

We wish to make the following recommendation(s):

- m. Include in the Bill, expression that the costs to operate the regime will be apportioned to all domestic and export organic sales.
- n. Include a form of benchmarking of the total fees an operator is subjected to, in comparison to our organic trading partners who have had organic regulations in for many years.
- o. Provide greater transparency on fees, levies, or charges within a cost recovery structure.
- p. Remove the 'two-step' duplicated approval process and instead use a system similar to the current certification model (as discussed above).
- q. Provide additional detail as to what needs to be considered in the three yearly cost reviews in order to ensure the reviews are robust:
 - Assessment against cost recovery principles
 - Consider cost recovery practices in other jurisdictions
 - Consider the implication of cost recovery regime on international competitiveness
- r. Ensure the approach to cost recovery set out in regulations is simple, and preferably that fees or charges are paid at the point of registration (certification).
- s. Include a clause that required the relevant ministry to publish on their website a report detailing the cost recovery review for each period.

8. Exemptions

We seek that there no exemptions to the requirements to meet or be approved under the standard (with the exception of clause 113), but that the allowance for exemptions from fees and charges are retained.

The following exemptions are currently in, or enabled within, the Bill:

- Exceptions from fees and charges (clauses 38, 107, 11)
- Exemptions from requirement to be approved (clauses 108, 112)
- Exemptions relating to exports/exporters (clause 113 – for certain operators or products and exception from an export requirement, for research and development, trade sample, personal or non-commercial use by the person travelling with the consignment, consumption during transit by passenger or crew on a vessel or aircraft leaving NZ).

- Exemptions from the standard itself (clause 50 - for certain products intended for export, on recommendation of the Minister).

Building in exceptions within the Bill risks undermining the integrity of the regime, and the overall purpose of the Bill. In our view, setting thresholds for exemptions (e.g. based on revenue) would likely be an arbitrary exercise that could result in perverse outcomes. Exemptions to approval, as can be provided through regulations as the Bill is drafted, run the risk of undermining confidence that organic standards are being adhered to.

To better achieve the purposes of the Bill, the use of exemptions should be avoided and instead other means can be used to assist smaller producers.

While we acknowledge the need to provide for farm gate or very small producers, this can be better facilitated by consideration of how costs can be managed, including:

- Amending the framework, as sought in this submission, to prevent increasing costs as a result of duplication. The cost of certification (from the third-party agency) generally has a minimum fee, but is scaled to the size of the production.
- Retaining fee and charges exemptions which provide an alternative means of managing cost implications.
- Retain (or provide for) the ability to have Participatory Guarantee Schemes (PGS) within the Bill or regulations to provide options for small producers supplying the domestic market, provided there is a robust process to ensure integrity of the national standard is not compromised.

We wish to make the following recommendation(s):

- t. Retain exemptions from fees and charges (clauses 38, 107, 111).
- u. Remove exemptions from the requirement to be approved under the Bill (clauses 108 and 112).
- v. Remove the exemption from compliance with the standard (clause 50), but retain clause 113 which applied to very limited and specific circumstances.

9. Regulation making powers

Sector involvement in developing an Organic standard

The organics sector in New Zealand is currently mostly certified to various internationally recognised standards, and we propose that this part of the existing system needs to be acknowledged and encompassed into the process of developing a national standard. To ensure that standards are practical, fit-for-purpose, and meet the demands of the organic sector (domestic and international), it is important that the organic sector has a greater role than currently expressed in the Bill. To achieve this, we seek the Organic Governance Group (discussed above – refer to recommendation 6) has a role in the creation and review of organic standards.

Principles of an organic standard regulation

Clause 105 lists what an organic standard may set out from a practical perspective, however we think there is value in also setting out principles of what organic regulations/standards will achieve. For example, the draft regulations circulated include the statement "... we have evaluated the proposals against what we think the proposed regulations should achieve"; these matters could be set out at a high-level within this clause to be clear on the intent of regulations (keeping in mind, there needs to be the ability to respond to change over time).

Transitional provisions

There is no reference to transition provisions in the Bill (presumably these would be in regulations), and it is very important to the functioning of the organics sector that such provisions are given appropriate consideration. Transitional provisions will be particularly important to stock which has a long-shelf life, and in relation to inputs, which may already be sourced prior to organic standards coming into force. Insufficient consideration on transitional provisions could have significant impacts on organic producers in the interim period. Transitional provisions should also take into account that numerous organic producers are already certified organic.

