Submission to: **The Primary Production Select Committee**

On: **THE BIOSECURITY LAW REFORM BILL**

From: **Horticulture New Zealand Inc (HortNZ)**

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Horticulture New Zealand wishes to appear before the committee to speak to this submission.

INTRODUCTION

Horticulture New Zealand (HortNZ) represents New Zealand's 7,000 commercial fruit, vegetable, berryfruit and olive growers.

Horticulture occupies 90,000 ha of productive land in New Zealand. The crops that our members grow are exported to discerning customers in more than 118 countries globally. The industry also supplies the majority of both fresh and processed fruit and vegetables consumed domestically.

The industry has a value of over $5 billion including exports valued at almost $2.5 billion (NZ$ FOB) in the year ended June 2009. The industry value has grown from exports of $200 million in 1980 to $2.5 billion over the past 30 years. Our Horticulture Industry Strategy "Growing a New Future" plans to increase the value of the industry to $10 billion (domestic and exports) by 2020.

A key natural advantage that NZ horticulture has is our relative freedom from unwanted pests and diseases. This is based on our geographic isolation and a historically strong and effective biosecurity system.

Biosecurity has a direct impact on three of the seven key themes identified in the industry strategy:

1. **Productivity** – excellent biosecurity means we have fewer pests and diseases to manage and therefore growers can achieve higher yields and better quality of production.

2. **Sustainability** - excellent biosecurity means that agrichemical and post harvest treatments are used less or not required. This underpins our drive to minimise environmental and food safety issues associated with our production systems and products.

3. **Improved Market Access** - the most significant barriers to expanding New Zealand's horticulture exports are the technical barriers to trade we face due to our trading partners' concerns about biosecurity and food safety (usually around residues of chemicals used to control pests and diseases).

Biosecurity is a critical risk faced by the horticulture industry. Just one fruitfly infected piece of fruit can close down substantial export markets for us overnight. At critical times of the season this would cost the industry millions every week. The 1996 find of a small number of fruit flies in traps in Auckland city closed many markets for months and some for years. Fortunately this was centred on an urban area rather than a horticulture production area. The industry is very aware of the risks it faces in this area and relies on excellent biosecurity to manage that risk.

EXECUTIVE SUMMARY

HortNZ is disappointed in the way that this Bill has been presented. The lack of comprehensive Explanatory Notes with the Bill and the absence of any attempt to link the scant notes that there are to specific sections of the Bill has made it very difficult for submitters.

HortNZ generally supports the need for the Bill and the intention of the Bill to enable the biosecurity system to respond to an increasingly challenging environment including; globalisation, technological changes, communication and information technology changes, greater and more rapid trade and travel.

We have made specific comments on a number of areas suggesting changes where we think they are necessary. The key points in our submission include:

- GIA – We have strong concerns about the provisions around Government-Industry Agreements. There appears to be a high level of detail about the collection of levies but very little about the principles of GIA or the improvements in biosecurity that both Government and industry say they want to achieve from GIA. Some of the changes we would like to see relate to the exercise of real joint decision-making powers and the delegation of powers of compliance and enforcement to management agencies (when MAF is not managing an incursion response)

- System Improvements - We are supportive of a number of measures that will improve biosecurity risk management such as information provision and clearer roles and responsibilities especially for importers and operators of transitional facilities.

- Post Clearance Requirements – we are concerned about how these are being used at present and have suggested some additional provisions that will ensure more robust and transparent decision making.

- Technology and Profiling – we support the use of these new biosecurity tools but not at the expense of our enviable 100% passenger baggage x-ray process. These and other new technologies should be seen as a way of improving our biosecurity rather than reducing costs.

- Import Health Standards – we have made a number of comments in relation to IHS. We must have a transparent system that is auditable and able to be verified. It is important that MAF, Border staff, industry in NZ, parties exporting to us and importers know

exactly what needs to be done to meet our biosecurity requirements. We strongly oppose IHSs that simply state the outcome to be achieved.

- Compliance, Enforcement and Penalties – we support enhancements in these areas.

- Pest Management – the improvements to simplify and streamline processes around PM Plans are welcomed. The very low number of national and regional pest management plans promulgated under the Act reflects that we need substantial change in this area and improved leadership from MAF.

