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Submission on Proposals for Regulating Organic Businesses in the Primary Sector

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

Supported by: Teviot Fruit Growers Association, Bostock NZ, Lawson's Organic Farms Ltd, Central Otago Fruit Growers Association, New Zealand Kiwifruit Growers Incorporated (NZKGI), Blueberries NZ Association

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Introduction

HortNZ and COKA (supported by the organisations listed in support of the submission) lodged a submission on the Organic Products Bill in May 2020.

Organic fruit and vegetables in New Zealand are making rapidly growing contributions to both domestic and export markets (for example, Zespri's 2021 five-year plan notes that organic SunGold kiwifruit Class 1 volumes are expected to rise from 1.4 million trays in 2020/21 to reach 4 million trays in 2025/26 – a 285% increase in supply over the next five years).

The Organic Product Bill and the regulations which will support its operation are important to establish in order to encourage further contributions from the organic sector to both the nation's economy, and environmental credentials. The introduction of specific well considered regulations will serve to protect the integrity of organics and support the well-functioning organics system in New Zealand.

To support the organics sector, the Regulations need to be:

- Built on the framework of the current organic certification system.
- Simple and effective for producers
- Be delivered/developed in a timely manner.

This submission provides specific comments and responses to the proposed framework for the regulations as described in the MPI Discussion Paper '*Seeking your views on proposals for regulating organic businesses in the primary sector - Approving businesses and checking compliance with organic standards*'.

Submission on the proposed regulations

BASELINE PROCESS FOR CHECKING COMPLIANCE

How strongly do you agree or disagree with the proposed baseline processes for assessing business' compliance with the organic standard?

Strongly agree / Agree / Neutral / **Disagree** / Strongly disagree

Please explain your view, including what, if any, alternative processes could be considered and why:

We generally support the overall process – in terms of organic management plans, evaluation, verification etc, however we do have concerns about the 'Approval' step exclusively sitting with MPI.

An alternative process which we suggest (and strongly urge MPI to adopt) is one where MPI delegate's the 'Approval' step of the process to "approved Recognised Agencies".

We anticipate that this would include a process for a specific approval of delegated authority for each certifier (i.e Recognised Agency) who wanted to take on this role. The process could be designed so that MPI would have to first approve the certifier, and therefore maintain confidence in the processes and systems which will provide both robustness and maintain the integrity of the system.

- This would be a more efficient and effective approach because the approval of an organic producer (a role that sits with MPI in the proposal) is already based on the recommendation of a Recognised Agency or person – this is necessary because the technical knowledge of the organics sector (and certification) sits with the certifying bodies;
- This approach would ensure that MPI maintain an oversight role (and ability to revoke if necessary) – in ensuring that the 'certifiers' (Recognised Agencies) are performing their required functions, as opposed to MPI having direct involvement in each organic business. This could for example include the requirement for a different person in the Recognised Agency to undertake the approval role, in order to build in additional rigour– this does not just have to be a role performed by MPI;
- We understand that this is a well-known and well-used system overseas, and here too in New Zealand there are examples of it working effectively. For example, under the Food Act 2014 framework, NZ GAP has been approved by MPI as meeting the requirements of the Act in regard to Food Control Plan Templates – therefore, NZ GAP certification can cover a growers' Food Act requirements. NZ GAP then registers the grower with MPI. Alternative pathways for registering under the Food Act are directly with MPI, or via Territorial Authorities We also understand the Food Act enables approval of verifiers as class approvals.
- MPI could still conduct random audits as required and maintain the ability to use discretion to dispute or decline registrations/approvals to provide an extra safeguard.

This would require the regulations to include a process for Recognised Agencies who wish to have delegated authority to do the 'Approval' step, to first be approved by MPI, and a process for ensuring the register is updated etc.

This would in our view achieve the balance of maintaining the integrity/robustness of the new framework and also efficient and effective processes (for all parties).

We are concerned that the current proposed process – where the approval role sits exclusively with MPI – will lead to additional costs, inefficiencies (and the significant additional workload and capability requirements on MPI) for no additional benefits or consumer certainty. As noted above, we see this operating with MPI oversight, but not producer-by-producer approval.

