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This Bill is not fit for purpose and should be discarded or returned to the drawing board and rewritten. The Bill misrepresents the cited references & fails to address the fundamentals of organic certification.

I am concerned at the total power invested in the Minister and CE for both this Bill and subsequent regulation. Particularly with a Bill as general and undefined as the Organic Products Bill. This, with no mandatory or binding organic sector collaboration where more than 35 years of organic experience, knowledge and compliance lies.

The Bill reflects the RIA recommendation of a government based 'approval' process despite international organic norms (and current New Zealand practice) of certification and accreditation. A process facilitated through Third Party Accreditation (TPA).

RIA failed to differentiate the issues affecting domestic organic and export organic sectors and this differential is not reflected in the Bill.

I detail my reasons below by section. I will refer to the Bill and the supporting documents referred to in the Bill.

Explanatory Note – Facilitating International Trade

There is no evidence supplied to support the statement that "*countries that regulate organic production are increasingly expecting comparable regimes from their partners*". This is contrary to the evidence supplied in the FAO research document referred to – for EU, USA & Japan - where legislation mandates multiple pathways to importing product from direct government to government to accredited TPAs. Indeed, the only regulations NZ has (unilateral) government to government equivalency with is the EU – facilitated under the current MPI – OOAP process. New Zealand has a world first bilateral China organic agreement facilitated under the current OOAP process without requirement for legislation.

New Zealand successfully exports organic certified products to both regulated and unregulated markets under the current system – there is no evidence supplied that legislation would improve access.

Special features of the Bill –

a. There is no necessity for multiple ministries to be involved in setting organic standards. Organic verification is a process based, supply chain verification. The organic standards refer to other relevant legislation and ensure the relevant compliance is in place as part of the organic verification.

b. Ingredient traceback to organic origins is a key part of this process and organic origins are primary industry based.

c. It is unnecessary, expensive, and onerous for organic producers to work with multiple ministries. For example, an organic hemp grower who wants to make their product into organic hemp medicinal products – MPI for growing and MoH for the end product? A herb producer who wants to make herbal medicine products? An essential oil producer who want to make health & body care products? Textiles are already certified under primary industries – lambswool & potentially hemp fibre. Health & Body care is already certified in NZ by BioGro, without the need for multi ministry input. This special feature is not required.

Title – The Organic Products Act –

d. The RIA refers to the MPI consultation process and then effectively ignores the conclusions by:

   i. Ignoring the organic production system and verification of the supply chain. Organic accreditation internationally is process-based standards, this proposal is an outcome-based process. The MPI discussion document from 2018 recommended a process-based regulatory regime.

   ii. Arbitrarily dropping the TPA accreditation and certification system and replacing with a government-based system.

   iii. Ignoring MPI advice *"*"*The Panel considers that as the options presented in the RIA have not been fully consulted with those affected by this proposal the full impacts may not have been drawn out in this RIA. In particular, the preferred implementation option is different to current practice and could be a surprise to stakeholders. Not consulting on this implementation option also risk issues with making the regime operational. Additionally, the decision not to create a regime that provides certification will be unfamiliar and unexpected to those impacted as it was not part of the formal consultation. The RIA does not fully outline the impacts that domestic, export, and import business will experience."*

e. The failure of the RIA to heed consultation outcomes and referenced advice has led to recommending an unworkable and unfit system on which the Bill is based.

f. *G*o back to the drawing board and formalise what already exists.

The RIA's unsubstantiated ideas are also reflected in the proposed legislation – missing the whole process of organic certification that creates the 'organic product':

g. Organic certification in the proposed scopes begins with the land, with certification of the land and a process of accountability with everything that is applied to land, or crop being approved by the certifying agency before use. The operator is scrutinised to ensure they are environmentally responsible, every input is approved and verified when used, crop management optimises natural control before the use of any crop protection products, healthy land, plants, animals and people. All this has to happen before an organic product is produced. None of this is accounted for in the Bill.

h. Organic certification in the primary sector is a long-term commitment and must be recognised as such.

i. There is no definition or scope of the term 'organic standard'

j. I note in today's climate where sustainable farming and climate change mitigation is being championed by the government; the one sector already implementing and verifying environmental and strict input requirements is being saddled with unnecessary expense and layers of compliance.

k. Organic certified operators have had a farm environment plan as part of their organic management plan for more than 30 years and when an organics legislation is proposed, these parameters are not even mentioned. The whole industry has been shrunk to an 'organic product'.