SPECIFIC SUBMISSIONS

1. Crown to meet good neighbour rules (Various areas) **Support**
HortNZ supports the changes that will require the Crown to meet "good neighbour" rules within regional pest management plans.

2. Efficient and effective Pest Management (various sections) **Support**
HortNZ supports the provisions that will allow national and regional pest management plans to be more efficiently developed. We also support the provisions that enable the development of plans at national and regional levels to address the movement of harmful organisms along pathways. These changes will improve the efficiency and effectiveness of pest management.

3. Information (various areas) **Support**
HortNZ supports the various provisions in the Bill that provide MAF with improved powers to require information in advance of arrival of passengers, goods and craft in New Zealand

4. Definition of "Producer" (s 4, Page 14 Line 29) **Change Requested**
HortNZ is a grower representative organisation and is concerned that the definition included in the Bill *"Producer means a person in the business of producing or using animals or plants"* is too broad and does not sufficiently define a producer. Later in section 100V there is a requirement for industry organisations to consult "producers in the sector". The current definition will make it almost impossible to do this.

Due to the complexity of the Bill we are unsure of all of the situations in the Bill where the word producer is used. We would like to see some formal engagement with existing industry groups representing producers to discuss and settle on an agreed definition.

5. Responsibilities of Importers (s16(B) Page 21 line 6) **Supported**
HortNZ supports the provisions that create specific duties for importers to encourage them to proactively manage the biosecurity risk posed by their goods.

6. Post Clearance Requirements **Change Requested**
(s20 page 26 line 13 & s20 page 28 line 34)
HortNZ is very concerned about the practice of MAF imposing post clearance requirements on imports to manage biosecurity risks. This practice is contrary to MAF policy to move risks offshore and the ability to effectively police these requirements is almost nonexistent.

HortNZ is very supportive of the stated aim of MAF to move more risks offshore rather than try to manage them at the border. Yet here MAF is requesting powers to allow the risk to enter though the border and then impose conditions.

The horticulture industry's experience of this issue has been around the importation of Chinese garlic for human consumption only. This means that it is illegal to plant cloves of Chinese garlic in New Zealand. Yet at no time has there ever been any signage at retail level regarding this point or any attempt to impose such requirements. We are not aware of any compliance activity

undertaken by MAF in regard to this condition nor are we aware of how this condition was intended to be imposed. (Perhaps a good example of MAF defining an "outcome" with little or no knowledge about how or if it could be achieved but allowing the imports to continue regardless. See our comments about outcome based IHS under point 7 of this submission)

We recognise that there may be some circumstances where Post Clearance Requirements can be effectively enforced and compliance audits carried out and have therefore resisted calls to submit that the sections allowing the imposition of Post Clearance Requirements be deleted from the Bill. Instead we propose two additions:

a. The amendment of 22(6) page 26 line 6 so it reads **"**Post-clearance requirements in an import health standard **must describe how the requirements will be imposed and enforced** and may…. "
b. The inclusion of the following requirement in 22AA(5)(e) (section 20 Page 28 Line 34) regarding the issues the Chief Technical Officer must ensure when imposing post clearance requirements as part of Import Health Standards "(iii) the measures proposed can be effectively implemented, audited and enforced"

7. Outcome based import Health Standards (s20 page 26 line 17) **Change Requested**

Section 22(4)(c) states that an Import Health Standard (IHS) may list the "outcome to be achieved". We are very concerned that some IHSs may simply list the information required by Section 22(3) and then simply an outcome to be achieved.

This will result in a lack of transparency and ability to audit/verify compliance with requirements of the IHS. For example an IHS could simply state that the goods must be free from quarantine pests, or be infested with quarantine pests at no more than a certain level. For pests such as fruit fly, border inspections (600 units) are not adequate to detect low levels of infestation which would still result in establishment of these pests and consequent trade disruptions.

Most current measures require freedom from pests at the level of Probit 9 (or equivalent) as provided by specific treatments (chemical, temperature, irradiation) or pest free areas. The effectiveness of these measures can only be assessed by audits and ongoing assurances from export authorities that systems are being followed; border inspections will only detect gross system failures. Our concern is that MAF could issue outcome based IHS that are non-transparent and for which there is no way of monitoring effectiveness or compliance by authorities of the country of export.