HAVING A PLAN

How strongly do you agree or disagree with the proposed organic management plan requirements?

Strongly agree / **Agree** / Neutral / Disagree / Strongly disagree

We agree with the requirement for an Organic Management Plan (OMP) as this both aligns with current practice and is a practical approach.

We agree that there needs to be minimum content expectations of an OMP set out in regulations (i.e. what it should contain). We consider that it could also add efficiencies to provide guidance on a suitable format through a template – while still enabling flexibility.

It is also important to note that the OMP is a ‘living’ document (organic producers will already have a fully developed and operational OMP) inherent to the auditing process.

Is there anything you would add or remove?

There is no reference to production quantities in the types of information to be included in the organic management plan – we consider this should be added.

What would be the advantages for your business of keeping an organic management plan?

The OMP provides a blueprint for how the organic producer is going to operate over the coming time period, and it is an advantage to have this documentation to ensure compliance with organic standards during any personnel changes within the organisational management.

What would be the disadvantages for your business of keeping an organic management plan?

None - it is a current process that is well accepted and utilised throughout the sector.

INITIAL ASSESSMENT

How strongly do you agree or disagree with each of these statements? Please select one option for each statement.

<i>An initial assessment should involve an evaluation of an organic management plan, and verification of the business.</i>	Strongly Agree - we support this requirement.
<i>If the recognised person who evaluates the plan is also able to verify that the business is operating in accordance with its plan in one visit, then a second visit should not be required as part of the initial assessment.</i>	Strongly Agree - We agree that the Recognised Agency should be able to make this determination. Flexibility to cater to specific situations is important.

Do you have any further comments on initial assessment?

This is a current practice for BioGro licensee's, and it operates very effectively and efficiently. Enabling the Recognised Agency (RA) to operate a flexible assessment process is very helpful, especially during the early years of becoming an organic producer.

MPI APPROVAL AND THE PUBLIC REGISTER

How strongly do you agree or disagree that MPI should assess and approve business' organic management plans (as well as assessing and approving the business)?

Strongly agree / Agree / Neutral / Disagree / **Strongly disagree**

We strongly disagree that MPI needs to have a role in assessing and approving businesses organic management plans – the main reason for this is because the required knowledge and expertise already sits with the certifiers (Recognised Agencies). This assessment role should sit with Recognised Agencies.

We are not opposed to MPI being able to do this role, as an alternative to a Recognised Agency – in the event that there is not the number of Recognised Agencies operating in New Zealand for example (although this is unlikely given we have a current system operating already) – but this should not be a role exclusively able to be performed by MPI. If this is the case, the 'person' in MPI would need to have the relevant qualification and experience expected of a Recognised Person.

(As discussed above – we consider that MPI should be able to delegate the role of approving a business).

We propose that there be a public register of organic businesses, how strongly do you agree or disagree that the following details should be made public:

<i>The name and location of the organic business</i>	Name - Yes. Location – at a generic level only, not specific site addresses due to privacy concerns.
<i>The products they are approved to describe as organic</i>	Yes
<i>The processes they are approved to carry out for organic products</i>	Yes (if relevant to that business)
<i>The status of the approval e.g: approved; suspended</i>	Yes
<i>Approval date</i>	Yes
<i>Expiry date of the approval (if any)</i>	Yes Expiry date will assist with minimising risk of interactions with "uncertified" operators.
<i>The recognised agency or person who assessed the business</i>	Yes (The recognised person should be confidential, but support listing the Recognising Agency).

Is there any other information that should be published?

The length of time that the business has been continuously certified.

What factors do you think MPI should take into account when setting, or deciding to set a duration on the approval?

As above – we strongly recommend that MPI enable a process for delegating the approval role to Recognised Agencies.

Regardless of that view, we consider the duration of an approval should be determined by recommendation of the Recognised Agency/Person who undertakes the pre-approval verification; this person will be best placed to consider all the factors at hand and make a judgement on this (as already occurs in practice). We are not convinced that MPI has the knowledge/expertise to do this particular part of the process.