Input approvals

There is no indication within the Organic Products Bill of how inputs for organics will be addressed. It is important that there is an efficient, clear and flexible pathway for input approvals. We suggest that this role should sit collectively with the Recognised Agencies and the Organic Governance Group as they are best placed to make efficient assessments, and because input approvals/updates will need to occur more frequently than the organic standard. We seek that the provisions in the Bill about the promulgation of an organic standard, signals that the standard will set out the processes that will apply.

Requirement for review of organic standard(s)

The Bill provides no indication that there will be a set review for Organic Standards once implemented. Provision of regular review is important to ensure the system remains fit-for-purpose and we are not 'left behind' compared with international regimes. This would assist with meeting the purpose of the Bill.

We also note that there are a number of regulations that need to be in place (in addition to an organic standard) for the system to work smoothly – it is important that before a standard is introduced (and then is mandatory) that the necessary framework is in place.

We wish to make the following recommendation(s):

w. Include a role for representative organic sector group (Organic Governance Group – as discussed above) in developing organic standards.

x. Amend Clause 105 to include principles of what regulation should achieve:

(x) In determining the content of an organic standard, the following should be taken into account, as far as is reasonably practical in achieving the purpose of the Act ensure that:

- a) the regulatory regime is simple to understand and administer;*
- b) the regime has flexibility; and*
- c) costs to businesses and consumers are proportionate to the overall benefits*
- d) the organic standard is consistent with the principles of organic production*
- e) current organic standards are taken into account*

y. Include the following sub clauses on clause 105 (2)

- x) transitional provisions that apply when the organic standard is introduced*
- x) the process for approval of inputs by Recognised Agencies and the Organic Governance Group.*

z. Amend the Bill to insert a new clause 105A – Review of organic standards, which stipulates that the organic standard must be reviewed at least once in every 5-year period occurring since the original setting of, or latest change to, the organic standard, and that the review should include the Organics Governance Group, and consultation with the industry.

10. Enforcement role - issuing an improvement notice

We support the approach whereby enforcement sits with the relevant Ministry, but compliance/verification with Recognised Agencies. However, we propose that Recognised Agencies would be better placed to issue 'improvement notices' (minor non-compliance notices requiring corrective action) provided for under clause 67, with a requirement for the Recognises Agency to notify the relevant Ministry of any improvement notices (major non-compliance notices) and action taken. Any further action (if required) would then sit with the relevant ministry.

Enabling warrantless entry by an organic products officer seems unnecessary due to the nature of this Bill; there should be a process in place and a reasonable reason to do so. Entry on to a producer's property may otherwise pose health and safety risks, if the necessary processes have not been followed.

We wish to make the following recommendation(s):

- aa. Amend Clause to ensure that a process is followed and that entry of an organic products officer is associated with reasonable suspicion of major non-compliance.
- bb. Amend Clause 67, to provide Recognised Agencies the ability to issue improvement notices (minor and major non-compliance notices) (with regard to meeting an organic standard), with a requirement to notify the relevant Ministry in the situation where major non-compliance has been identified.

11. Other comments and clarification sought:

Information on the public register – Clause 39 and 40 sets out the information to be provided on the public register in relation to each operator and recognised entity. There will be cases where an organic producer has both organic and non-organic product lines. In order to provide the consumer confidence and clarity what products are organic, the public register should include specific reference to organic product lines (particularly where the producer also has produces non-organic products).

Incorporation by reference – Clause 114 provides for the incorporation of material by reference (in regulations and notices). Clarification is sought on the process that applied when there is amendment to, or replacement of, material incorporated by reference.

Information protection – There are a number of clauses within the Bill which enable the relevant chief executive to request information from an organic producer. It is important to ensure that this information is held securely, and not used or stored for any other purpose (particularly commercial sensitive information).

Recognition without application – Clause 22 enables a relevant chief executive to recognise relevant Ministry and Personnel as a Recognised Agency or person, without application. We seek clarification on what grounds Ministry and Personnel can obtain such privilege, and the accountability for such decisions.

Unlawful activity procedures - There is no indication in the Bill of precautionary procedures, whereby organic operators abuse the certification process. Examples of this would include:

- An operator losing certification due to non-compliance, then approaching an opposing verifier to obtain certification elsewhere. Regulations could address this by providing guidelines/timeframes around this.
- An operator losing certification and operating under a different business name.