We believe that it is appropriate that an IHS may specify the outcome to be achieved but only as part of a package of requirements. For example an IHS could specify that consignments are free of pests to a certain tolerance, as achieved through pest free area, a certain treatment, or equivalent measure as specified by the exporting country and evaluated by MAF. This will provide flexibility and allow the acceptance of equivalence while remaining transparent to all parties.

The reform of the Biosecurity Act should increase transparency to all parties. As an example of the non-transparent nature of IHS developed under the current Act, several IHSs reference "Bilateral quarantine arrangements" which contain the details of technical requirements. These documents are not made publically available by MAF, so it is difficult for stakeholders to understand and have confidence in the measures proposed by MAF. It is also difficult for some exporting countries to be aware of the conditions imposed on other exporting countries, and may contravene the transparency provisions of the SPS Agreement.

8. Chief Technical Officers role (s20 Page 27 line 2) **Change Requested**

This section is unchanged from the current Act, however we would like to draw attention to the current practice within MAF for the role of the Director General under 22AA(1) to be delegated to a Chief Technical Officer.

The current Act envisages a two-step process that does not always exist within the Ministry. Essentially the Chief Technical Officers are recommending to themselves that IHS be issued or amended or revoked and then proceeding to issue the IHS without reference to a second, higher level of authority. Given that IHS have a status very similar to a regulation issued under an Act of Parliament, this process does not seem sufficiently robust to ensure that that all necessary checks and balances are in place. We suggest that provision be made within the act that certain duties cannot be delegated.

9. IHS Consultation (s20 page 27 line 16) **Change Requested**

22AA(3) We believe that a two-stage consultation process is necessary, and that "or" at the end of 22AA(3)(a) should be changed to "and". Terminology in 22AA(3)(b) should also be more precise when referring to analysing or assessing risk. Risk assessment[1] does not include the proposal of measures for risk management (phytosanitary measures). Risk analysis[2] includes both risk assessment and risk management. Industry needs to be consulted on both risk assessment and the phytosanitary measures proposed to manage risk. This could be achieved by requiring consultation on both the IHS and the risk assessment.

10. Urgent Issuing or change to IHS (s22AA(4) Page 27 line 20). **Change Requested**

We question the reasonableness of there being no consultation on the issuance of an IHS. The provisions for urgency surrounding amendment or revocation of existing IHS are understandable and reasonable, as there may be newly identified risks or instances of non-compliance that require urgent actions. However we cannot foresee any circumstance that would justify a new IHS being issued with urgency. This provision does not assist with the management of risk in any way, as the absence of an IHS prevents the importation which manages the risk via prohibition. If such circumstances do exist, then the Act should specify what these might be.

HortNZ submits that s22AA(4)(a) page 27 line 22 be amended by removing the word "issued".

11. Craft Risk Management Plans (s 22AF Page 33 line 12) **Support**

HortNZ supports the introduction of the craft risk management standard, which will set out the biosecurity requirements that craft arriving in New Zealand must meet.

12. Clearer roles and responsibilities around Clearance of imported goods and the operation of transitional facilities (s 23 page 35 to s33 page 45) **Supported**

HortNZ supports the new requirements that provide a clearer statement about how imported goods are cleared and what is expected from the operators of transitional facilities.

13. National Policy Direction (s56 page 50 line 17) **Support**

HortNZ supports powers that will allow the Minister to establish a National Policy Direction to ensure that established pests and diseases of national significance can be managed effectively and in an aligned way.

Review and Minor changes to pest Management Plans (s100 page 103 to s100B page 105) **Support**

HortNZ supports the provisions that provide more flexible processes for reviewing and amending pest management plans. This will allow programmes to be readily adjusted to reflect changes in the environment, available information and priorities.

14. Government Industry Agreements (s 100S page 120 to s100ZC page 130) **Change Requested**

The Bill provides for MAF to enter into an agreement with industry groups that provides for joint decision-making and cost sharing for preparing for, and responding to, harmful organisms that enter New Zealand.

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[1] As defined by the FAO Glossary of Phytosanitary Terms, a technical standard under the SPS Agreement.

[2] Ibid

There is high level of nervousness within industry groups about these proposals.