In saying that, we would not necessarily oppose the regulations including some duration parameters, however there also needs to be flexibility for the assessor to determine the most appropriate duration.

What should the minimum or maximum duration be?

Minimum period of 12 months – maximum period of 24 months*.
(*Note: The RA should have an option for approving a producer/operator for longer than 12 months only after the 10 year anniversary of continuous certification without any major non-compliances.)

ONGOING VERIFICATION

How strongly do you agree or disagree that businesses should be verified on an ongoing basis?

Strongly agree / Agree / Neutral / Disagree / Strongly disagree

We strongly agree there is a need for ongoing verification (and that this be a role performed by Recognised Agencies/Persons)

VERIFICATION OUTSIDE OF THE REGULAR SCHEDULE

How strongly do you agree or disagree with the following statements. Please select one option for each statement.

<i>Significant changes to organic management plans should be approved by MPI.</i>	Strongly disagree These should be approved by the Recognised Agency (not MPI) otherwise creates double handling
<i>Significant incidents should be notified to the recognised agency.</i>	Agree Notification procedure already exists for BioGro licencee's.

Do you have any other comments on verification?

Recognised Agencies currently have the ability to complete random spot audits to assist with maintaining the integrity of the current system. This process needs to be retained.

RENEWAL OF APPROVAL

What factors should be considered for whether an approval would expire?

This process is currently handled by both the recognised agency (e.g., BioGro) and the business. We request more clarification on why existing processes would need to be altered.

What factors should be considered when determining the renewal frequency (if any)?

As with duration – we consider that the renewal frequency should be determined by the Recognised Agency/Person.

OPTIONS WITHIN INDIVIDUAL BUSINESS VERIFICATION

How strongly do you agree or disagree that there should be flexibility within verification?

Strongly agree / Agree / Neutral / Disagree / Strongly disagree

There is a need for flexibility as all operations are different, and subsequently there are different risks/systems/methods of operating etc. However, this needs to be considered in context (i.e it is important what that flexibility entails).

Which is your preferred option for verification?:

We agree prefer option 1A (flexibility in the nature of verification) but disagree that MPI should be making the decisions that determines this for each organic producer.

If we progress with our preferred option (1A: fixed frequency, flexible nature), what would be the advantages for your business?

Certainty, and cost-effective RA's. Businesses/producers will be able to plan their certification responsibilities around other business activities. The RA's will be able to plan out their workload which will enable more efficient usage of resources (leading to lower operational costs).

We propose the following risk-based criteria to determine verification frequency or nature. How strongly do you agree or disagree with the proposed criteria:

This submission strongly agrees that a risk-based criteria is used to determine verification frequency, although disagrees that MPI should be making decisions that determine this for each organic producer (i.e., this should reside with the RA).

What other criteria (if any) should be used to determine verification frequency or nature?

Remote locations, accessibility and practicability, and size/complexity of business.

ALTERNATIVE METHODS OF APPROVAL, INCLUDING APPROVAL OF GROUPS OF BUSINESSES

How strongly do you agree or disagree that small organic businesses should be allowed to be approved as a group?

Strongly agree / Agree / Neutral / Disagree / Strongly disagree

We agree there should be a group system in place that allows small organic businesses to be approved as a group, however the system needs to be defined carefully to ensure the national standard is not compromised.

How strongly do you agree or disagree with the proposed criteria for group scheme membership?

Strongly agree / Agree / Neutral / Disagree / Strongly disagree

We agree with the proposal to have a Recognised Agency assess the group to ensure the integrity of the national standard is maintained.

Group certification (or specifically the cost of group certification) will then be one of the considerations that individual members would need to assess at the time that a decision is made to operate with that type of group certification within the organic sector. Consumer confidence must be maintained within the marketplace, and a simple way of achieving that is to use a consistent certification approval model based on Recognised Agency's for all approved producers, manufacturers, retailers, importers, and exporters.

What other criteria (if any) should there be for qualifying to be a member of an organics group scheme?

A group scheme:

- should be for domestic purposes only.
- not applicable for processors, manufacturers, retailers or importers.
- only available for small scale primary producers that are operating within defined parameters.

