



ORGANIC & MORE

ORGANIC REGULATION
SUBMISSION

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INTRODUCTION

Thank you for the opportunity to make submissions on the process regulations to implement the Organic Products and Production Bill (“the Bill”). As a direct contributor to the submission put forward by OANZ (Organics Aotearoa New Zealand), BioGro will follow a similar format.

BioGro extends the appreciation noted by OANZ for the consultation on the regulations and the willingness of the Ministry for Primary Industries (“MPI”) to work with it and the rest of the sector on the content of the regulations.

BioGro has attended many of the consultation sessions with MPI on the process regulations and considers this document to be in addition to the verbal submissions given during these online and in-person sessions. Any omissions should not be taken as agreement with the proposals.

The information sheets provided by MPI have been useful in guiding the consultation process but raise options for various aspects. Although we have had useful discussions around those options we do not know which options will progress through to the drafting stage to be included in the Regulation.

As noted by OANZ, it is difficult for sector groups and interested parties, to make submissions without more detailed information on the specific options MPI chooses to incorporate into the regulations. At this stage therefore BioGro can only highlight areas of concern that we have and our suggestions for how they can be dealt with.

Ideally, following the current consultation, MPI would produce a more developed outline of the Regulation for further consultation. However, we have been advised by MPI that the timeline for drafting the Regulation and implementing the regulated system does not allow for further sector-wide consultation.

The lack of further consultation is a serious concern for the sector and, it believes a risk to the robustness of the Regulation. There is however a route whereby the sector can be involved in further scrutiny of the Regulation as it moves to the drafting stage.

SUBMISSION POINTS

The Interim Organic Advisory Council

In making submissions to the Select Committee considering the Organic Products Bill - OANZ, BioGro and other organisations and individuals across the sector proposed the formation of a governance or advisory body to guide the introduction of the new regulated system and to provide ongoing monitoring and support.

The Select Committee took up the point and recommended an amendment to the Bill allowing the Minister to establish an Organic Advisory Council. This recommendation was accepted by the Minister, and the amendment was included in the Minister's Supplementary Order Paper supporting the Second Reading of the Bill.

The Council clearly cannot formally be established before the Bill becomes law, however MPI recognized the value of such a body to help guide the implementation of the Bill and have set up an "Interim" Council with wide sector representation to provide a practical way for MPI to quickly access the skill and knowledge base that resides in the sector.

As OANZ suggest, if full sector-wide consultation on the next stages of the regulation process is not practical then the Interim Advisory Council provides the best forum for MPI to test, and seek advice on the final regulation proposals before, or as, they are submitted to Parliamentary Council for drafting. We suggest this is the type of role the Council was designed to fill.

- It has the expertise, knowledge, and experience of what works within the current system and how that can be transferred into the new system.
- It can be called together quickly and is representative of the whole sector.
- It can operate in an environment of confidentiality if needed.
- Its involvement will encourage acceptance of the new regulated environment.

Definition and Statement of Organic Principles

In its submission to the Bill BioGro strongly advocated for an overarching definition of the term “Organic” and a statement of the principles on which organic production is based should be included in the primary legislation.

A definition and principles have not been included in the Bill but MPI has advised that they will be included in the regulations.

We have had conflicting advice as to which regulations the definition and principles will appear in but we now understand that it is intended to include them in the National Organic Standard and that the Standard will have the same status as the process Regulations.

BioGro submits that the definition and principles will provide guidance for interpreting the whole regulated system. They are of such importance that BioGro considers that specific consultation across the sector is needed. If they are to go in the National Standard then that consultation should be able to take place. Wherever they end up being located, the following wording is based on several different definitions and principles including the International Federation of Organic Movements (IFOAM) and should be the starting point for further consultation.

“Organic Agriculture is a production system that sustains the health of soils, ecosystems, and people. It relies on ecological processes, biodiversity and cycles adapted to local conditions, rather than the use of new biotechnologies and synthetic inputs with adverse effects. Organic Agriculture combines tradition, innovation, and science to the benefit of the shared environment and to promote fair relationships.”

Organic Agriculture is based on 4 Principles:

Health - Organic production should sustain and enhance the health of soil, plant, animal, and human as one and indivisible.

Ecology - Organic production should be based on living ecological systems and cycles, work with them, emulate them and help sustain them.

Fairness - Organic production should build on relationships that ensure fairness regarding the common environment and life opportunities.

Care - Organic production should be managed in a precautionary and responsible manner to protect the health and well-being of current and future generations and the environment.

Organic Management Plans

Organic management plans should include information on how the business will manage ecosystem maintenance and enhancement including the management of any water resources required by the business.

Freshwater Farm Plans

Freshwater Farm Plans are designed to reduce nutrient runoff and reduce water pollution from both fertilisers and animal waste. Organic farms use zero soluble nitrogen fertiliser and have had herd limits like or less than those recommended by Ministry for the Environment for 40 plus years. It is BioGro's position that any producer with an organic management plan approved by MPI should be exempt from having a Freshwater Farm Plan, as it would be redundant.

In addition, all organic farms should be exempt from paying for carbon use. In a few years most organic farms in the horticulture sector will be 100% renewable electric. The organic dairy sector is also the lowest carbon users in the dairy sector.

Organic Farms are Fit for a Better World and should be recognized as so by MPI and the Ministry for the Environment.

Record Keeping

The example given is at odds with how verification would happen now. Records are not given or submitted to verification agencies; they are verified on site. This example shows how records could be submitted and verified off site.

Recognised Agency Requirements

The MPI Official Organic Assurance Programme currently operates with full market access to all EU members, Great Britain, Switzerland, Norway, Taiwan and Japan for some products. It has a recognition agreement with the US. This programme does not require below numbers one or two. Only in specific cases would these apply. Non-conformances are currently managed by the agency, not by MPI. BioGro does not see any advantages to MPI managing this level of detail.