HortNZ supports the introduction of the changes to the Act to facilitate Government Industry Agreements subject to:

a. The rewording of s100S page 120 line 34 to read "The purpose of this Part is to provide for the government/industry **partnership** agreement on **biosecurity** readiness and response" This provides a clear statement of the intent particularly the concept of a partnership.
b. The addition of "the readiness and response actions to be undertaken" to Section 100U(3) page122 line 8. This is a key aspect of the agreement for industry.
c. 100U(4) page 122 line 37 states that the CTOs cannot be challenged if they exercise powers in line with a joint decision made under a GIA agreement. While we support this subsection we submit that there should be provisions that allow for the clear and effective authorising/delegating powers from MAF to organisations/individuals that are managing incursion responses under the GIA regime. The delegation of such powers should extend to decision-making and enforcement of agreed actions under an incursion response (similar to s154(3)(f))
d. Clarification of the requirements that an industry organisation needs to meet as set out in Section 100V page 123 line 1. HortNZ submits that the subsections quoted should be 2, 4 & 7 rather than 2, 5 & 7
e. Clarification of the definition of producer - see submissions above (point 4)
f. Amendment of Section 100W(1)(a) & (b) Page 123 line 35 to allow levies to fund or reimburse parties other than the Ministry. In some cases the decision may be made that other agencies should undertake readiness and response activities.
g. Inclusion in Section 100W(2) page 124 line 6 of the specific requirement to consult with all proposed levy payers before imposing a levy.
h. Clarification of how "freeloaders" who benefit from readiness and response activity but have not signed a GIA will be handled. Such people are excluded from the levy provisions by Section 100W(2) page 124 line 6
i. Information disclosure issues being resolved. The partnership concept of GIA and the effective exercise of joint decision-making powers mean that both parties (government and industry) must have access to all relevant information. The disclosure requirements on pages 146 and 150 of the Bill potentially prevent the free exchange of information with industry and those managing an incursion response. HortNZ submits that there should be a specific clause inserted into the GIA or Information Disclosure sections of the Bill to address this issue.

15. Automated Electronic Systems (s142F page 147 line 25) Conditional Support

HortNZ supports the future-proofing of our biosecurity system through the use of new technology including electronic systems provided:

a. We retain a strong and visible biosecurity presence at points of entry and continued inspections at the border to ensure compliance and to remind people of the importance of biosecurity. The system that we have run that has x-rayed 100% of baggage at international airports has substantially increased the public understanding and awareness of biosecurity, and maintains that interest.
b. That electronic systems are rigorously tested before becoming "operational"
c. That backup systems are available in the event that automated systems fail or there is an event such as a power failure.

Automated electronic systems should be used as a way of improving biosecurity performance rather than focussing on reducing costs.

16. Risk Profiling (s 142H page 149) Conditional support

HortNZ supports the provisions within the Bill that allows MAF to focus its resources at the border provided that profiling does not replace the 100% inspection of passenger baggage policy.

We need a visible biosecurity presence at points of entry and continued inspections at the border to ensure compliance. We would like to see profiling used in conjunction with continued 100% baggage inspection.

We have noted with real concern recent changes at some international airports where 100% baggage inspection is not taking place. HortNZ is not convinced that profiling can reliably identify all high risk passengers as the Ministry of Agriculture simply does not receive relevant information about critical issues such as the businesses people work in (e.g. horticulture or seed sales), what passengers' interests are (e.g. growing exotic plants or entomology) or what activities they have been undertaking prior to travelling to New Zealand.

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17. Compliance, Penalties and Offences (pages 160 to 180) **Suggested amendment**

HortNZ welcomes the sections of the Bill that strengthen compliance provisions and the sanctions that are available to deal with cases where non-compliance is detected**.**

The Bill introduces provisions to enable the development of GIAs. One of the very strong objections from industry to this approach has been the apparent inability to have exacerbators contribute to the costs of clean up.

HortNZ strongly supports the inclusion of a provision that specifically enables income derived from penalties imposed under the Act to be used to directly offset the costs faced in readiness and incursion response activity. Returning a percentage of fines to the victims is becoming increasingly common. We suggest 90% of the fines collected should be returned to Biosecurity NZ to specifically reduce the costs they are sharing with industry under GIA agreements.

18. Court Ordered Enforcement (s154G(3)(a) page 165 line 13) **Change Suggested**

This section outlines the matters that a person must satisfy the Court of before the Court makes an Order. HortNZ is concerned that the current list does not adequately cover the protection of an industry from biosecurity threats.

HortNZ recommends an additional subsection after line 27 on page 165 "(iv) *Protection of the productive capacity or market access of industry".*