

## Submission to the Organic Products Bill

### About BioGro NZ

BioGro NZ is Aotearoa's leading organic certifier. We were founded back in 1983, originally known as the Biological Producers & Consumer Council (NZBPCC). The BioGro Standards originate from 1984, and over 37 years have adapted and progressed as the organic sector evolved into one of the fastest growing markets here and internationally. As a Third-Party Agency, we are internationally recognised and accredited with the ability to facilitate export of thousands of organic products every year. BioGro is accredited by the New Zealand government, as well as the Japanese, Canadian and European Union Governments directly for organic certification. The BioGro certification logo continues to provide trust for consumers in this unregulated market, as we've continued to push for the need of a National Regulation and Standard to ensure integrity remains.

### Submission Approach

BioGro has and will continue to be a voice for the organic sector, as we have done so throughout the years. We fully support the implementation of an Organic Products Bill but have many concerns surrounding its current state. Our team combined have an extended wealth of knowledge on current national and international organic practices and have utilised this within each of the points raised. We also draw upon many stakeholders and customers submission comments with their differing expertise.

The sector as it stands is dedicated and passionate to ensuring a sustainable future for ongoing generations, by producing a variety of products using practices that nourish ecological systems and cycles. We have a unique opportunity to shape the sector in a way that puts New Zealand ahead of other countries as consumers opt for more sustainable ways of living.

The Bill as it stands gives full control to persons who are not as experienced than those already operating within the framework. We are dubious about the export arrangements on the implementation of the Bill and what this could mean for the current process which is already working. With lack of definition and a perception that a vast array of costs and levies will be added to the current system – we foresee a process which is supposed to encourage organic production, to actually discourage and potentially steer away those that have been loyal to this way of producing for many years. Below we list all Submission Points, each of equal importance.

### BioGro Key Submission Points

1. **Decision Making** - All decisions surrounding compliance sit with the 'Chief Executive' and 'Ministry'. There is reference to 'recognised' agencies carrying out compliance operations, yet not the certification approval process itself. Clause references - 11, 12(2), 12-17.

- This model raises concern, especially when it is not in line with international procedures that currently delegates approval authority and Organic Management Plan assessments to Third Party Agencies such as BioGro.
- BioGro as an organisation have 37 years experience with this decision making process.

We believe it is more practical and less expensive to delegate as much of the certification and compliance work as possible to approved Third Party Agencies in a manner that is similar to the current model. This is the standard practice internationally.

2. **Equivalency Agreements** - Concern surrounding how equivalency agreements will be managed moving forward. Due to our current lack of Regulation, we already have agreements in place allowing organic products to reach regulated overseas markets. It appears that no analysis has been completed to show that the legislation being proposed will in fact improve international access for our organic producers. Clause references - 46, 50, 87.
  - How will trade continue whilst national equivalency agreements are being negotiated?
  - What will the verification procedures be once regulation is implemented for unregulated markets looking to export to New Zealand and who will control this process?
  - Are there risk mitigation procedures in place for these changes to ensure international trade is not affected?
  - Evidence to show that the legislation being proposed will in fact improve international access for our organic producers?
3. **Lack of Definition** - "The bill does not provide a broad brush definition of 'organic'". There are several instances where the definition can be open to interpretation. Most comparable jurisdictions explicitly state definitions clearly and so do other New Zealand Government Bills (E.g. Food Safety). We suggest New Zealand follow this protocol for the Organic Products Bill to avoid misinterpretation.
4. **Multiple Government Departments** - There is an indication that you could be dealing with multiple government departments to obtain certification. This multi-approach arguably creates a complicated structure with no transparency of which government departments will be involved and for what reason. BioGro believes that a single Ministry should be tasked with oversight of organic regulations. Clause references - 'Special Features'.
5. **National Mark** - Vague phrasing surrounding the implementation of a National Mark. Clause references - 18.
  - Is this mandatory or optional?
  - How and who will control the verification of the National Mark?

- What are the requirements for organic exports and using the National Mark?
- Marketing implications?

BioGro would like further clarity on the National Mark before we can provide our support for the implementation of this.