PART 1 – Section 5 - Interpretation –

a. Does not include definitions of terms commonly defined in organic legislation and outlined in the Codex Alimentarius – organics. This section is titled interpretation, not definition.

b. There is no definition of organic, organic production, the roles of 'recognised bodies' etc. compared with the detailed definitions in Acts such as the Food Act & Animal Products Act.

c. There is no statement or definition that identifies it is even about organic certification or accreditation – the fundamental basis of organic verification and official organic assurance.

PART 2 – Approval & recognition –

I do not support the model of 'operator approval'. The organic certification process implemented and recognised internationally is the appropriate model.

a. 8 – Restriction on describing products as organic **–** finally – a mention of an organic standard but still no mention of an organic certificate or certification – the fundamental processes that identify compliance with an organic standard. Definition of term is for 'organic' only, not 'organix' 'awganic' which are used to confer the same meaning as 'organic' or even "made with organics", "grown organically".

b. 9 – Describing a product as organic – specifies 'labelling' or 'advertising' – not organic claims or certification. A primary producer in transition to organics does not 'label' or advertise' the organic product until the three-year transition or conversion period is completed. The transition process is fundamental to the accreditation of the organic product to the organic standard and is not accounted for anywhere in this Bill.

c. 10 – approval as an operator **–** this terminology is not used internationally to describe an enterprise that has been certified to an organic standard. The term accreditation and certified are those used internationally and reflect the process-based nature of organic certification. At a primary level, the certification process is continuous with input approvals, OMP updates an ongoing process. The accreditation is not a 'one off' process when a product claim is made. When proof of organic certification is required, the document requested is the organic certificate which lists the products and standards to which the products are certified – not an 'approval'. There is no discussion or documented evidence provided as to why this Bill does not follow international guidance on organic legislation, even though a study of this topic was included in the Bill reference material.

d. 12 – No definition of a 'fit and proper person', 'prescribed information' etc ……

Subpart 3 – Recognising entities - I do not support the unsubstantiated move away from the TPA model where the entire certification process is completed by a single entity.

a. This section does not define the roles and responsibilities of recognised entities. There is a mix of MPI & 'RA' roles through the 'approval' process – an operator (licensee in current terminology) will have to negotiate both MPI & RA processes to gain approval. Currently, the whole certification process is completed by the TPA – one entity, one invoice, one interaction point. No change required.
b. The RIA recommends a departure from the existing and internationally accredited TPA process where the entire certification/accreditation process is carried out by TPAs. There is no researched or referenced justification for this change. The consultative process carried out by MPI in 2018 favoured continuation of TPAs.
c. TPAs are specifically referred to with regards to market access process in the EU, USA & Canadian legislation. Current TPAs facilitate market access to Canada, Brasil and unregulated markets and via the MPI OOAP – to EU, USA, Taiwan & Japan. TPAs have an ongoing role in facilitating organic access in smaller volume markets. By replacing the TPA process with an untried 'recognised' entity process, there is a high risk that current international organic market access may be adversely affected or require renegotiation – a cost to the organic sector. This could also jeopardise future access negotiations. The TPAs have systems and expertise in place and there is no reason why the industry should pay for duplication at MPI.
d. The draft regulations provided in conjunction with this Bill notes recognised entities can be ISO 17065 or 17020 accredited – in organic legislation internationally (specifically in the case of EU & Japan) ISO 17065 is the specified standard, reflecting the oversight of a certification process. ISO 17065 is used as the basis for assessing equivalency via the Organic Equivalence Tool & the International Requirements for Organic Certification Bodies via ITF.
e. Vague and unhelpful term such as 'prescribed matters' does not give me confidence in this Bill.
f. 19 -22 no definition for "specified functions and duties", "reasonable grounds", "matters CE considers relevant". The unbinding "consultation with members of the class …" is not acceptable. The organic sector has the experience and knowledge, not MPI. Consultation is not enough; collaborative agreement might be.
g. 26 – no definition or clarity around '….vary the conditions if the CE considers is appropriate in the circumstances". No notice of accountability, reporting the actions taken or right of appeal.

PART 3 – Imports & Exports

46 – The relevant organic standard here refers to a New Zealand standard – for exports it should also refer to an international standard. NZ standards (currently the technical rules), under MPI are not yet recognised in some of our main export (regulated) markets and even with legislation this may not be achieved.