The membership criteria in Section 6.5.3 lacks clarity and specificity as to what scale of business can be part of a group scheme. The consultation document refers to 'small businesses' but this is undefined, and we seek clarification on this matter.

Is there another model for reducing the cost of verification that we should investigate?

A difficult question, as the costs will always need to be balanced with the inherent need to achieve integrity in the certification model.

Compared to organic businesses approved individually, how much confidence would you have in organic products that were produced by businesses approved using the group process?

We consider that if a Recognised Agency has certified the group process in order to meet the requirements of the national standard, then there should not be any material difference in the level of confidence between individual and group operators. Also refer above to response to ("What other criteria (if any) should there be for qualifying to be a member of an organics group ...).

IMPORTING ORGANIC PRODUCTS

How strongly do you agree or disagree that importers should be verified with the same flexibility as businesses producing and processing organic products domestically?

Strongly agree / Agree / Neutral / Disagree / Strongly disagree

Do you have any other comments about importing organic products?

We seek clarification regarding the Trans-Tasman Mutual Agreement and how this would operate in terms of equivalency, to ensure that the integrity of what can be labelled 'organic' is upheld, as understand that Australia have not implemented national organics regulations.

EXPORTING ORGANIC PRODUCTS

How strongly do you agree or disagree that exporters should be verified with the same flexibility as businesses producing and processing organic products domestically, where the export market allows it?

Strongly agree / Agree / Neutral / Disagree / Strongly disagree

How strongly do you agree or disagree that regulations should allow businesses exporting from New Zealand to meet overseas market access requirements rather than the New Zealand standard (as long as those products aren't sold as organic in New Zealand)?

Strongly agree / Agree / Neutral / Disagree / Strongly disagree

The businesses should always be required to meet the New Zealand national standard to be certified as organic in New Zealand, otherwise there could be a scenario where a producer was producing to a lower standard than the New Zealand standard.

EXEMPTIONS FOR VERY SMALL ORGANIC BUSINESSES SELLING DIRECT TO CONSUMERS

How strongly do you agree or disagree with the following proposed criteria for exempting very small businesses from approval. Please select one option for each criteria.

Criteria	
The business must only sell the products that they produce or process	Strongly agree / Agree / Neutral / Disagree / Strongly disagree
The business must only sell such products directly to the final consumer from a single physical location (e.g. not through internet sales or other electronic sales)	Strongly agree / Agree / Neutral / Disagree / Strongly disagree
The business must only use ingredients from businesses that are approved (if applicable)	Strongly agree / Agree / Neutral / Disagree / Strongly disagree
The business must have an annual turnover relating to organic production or processing which does not exceed \$10,000.	Strongly agree / Agree / Neutral / Disagree / Strongly disagree

We also note that there needs to be a clear distinction between ‘very small’ organic producers who are exempt from the requirements of the Bill (Act) and those who can be part of group approvals.

EXEMPTIONS FOR RETAILERS

How strongly do you agree or disagree that retailers who sell bulk organic products or who repackage organic products should be exempt from having a plan, being verified, and being approved? Please explain your view

Strongly agree / Agree / Neutral / Disagree / **Strongly disagree**

We are concerned that with no approval/verification process there is no ability to check that cross-contamination for example is not occurring. An alternative would be scaling the approval/verification process to match the level of risk. This ties to achieving the purpose of the Bill (which includes increasing consumer confidence in purchasing organic products) and ensuring consumer assurance is maintained.

What, if any, other groups/classes of businesses do you think should be exempt from any parts of the approval and verification process?

No – we note there are already some groups which are not captured by the scope of the Bill. We consider that there is a risk of undermining the purpose of the Bill if there are too many groups who are required to meet organic standards, but there is no verification process.

COMPETENCY REQUIREMENTS FOR RECOGNISED AGENCIES

How strongly do you agree or disagree that recognised agencies should be accredited to either ISO 17020 or 17065 to carry out roles under the organics regime? Please explain your view.