6. **Inputs for Organics** - “Inputs” are the crop and livestock management products used by organic farmers to produce their crops and manage their animals. BioGro currently runs an extensive inputs approval programme for organic producers which is used by licensees of BioGro and AsureQuality. For reference, there is free public access to this database directly on BioGro’s website. There was no indication or mention of this throughout the contents of the Organic Products Bill.
7. **Bill focus** - There is a focus on products as opposed to organic production as an agricultural process. For example, The approval process doesn't take into account the three year conversion process for primary industry. Organic production is an important distinction and we would like to see this process included through the Bill. Clause references - 3, 9 (2).
8. **Exemptions** - The Organic Product Bill states relevant Ministry and Personnel can receive recognition without relevant application. BioGro would like more clarification on what grounds Ministry and Personnel can obtain such privilege and accountability for such decisions. Clause references – 22
9. **Regulatory Impact Statement** - Aspects of the current organic certification process have not been taken into account. This suggests that the bill itself is based on an incomplete understanding of the current organic sector. An example of this is failure to recognise that current organic exports have to meet the regulations for the export market and recognising the standards as 'voluntary' (which is only an accurate statement for the domestic market).
10. **Trans-Tasman Mutual Recognition Arrangement** - Australia will still remain an unregulated market. The Bill suggests that the Arrangement will remain through the implementation of a regulation here in New Zealand - there is no clarification that products imported from Australia will need to meet national organic requirements despite this. BioGro believes that products imported from Australia should be required to meet New Zealand’s national organic requirements despite the MRA with Australia.
11. **Describing product as organic** - The Organic Products Bill explicitly lists a handful of descriptors. Suggest including a phrase such as 'but not limited to' to ensure all bases are covered. Clause references - 9.
12. **Standard Review** - There is no indication that there will be a set review period or frequency for the Organic Standards once implemented. BioGro strongly believes that regular review of New Zealand’s organic production standards as defined by the regulation is essential. This will ensure we remain current with international best

practice, and will reduce potential issues such as New Zealand producers being unfairly prevented from using new organic inputs or techniques.

13. **Retailers** – BioGro would like clarification on retailers purchasing and re-packaging organic produce. What would be the certification requirements for retailers in these situations? Clause references - 10 (c).
14. **Unlawful activity procedures** - There is no indication in the Organic Products Bill of precautionary procedures, whereby organic operators abuse the certification process. An example of this would be an operator losing certification due to non-compliance, then approaching an opposing verifier to obtain certification elsewhere. BioGro believes there should be defined processes to manage this, such as mandated information sharing between verifiers.
15. **Cost Implications** – BioGro strongly urges more transparency on fees, levies or charges with a cost recovery structure. There are fears within the organic sector of significantly increased costs to producers, who already pay for their certification. Adding another layer of cost on producers is likely to make New Zealand’s verification system more expensive than those of our trading partners. Clause references - 51-59
16. **Transition Time**- There appears to be no mention in the Bill of the transition periods once the Bill is fully implemented. Will these be expressed at the regulation level? Clause references - 6.
17. **Product names** - We agree with the clause relating to the product. However, we would like the Bill to expressly forbid the use of the word organic in a company name or trading name unless all of their product is certified organic. There are current entities in New Zealand with the word organic in their trading name while selling non organic products. Exemptions should be allowed for retail stores and associations whose trading name is not directly associated with a product. Clause reference - 9.
18. **Conversion Period** - There appears to be no mention in the Bill of “conversion” (or transition) periods. This is the time taken for a non-organic property to attain full organic certification. Will these be expressed at the regulation level? BioGro believes that the conversion period should be 36 months, which is common to other international regulations.
19. **Cost Implications** - We would like an expression that the costs to operate the regime will be apportioned to all organic sales in New Zealand and all organic products exported from New Zealand. Not just to these markets which New Zealand currently has organic trading arrangements with. Clause references – 51.
20. **Sector Development** - We would like to see the relevant levy that an organic grower or farmer pays under the Commodity Levies Act 1990 to be redirected (where the organic grower or farmer elects to redirect) to fund the development and operation of specific organic entities that perform similar marketing roles as primary produce

marketing boards who currently receive the levy. This alternative is in practice in some of our major trading partners. Clause reference - 115.