Ensuring these instances are provided for will assist within protection of the consumer and achieving this purpose of the Bill (to increase consumer confidence in purchasing organic products). One means of assisting could be having a register of enforcement proceedings (excluding minor non-compliances) under the Bill/Act.

Summary of changes sought to the Organic Products Bill

CLAUSE	COMMENT	WE MAKE THE FOLLOWING RECOMMENDATION(S):
PART 1		
3 – Purpose	<p>We support the purpose of the Bill, however there is a focus on products, as opposed to organic production. Following a certain production process is a key element of organics (and defines what is considered organic).</p> <p>Including a definition for organic will ensure that the integrity of the fundamental principles of ‘what is organic’ is protected.</p>	Retain the purpose of the Bill , but include principles of organic production in the Bill.
5 - Interpretation	As above – we seek that a definition for ‘organic’ is included, so that principles of organics are clear.	<p>Insert a definition for principles of organic production in Clause 5 (or as a new clause) to recognise that a product is organic by virtue of the way in which it was produced.</p> <p><i><u>"Principles of organic production: Organic products result from a production system that sustains and regenerates the health of soils (or water in the case of aquaculture), ecosystems, and people. It relies on ecological processes, biodiversity, and cycles adapted to local conditions, rather than the use of inputs with adverse effects."</u></i></p> <p><i><u>For the purpose of this Bill, a product is organic if it is produced in a way that meets the national organic standard, under regulation created under this Bill."</u></i></p>
PART 2		
8 - Restriction on describing product as organic product	Support the premise of the legislation, that to use ‘organic’ the national organic standard must be met. This is an integral part of the Bill.	Retain Clause 8.
9 - Describing product as organic	<p>Support the specification of terms akin to organic which are restricted by the legislation (if an organic standard applies), to avoid unintended loopholes it is suggested that “but not limited to” is added – see right.</p> <p>In order to achieve the purpose of the Bill (particularly increasing consumer confidence in purchasing organic products), it is also necessary to extent this provision to the name of companies.</p>	<p>Amend Clause 9, as follows:</p> <p><i>A product is described as an organic product if its labelling or advertising uses words such as, <u>but not limited to</u> “organic”, “organically grown”, “organically produced”, or “organic standards” that would suggest to a reasonable person that it is an organic product.</i></p> <p><i><u>The word “organic” may not be used in a company name or trading name unless all of their product is certified organic.</u></i></p>
<i>Subpart 2 – Approval as operator</i>		
11 - Applying for approval	This is an overly complex, duplicated process, we seek that the Bill be amended to enable ‘third-party certification’ or approval by the recognised agencies, and registration with MPI (rather than approval).	<p>Amend Clauses 11 – 13 to:</p> <ul style="list-style-type: none"> • Enable the ‘approval’ decision to be delegated to the Recognised Entity – as per a prescribed process set out in regulations;
12 - Considering whether to approve as operator		

CLAUSE	COMMENT	WE MAKE THE FOLLOWING RECOMMENDATION(S):
13 - Granting or refusing approval		<ul style="list-style-type: none"> Remove the requirement for an organic producer to seek approval from the relevant ministry and instead require registration of organic producers with the relevant ministry (which would be done by the Recognised Agency); and Any consequential amendments to other clauses.
15 - Surrendering approval	As above – consequential change.	Amend Clause 15 to also require notification of a Recognised Agency, who would then be required to notify the relevant ministry.
16 -Suspending approval	Support a clear process for suspension, however consequential changes are required to reflect the changed we seek to enable Recognised Agencies to approve/certify organic producers.	Amend Clause 16 to enable a Recognised Agency to recommend to the relevant Ministry that an organic producers' approval be suspended.
17 - Withdrawing Approval	As above.	Amend Clause 16 to enable a Recognised Agency to recommend to the relevant Ministry that an organic producers' approval be withdrawn.
18 - Use of national mark	As discussed in submission.	In the Bill or subsequent regulations, specify: <ul style="list-style-type: none"> The administration of the National Mark by the Organic Governance Group. The requirements for use domestically, and for organic exports. Whether the use of the National Mark is mandatory or voluntary.
<i>Subpart 3 – Recognising entities</i>		
19 - Recognising agencies	As discussed in submission.	Amend Clauses 19-21: <ul style="list-style-type: none"> to enable recognition of only third-party agencies only (Recognised Agencies), rather than individuals as a Recognised Person (acting as an independent, or the individuals within the Recognised Agency); and Any consequential amendments to other clauses.
20 - Recognising natural persons		
21 - Recognising classes of natural persons		
22 - Relevant chief executive may recognise certain entities without application	Clause 22 enables a relevant chief executive to recognise relevant Ministry and Personnel as a Recognised Agency or person, without application.	Provide clarification on what grounds Ministry and Personnel can obtain such privilege, and the accountability for such decisions.
28 - Duties of recognised entity	As above – we seek that the Bill provides a process that enables recognition of third-party agencies only (Recognised Agencies), rather than individuals as a Recognised Person (acting as an independent, or the individuals within the Recognised Agency) and a process of registration.	Amend Clause 28: <ul style="list-style-type: none"> Delete (2)(a). Amend references to approval to certification. Include registering organic producers with the relevant ministry as a function of the recognised agency.
<i>Subpart 4—Provisions applying to both approval and recognition</i>		
35 - Requesting further information from applicant	Consequential change.	Amend Clause 35 to enable Recognised Agencies to request information, for approval/certification