Currently there are several ways exports gain market access:

i. EU & Switzerland - via the MPI-OOAP programme where NZ has unilateral equivalence where NZ standards (was MPI Technical Rules, will be MPI-OER in September) are accepted by EU.
ii. USA – MPI has negotiated a recognition of conformity with USA but New Zealand exports must meet the USDA-NOP standards.

iii. The MPI-OOAP agreement with Taiwan where the Tech Rules plus an OMAR must be met.
iv. Canada – The Canadian Organic Standard must be met for exported products. Currently facilitated by BioGro agreement with Canada.
v. Korea – Korean standards must be met – Korean auditors visit NZ to verify although BioGro does have a direct relationship with DCOK.
vi. China – New Zealand has a world first bilateral agreement signed with China in November 2016 but this has not yet been implemented (over three years!!). Currently exports meet the China standard as verified by Chinese auditors.
vii. Japan – MPI recognition for products labelled in Japan, for products JAS labelled in NZ, additional requirements are facilitated via BioGro (effectively OMARs).

a. This list illustrates the complexity of organic export market access and the ability of the current model of TPAs and MPI-OOAP programme to manage it.
b. While simplification of the market access process into one body and one standard is an industry goal, there is no evidence, discussion, or analysis that this legislated process will achieve that.
c. For example, for equivalency agreement with USA organic regulation an equivalent legislation is a prerequisite. However, the enabling legislation for the USA is the Organic Foods Production Act – this act is specific and detailed, is in huge contrast to this Bill's generalities.
d. My concern is while New Zealand legislation may facilitate equivalency agreements, it may also hinder if the legislation is not recognised internationally. For this Bill to meet its trade goals it must be viewed in an international context, not just a New Zealand one.
e. The RIA refers to a document researched by the FAO and published in 2012 that covers, in detail, the legal framework for organic regulation and provides a guide as to what should be included in both legislation and regulation – the RIA and subsequent Bill have not referred to, analysed, or implemented these guidelines.
f. To manage this risk, the TPAs, (as a certification body) must be retained, to access export pathways, particularly in small volume, occasional markets, (e.g. Brazil) where TPAs already have a relationship with international certifiers.
g. Clause 50 – unclear if this refers to the continuation of current market access pathways if equivalency agreements cannot be negotiated.
h. Equivalency agreements are presented as the preferred option in the RIA, they are also expensive & time consuming to negotiate and (for China agreement) to implement. Both parties must be willing to negotiate. There is no fallback position in this Bill if government to government equivalency cannot be realised.

One feature of part of New Zealand's organic domestic certification is Organic Farm New Zealand's (OFNZ) Participatory Guarantee Scheme. This scheme was developed as a low-cost scheme for small operators (and surprisingly, set up with government funding). This scheme has not been mandated in this Bill or in the draft regulation. A group certification scheme has been proposed in that regulation which is an entirely different structure and process than a Participatory Guarantee Scheme – the Participatory Guarantee Scheme is well founded and a long term solution to the cost of compliance so often cited as a barrier to organic certification. This fundamentally not even mentioned in this Bill.

Part 5 – Enforcement

88 - There is a fear among the rural community that raising a Critical Non-Compliance (often from circumstances outside their control) under the regulation will lead to fines and court action. Often the CNC (potentially a breach of the regulations promulgated by this Bill) is the result of chemical trespass from a neighbour or contractor activity, but that neighbour does not suffer for their actions, the organic operator does. The organic operator is often financially affected by potential loss of certification and having to start again with a two to three-year re-conversion to organics process for some or all their property. This is enough consequence without litigation.

Operators outside the organic operation adversely affecting the organic status of the operation are not currently liable – this is not addressed in this Bill.

Under the current TPA arrangement, the licensee agreement facilitates random and unannounced audits of licensees. Failure to allow entry can jeopardise organic certification. Unwarranted entry onto premises with organic certification is not necessary.

Part 6 – Regulation and Notices

a. I re-iterate my concerns on the lack of definition and stated principles around organic standards. I recommend reference to the Codex Alimentarius Organics for guidance.
b. There is no right of appeal for any decisions made by MPI around the promulgation or interpretation of the standards. There are no mandated standards review programme or process or guidance on practical implementation – all requirements of organic standard programmes.
c. There is no guidance or list of approved inputs for organics or how in inputs will be assessed and approved under this Bill
d. Interpretation of standards and guidance is partially achieved now by an informal collaboration between the TPAs and MPI under the OOAP programme but. There is no mandate for that in this Bill.
e. 110 – organic primary producers are already levied under the Commodity levies Act by industry bodies – no funds of which are specifically targeted to organics. Levies collected in this way could be targeted for organics without raising an additional levy. Operators already pay their own way through certification fees and levies paid by organic exporters for their exported produce. Organics has always paid its own way with very limited (almost none) public funding. This proposed regime looks like it will add cost at each level of compliance – there is no evidence supplied by the RIA that this will give any benefit to existing organic operators, and is more likely to create barriers to organic certification.

This Bill is not fit for purpose and should be discarded or returned to the drawing board and rewritten. The Bill misrepresents the cited references & fails to address the fundamentals of organic certification