21. **Terminology** – The language used has changed significantly from what we currently operate with. The terms Certification, Third-Party Agency and Licensee are non-existent through the Bill. BioGro would prefer that the existing terminology be retained.
22. **Standards** – BioGro believes there should be a statement of principles about the content of the organic production standards which are to be contained within the regulation. This does not appear in the current draft of the Bill.
23. **Title** – The title of the Bill does not properly reflect its purpose. All organic products are derived from crops or animal that have been grown according to an organic production standard. The Bill Title should reflect this. BioGro suggests the title “Organic Production Bill” or similar.
24. **Consultation** – The administrative structure proposed by the Bill does not reflect the sector consultation undertaken by MPI nor is it what the sector wanted. The Bill is focused on an official assurance program that puts MPI at the heart of the system taking overall responsibility for verification of producers against the standard and approving producers (in the bill referred to as “operators”). Given that MPI would also be the body with ultimate responsibility for the administration of the system and ensuring its integrity, the Bill exposes the system to a single point of failure.
25. **Language** – The language used to describe organic producers and their status in the Bill is a departure from the internationally recognised terms
26. **Cost** – The cost recovery provisions in the Bill will add an additional layer of cost on producers. The additional costs will make New Zealand’s verification system far more expensive than our trading partners for exporters. Clause reference - 51
27. **Technical Board** – This is non-existent, to oversee the development and ongoing monitoring of the National Organic Standard. BioGro strongly requests that a Technical Advisory Board should be mandated to oversee the development and ongoing monitoring of the National Organic Standard. Most countries which regulate the term organic (eg USA, Canada, EU countries, Japan, Taiwan) have established technical boards within the administrative structure to exercise a level of control over the content of the standard and the ongoing monitoring and interpretation of it. The Technical Advisory Board should be made up of experienced and knowledgeable people to represent a cross-section of producers, certifiers and consumers. Clause reference – 105 & 106
28. **Levies** – The possibility of levies under the Commodities Levies Act is a further potential cost. Most organic primary producers already pay levies to sector bodies (Beef and Lamb NZ, Hort NZ and Dairy NZ). BioGro recommends that existing levies paid by organic producers be redirected to support the organic sector.

29. **Small producers** – The Bill does little to foster the domestic organic market and the increased cost structure is likely to drive smaller growers out of the market. The structure set out will be prohibitive for smaller and even medium sized producers who are focused on the domestic market. BioGro suggests that more consideration is taken for these smaller producers when drafting the Bill.
30. **Implementation** - We note that the Bill, nor in the RIA, provides timeframe for when organic standards are to be developed. To provide clarity for those involved in organic sector, BioGro recommends a confirmation of a timeframe for when these relevant organic standards to be developed.
31. **Public Statements** – There should be prewarning of a public statement given to the producer in question, when there is failure to comply with the organic standards. Sometimes errors are accidental and unavoidable through neighbour negligence. Although procedures should be in place to decertify what is no longer organic, it is unfair to negatively publicise producers and brands through no fault of their own. Clause reference – 69.
32. **Non-Compliance Costs** – Similarly to above, critical non-compliances sometimes occur through causes beyond the producer’s control. In these instances, the producer is already suffering from loss of certification and possible re-conversion. There is fear that costs will be implemented through fines and court action which will result to even more financial loss. Clause reference – 88.
33. **Authority Protection** – The organic sector is a perfectionist’s industry. Errors and mistakes can and do occur, like all others. The bill states that ‘Persons acting under authority of Act are protected from mistake’. BioGro would like more clarity on what this implies and whether ‘authority’ will be made accountable if necessary? Clause reference – 98.
34. **Defining business sizes** – How are businesses classified? Large businesses may be a small producer of organic products and vice versa. BioGro would like more clarification on the framework and how distinctions are made.
35. **Group Certification Scheme** – There has been no mention of the currently used and tested Participatory Group Scheme (PGS) specifically developed as a low-cost scheme to help small operators. BioGro requests clarification on why Group Certification is the preferred option over the already used PGS scheme