Strongly agree / Agree / Neutral / Disagree / Strongly disagree

Agree with ISO17065, and feel there is less relevance in ISO17020, especially when it is not required internationally.

How strongly do you agree or disagree that recognised agencies should be able use a ‘key technical persons’ approach? Please explain your view.

Strongly agree / Agree / Neutral / Disagree / Strongly disagree

COMPETENCY REQUIREMENTS FOR RECOGNISED PERSONS

How strongly do you agree or disagree with the proposed competencies for verifiers and evaluators?

Strongly agree / Agree / Neutral / Disagree / **Strongly disagree**

We consider that the focus for MPI should be on the integrity and robustness of the certification processes/systems themselves, and Recognised Agencies appoint assessors and verifiers (as opposed to the specific individuals themselves).

INFORMATION SHARING BETWEEN MPI AND RECOGNISED ENTITIES

What systems and processes should be in place to ensure organic businesses keep up to date with compliance obligation when switching between recognised entities?

We agree that a process in this regard will assist in consumer protection and upholding the purpose of the Bill/Act.

There is a risk that an operator who loses certification due to non-compliance, then approaching an opposing verifier to obtain certification elsewhere. Regulations could address this by providing guidelines requiring that when an organic producer has had their certification revoked for some reason, that this is disclosed to the new Recognised Agency. There should also be an additional level of rigour in terms of the approval step, as to why the producer is now eligible to be 'organic' to confirm this is for a legitimate reason. A way in which this could be achieved would be by MPI holding a non-compliance list that only the Recognised Agencies can access.

(A similar risk could arise where an operator loses certification and then operates under a different business name).

However, where an organic producer is simply changing Recognised Agencies due to personal preference then the information sharing will not need to be as robust – but simply confirmation of any outstanding non-compliances or other points of note.

NATIONAL LOGO

Would a national logo for organic products be useful to you?

Yes - a New Zealand organic logo will assist to build consumer confidence, particularly with packaged goods.

If a national logo was to be developed, who do you think should be allowed to use the logo? (Tick all that apply)

<input checked="" type="checkbox"/>	Businesses that are approved individually
<input checked="" type="checkbox"/>	Businesses that are approved as a group
<input type="checkbox"/>	Importers importing products that meet the New Zealand Standard
<input type="checkbox"/>	Importers importing products that meet an overseas standard as agreed as part of a trade agreement
<input type="checkbox"/>	Importers importing products that are produced under an overseas organic regime deemed equivalent to New Zealand's regime by the New Zealand government

We are cautious about applying the New Zealand logo to goods produced outside New Zealand because this may lead to confusion and/or misrepresentation regarding country of origin. Only using the logo for New Zealand produced products enables consumers to more readily identify New Zealand products.

MOVING TO A NEW REGIME

If you have any concerns about transitioning to a new regime for organics, what are they?

Under the proposed system whereby MPI plays an approval role (of the organic management plan and an organic business) we are concerned about duplication, additional costs and inefficiencies (and likely ineffectiveness due to expertise). This may increase costs and potentially result in approval delays (due to bottleneck of approvals in MPI). We propose that instead MPI is enabled to delegate this function to Recognised Agencies (via a specific process).

A managed transition is very important to the functioning of the organics sector – we need to ensure that continuity of business not compromised. This may be achieved through a gradual introduction of the new requirements sector-by-sector.

Transitional provisions should also take into account that numerous organic producers are already certified organic. We seek that existing certified operators are pre-approved and transferred to the new register to ensure continuity of business. We also need to ensure that products (particularly those with a shelf life) remain approved as per their original approved certification (e.g., a bottle of organic wine shouldn't suddenly become "uncertified".)

Insufficient consideration of transitional provisions could have significant impacts on organic producers in the interim period.

What, if any, costs (other than those identified in this document) would your businesses face in transitioning that we should be aware of?

As above – we are concerned about cost increases that might result from MPI playing an approval role.

Transition has the potential to cause major disruption within the sector and marketplace – it is important that it is carefully managed, as noted above.

Is there going to be New Zealand based consumer education/ public awareness campaign for the new regime? Either at point of sale, or through other media to ensure consumers understand the change.