CLAUSE	COMMENT	WE MAKE THE FOLLOWING RECOMMENDATION(S):
36 - Proposing to refuse or withdraw approval or recognition	Consequential change.	Amend Clause 36 to reflect changes sought to enable Recognised Agencies/Entities to undertake approval/certification.
<i>Register of operators and recognised entities</i>		
39 - Public register of operators and recognised entities	<p>This clause requires the relevant CE to keep and maintain a register of all operators and recognised entities approved by the CE.</p> <p>To reflect the changes sought in this submission (to enable third party certification) a minor change is sought. A process of registration with the relevant ministry would enable the public register to be kept and maintained.</p>	Amend Clause 39 (1) to: <ul style="list-style-type: none"> (a) operators <u>certified by a recognised entity approved by the chief executive</u>; (b) recognised entities recognised by the chief executive
40 - Content of register	In order to provide the consumer confidence and clarity what products are organic, the public register should include specific reference to organic product lines (particularly where the producer also has produced non-organic products).	Amend Clause 40 to require that the information on the public register clearly identifies organic product lines, where an organic operator also produces non-organic products
PART 3 – Imports and Exports		
45 - Chief executive approval of foreign organic products regimes for importation into New Zealand	<p>There is potential for an 'grey area' for imported pre-packaged products labelled organic, we seek an amendment to make this clear.</p> <p>The detail within the Bill on equivalency agreements is relatively brief, however these provisions will be important to the overall functioning of the regime.</p>	<p>Amend Part 3 (Imports and Exports) to clearly state the requirement that imported product (whether pre-packaged or not) to which an organic standard relates must be approved via clause 45, otherwise it may not be labelled organic.</p> <p>Whether in the Bill or subsequent regulations, it will be important to specify:</p> <ul style="list-style-type: none"> • How trade will continue whilst national equivalency agreements are being negotiated and implemented. • What the verification procedures will be once regulation is implemented for unregulated markets looking to export to New Zealand and who will control this process. • Risk mitigation procedures for these changes to ensure international trade is not adversely affected.
47 – Official assurances	If an organic standard is met, an official assurance does not seem necessary	Clarify that if an organic product meets the organic standard (and is certified by a Recognised Agency) an official assurance is not required
50 - Exemption from organic standard for exported product	Building in exceptions within the Bill risks undermining the integrity of the regime and purpose of the Bill.	Delete Clause 50
PART 4 Cost Recovery		
51 - Costs to be recovered	A key concern of the sector is the potential additional costs for the organic sector. We support the inclusion of the principles of equity, efficiency, justifiability and transparency for cost recovery. Any additional costs within the system need to be	Amend the cost recovery clauses , to: <ul style="list-style-type: none"> • Include in the Bill, expression that the costs to operate the regime will be apportioned to all domestic and export organic sales.
52 - Principles of cost recovery		