BioGro finds some of these agency reporting requirements that could be done annually, but it seems MPI requires a real time view of OMPs.

This level of detail will be costly for agencies and persons to accomplish. Particularly Items one, two and three.

Recognised entities will need to:

- 1 - Send MPI ongoing verification results and any changes to verification schedule
- 2 - Inform MPI of any issues with tell an OMP they find during a verification check
- 3 - Tell MPI if an operator fails to carry out corrective actions
- 4 - Notify MPI if a business obstructs them from doing their job
- 5 - Update MPI on any changes to their accreditation, operations, or recognised persons they manage
- 6 - Tell MPI if they have compliance issues, and how they are fixing these.

The Approval Process and Ongoing Monitoring

In its submission on the Organic Products Bill BioGro expressed concern about the potential for duplication of work by a Recognised Agency and MPI both during the approval process and in the ongoing monitoring of approved operators.

The major concerns here are the increased cost to operators that MPI approval and monitoring will entail and the delays, potentially at vital times, this may cause.

The Select Committee recognised that concern by proposing an amendment to clause 12 of the Bill to give a relevant chief executive greater discretion in setting a process that would “satisfy” her/him as to the matters to be established for approval and ongoing verification.

BioGro accepts that the chief executive will always make the final decision on approval of an operator. There is no suggestion that the Bill empowers the chief executive to delegate this function. What we are talking about here is a process issue. How does the chief executive “satisfy” herself/himself that an applicant can be approved as an organic operator?

BioGro submits that the chief executive can be satisfied by relying on the recommendation of a recognized agency and the accompanying documentation, to give approval. Ongoing monitoring of the approved operator, including dealing with issues of non-conformance, should lie with the recognized agency except where there is a notable change to the scope of the operation necessitating new approval from the chief executive.

We say this because Recognised Agencies:

- 1 -Are themselves, together with their auditing staff, regularly audited by MPI;
- 2 -Have the knowledge and experience to deal with all the issues that will arise in the conduct of an organic operation;
- 3 -Where they are involved in the export sector, they are likely to also be audited regularly by the accrediting agencies of our trading partners;

If MPI is to be involved in a detailed assessment of an application for approval and the associated management plan after a recognized agency has already recommended it or if MPI must be notified of, and potentially investigate for itself, every non-conformance issue and approve the corrective actions that need to be undertaken, then the cost of the system will become unsustainable.

It may be better to put the detailed process for dealing with non-conformance issues in a Process Notice rather than in the Regulations. This would give the relevant chief executive more flexibility to rely on recognized agencies to deal with the bulk of non-conformance issues. BioGro accepts that MPI may need to be involved at some level with significant non-conformances, particularly where they might have a sector-wide or product-wide implication.

Term of Approval

The discussion documents suggest that approval be renewed every 3 years. How onerous a process that will be is not yet clear from the discussion documents. New approval will be required where there is a major change to an operation. However where a business continues to operate with minor change and is subject to ongoing periodic verification by the recognised agency, what is being achieved by renewal of approval every 3 years?

BioGro submits that providing there is no significant change to the operation and a recognized agency is carrying out the designated verification checks, there is no need for a regular renewal of approval.

Ongoing Verification

BioGro supports the risk-based approach to ongoing verification with clear criteria for how risk is to be assessed.

Off-site Verification

Verification can take many forms. Purchase records, video, photos, receipts, satellite photos, any remote monitoring technology. It could also be sending an agent of the recognised agency with a mobile phone to record video to be reviewed by a recognised person later. These can reduce the cost of certification without limiting effectiveness of verification. In addition they reduce the carbon footprint of the verification process.

National Logo

BioGro supports the development of a National Logo. The logo must be optional. Our trading partners: the EU (European Union) and the US have optional logos while China, Korea and Japan have mandatory ones.

As noted in our previous submission, there is concern about how this logo will be distributed and monitored. If compulsory, organic producers will incur significant costs related to their packaging to update artwork - will there be a rollout period? Will there be an approval process for using the logo and who would do this? Would certified organic producers be given a National Organic Number to be shown alongside the logo? Will there be marketing initiatives in place for the launch of this new logo to help build awareness amongst consumers?

Exemption and Group Schemes

BioGro supports the exemption of very small businesses from applying for approval and being regularly verified by a recognized agency.

However, s112 of the Bill makes it clear that an exemption cannot release an operator from compliance with the National Standard. So, it will still be illegal for a small operator to sell products as organic if they are not produced in accordance with the National Standard. Further, the exempted operator would still be subject to the provisions of the Fair Trading Act.

BioGro is aware that other groups from within the sector are attempting to develop, with MPI, a system that allows small operators to continue to operate without the expense of formal approval and verification and supports those efforts.

Any system that is approved for small producers, however, must in BioGro's view:

- Provide for such operators to be registered with MPI;
- Ensure that such operators understand that there is a National Standard and what it requires. This could be demonstrated by way of membership in an appropriate organic organization for example;
- Allows for the possibility of random audits by MPI or a recognized agency on its behalf;

The system for group schemes is still evolving, however, after discussions with MPI, BioGro considers that the form of the Group Scheme is likely to be one that BioGro could support.

Genetically Modified Organisms

The exclusion of organisms resulting from new biotechnologies (previously generally referred to as GMO's) is fundamental to organic production. The precise definition of what is included in such an exclusion needs to be discussed and debated within the sector and with MPI. BioGro understands that MPI recognize the importance of this exclusion to the integrity of any system that regulates organic production, both from a producer and from a consumer perspective.

BioGro understands that the ban on new biotechnologies and their definition will be in the National Standard and so will form part of the consultation for that Regulation.