CLAUSE	COMMENT	WE MAKE THE FOLLOWING RECOMMENDATION(S):
53 - Methods of cost recovery	<p>sufficiently justified in terms of the benefits that deliver to the sector.</p> <p>Removing the proposed 'two-step' approval process and instead using a system similar to the current certification model (as discussed above), will go part of the way towards reducing additional costs.</p>	<ul style="list-style-type: none"> • Include a form of benchmarking of the total fees an operator is subjected to, in comparison to our organic trading partners who have had organic regulations in for many years. • Ensure the approach to cost recovery set out in regulations is simple and preferably that fees or charges are paid at the point of registration (certification). • Provide greater transparency on fees, levies, or charges with a cost recovery structure. <p>Include a clause that required the relevant ministry to publish on their website a report detailing the cost recovery review for each period</p>
55 - Three-yearly review of cost recovery	Support the inclusion of a review of cost recovery, additional sub clauses are proposed to ensure that that review is robust.	<p>Amend Clause 55 to include the following requirements as part of a review:</p> <ul style="list-style-type: none"> • Assessment against cost recovery principles. • Consider cost recovery practices in other jurisdictions. • Consider the implication of cost recovery regime on international competitiveness.
57 - Penalty on unpaid debt	After 20 working days, increased by 10% of the sum of the debt, and for every 6 months thereafter.	Consider including provision for an alternative arrangement to be entered into (e.g. deferred payment), if the circumstances require.
PART 5 – Enforcement		
62 – Power of warrantless entry	Enabling the power of warrantless entry seems unnecessary within the Bill and could pose health and safety issues.	Amend Clause 62 to ensure that a process is followed and that entry of an organic products officer is associated with reasonable suspicion of major non-compliance.
67 - Power to issue an improvement notice	We support the approach whereby enforcement sits with the relevant Ministry, but compliance/verification with Recognised Agencies. However, we propose that Recognised Agencies would be better placed to issue 'improvement notices'.	<p>Amend Clause 67:</p> <ul style="list-style-type: none"> • Reflect existing terminology (minor or major non-compliance notices and corrective action requests). • To provide Recognised Agencies the ability to issue minor or major non-compliance notices and corrective action requests (instead of improvement notices) with regard to meeting an organic standard and minor or major, with a requirement to notify the relevant Ministry of a major non-compliance notice.
PART 6 - Regulations and notices		
105 – Organic standards	As discussed above.	<p>Amend Clause 105:</p> <ul style="list-style-type: none"> • Include a role for representative organic sector group (Organic Governance Group – as discussed above) in developing organic standards. • Include principles of what regulation should achieve: <ul style="list-style-type: none"> (4) <u>In determining the content of an organic standard, the following should be taken into account, as far as is reasonably practical in achieving the purpose of the Act ensure that:</u> <ol style="list-style-type: none"> a) <u>the regulatory regime is simple to understand and administer;</u> b) <u>the regime has flexibility; and</u>

CLAUSE	COMMENT	WE MAKE THE FOLLOWING RECOMMENDATION(S):
		<ul style="list-style-type: none"> c) <u>costs to businesses and consumers are proportionate to the overall benefits</u> d) <u>the organic standard is consistent with the principles of organic production</u> e) <u>current organic standards are taken into account</u> <ul style="list-style-type: none"> • Include the following sub clauses on clause 105 (2) <ul style="list-style-type: none"> x) <u>transitional provisions that apply when the organic standard is introduced</u> x) <u>the process for approval of inputs by Recognised Agencies and the Organic Governance Group.</u> <p>Amend the Bill to insert a new clause 105A – Review of organic standards, which stipulates that an organic standard must be reviewed at least once in every 5-year period occurring since the original setting of, or latest change to, the organic standard. Review of an organic standard should include the Organics Governance Group and consultation with the industry.</p>
106 - Prerequisites for prescribing organic standards	The Bill provides for consultation with the sector on the standard but no formal direct involvement.	Amend Clause 106 to include a role for representative organic sector group (Organic Governance Group – as discussed above) in developing and reviewing organic standards.
107 General regulation-making powers.	The Bill does not provide for direct sector involvement.	Amend Clause 107 to include a role for representative organic sector group (Organic Governance Group – as discussed above) in developing and reviewing regulations.
108 Exemptions for class of persons	We seek that there no exemptions to the requirements to meet or be approved under the standard –exceptions within the Bill risks undermining the integrity of the regime.	Delete Clause 108.
109 - Regulations may impose fees and charges	As disused – we seek more direct industry input.	Amend Clauses 109-111 to include a role for representative organic sector group (Organic Governance Group – as discussed above) in developing and reviewing regulations.
110 - Regulations may impose levies		
111 - Regulations may provide for exemptions, waivers, and refunds		
<i>Notices</i>		
112 -Exemption for individual cases	We seek that there no exemptions to the requirements to meet or be approved under the standard –exceptions within the Bill risks undermining the integrity of the regime.	Delete Clause 112
<i>Incorporation by reference</i>		
114 - Incorporation of material by reference	Provides for the incorporation of material by reference in regulations or notices.	Clarify the process that applies when there is amendment to, or replacement of, material incorporated by reference.