

# Regulatory Impact Statement: Proposals for regulating organic businesses in the primary sector

## Coversheet

Purpose of document	
Decision sought:	<i>Analysis undertaken to support the Government's decision whether to approve the design of a new system in regulations for approving businesses to make organic claims about food, beverages, and plant and animal products</i>
Advising agencies:	<i>The Ministry for Primary Industries is responsible for developing this RIS</i>
Proposing Ministers:	<i>Minister of Agriculture</i>
Date finalised:	<i>8 March 2023</i>
Problem definition	
<p>The current organics system in New Zealand creates uncertainty for consumers and businesses as to what is considered organic, and to overseas markets that New Zealand products are indeed produced organically.</p> <p>The Organic Products and Production Bill (the Bill) introduced in 2020 is a high level 'enabling' legislation aimed at increasing consumer confidence in organic products, increasing certainty for businesses to invest in organics, and facilitating international trade. Regulations and standards are required to give effect to the legislation and support its objectives.</p>	
Executive summary	
<p>Currently, organic claims in New Zealand are regulated under the Fair Trading Act, which requires people to be able to substantiate the claim that their product is organic. Organic status relies on the process employed when producing it, rather than any particular characteristic of the product itself. To ensure organic products are made to an accepted production process, businesses can choose to be certified to a private standard or use other ways to substantiate their organic claim.</p> <p>This creates confusion and uncertainty for consumers about whether the product they are purchasing is actually organic. It also means that businesses producing organic products are not all working to a consistent set of rules. Finally, countries that regulate organic claims are increasingly tightening their organic rules, including for imported products. In trade negotiations these countries are increasingly requesting comparable domestic regimes from their trading partners.</p> <p>In 2020, the Government introduced new legislation to regulate organic claims. When passed, businesses will need to be approved to claim their products are organic.</p>	

The new legislation aims to:

- increase consumer confidence in organic products;
- increase certainty for businesses to invest in organics; and
- facilitate international trade in organics.

The Bill is currently progressing through Parliament. It allows any ministry to make production standards and associated regulations for a compliance regime for the products it is responsible for.<sup>1</sup> The Bill is high-level, 'enabling' legislation, meaning that most of the details of any organics regulatory system will sit in the standard and regulations.

The Ministry for Primary Industries (MPI) is making a standard and regulations to regulate businesses making organic claims about food, beverages, and plant and animal products. There will be different sets of regulations made over time for different components of the system. These regulations will likely include:

- process regulations, which will set out the processes for being approved as an organic operator or a recognised entity;
- standard regulations, which will set out the parts of the national organic standard that will be made into law through regulations;
- compliance regulations, which will set out details relating to enforcement, such as infringement offences;
- cost recovery regulations, which will set out fees or levies for services provided by the relevant ministry; and
- regulations on alternative pathways for approval, which will recognise tikanga Māori and Pacific indigenous production when approving businesses to make organic claims on primary products.

This RIS will cover the process and standard regulations. The process regulations propose a four-step process for getting approved to make organic claims:

- have a plan;
- do pre-approval checks of the plan and the business;
- apply for approval to MPI to make organic claims; and
- ongoing verification.

These regulations also set up requirements for recognising third party agencies and persons to do evaluation, verification and other services under the new organics regulatory system.

This approval system is consistent with international best practice in private certification schemes and in organic regulatory systems in other countries. Most countries that regulate organic production adopt this type of conformance assessment model into law because organic status relies on tracking compliance to production rules throughout the supply chain from production to the final consumer. The proposed regulations therefore contain general requirements like record keeping and labelling requirements that are needed to support traceability and signal compliance to consumers and trading partners.

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<sup>1</sup> No other ministries are developing regulations under the Bill at this time.

The proposed regulations also include measures to support small businesses to participate in the system:

- a group scheme that allows small businesses turning over up to \$200,000 a year in organics to band together and apply for group approval, with group peer review and recognised third party oversight; and
- an exemption from approval requirements for very small businesses turning over up to \$10,000 a year in organics.

The new regulatory system will cover domestic, exported and imported organic products.

This RIS discusses the options for the detail of these requirements, within the overall conformance assessment model that underpins the design of these regulations.

Impacts on the system are expected to be positive. MPI commissioned a cost-benefit analysis report that presented findings as low, medium and high impact cases to account for information gaps due to the system being currently unregulated. The Benefit-Cost Ratio is positive in all impact cases, ranging from 2.7 to 8.2.

The key benefit in the medium and high impact cases arise from maintaining market access to the European Union (EU). In 2018, the European Union revised their organic regulations. The EU now requires the 13 countries with equivalence arrangements to re-negotiate their market access to full treaty-level equivalence by 31 December 2026. Without an equivalence agreement in place, production costs would increase as organic businesses would have to shift to meet the EU standard and EU verification requirements.

### Limitations and constraints on analysis

In 2018, the Government decided to regulate organic claims in New Zealand [CAB-18-MIN-0592 refers]. The RIS setting out the rationale for government intervention and high level regulatory design options (for example, options for self-regulation versus government approval) can be found at: <https://www.mpi.govt.nz/dmsdocument/44401-Regulatory-impact-assessment-of-the-new-organics-legislation-and-regulatory-system>

This RIS focuses on the design of regulations for regulating organic primary products, rather than focusing on options for regulating organics. That is covered in the RIS linked above.

A key decision concerns the possibilities for self-regulation for organic claims about food, beverages, and plant and animal products. The high-level decision about self-regulation has already been made: the Bill requires ministries to approve businesses to make organic claims. While it is possible under the Public Service Act 2020 for MPI to obtain the permission of the Minister of Agriculture to delegate some of its functions to someone outside the public service, MPI considers the decision to delegate functions to allow for greater self-regulation have already been made. MPI therefore limited the scope of the approvals options to exclude delegating functions to provide for self-regulation.

As the system is currently unregulated, information gaps exist. These have affected MPI's ability to assess the full costs and benefits of this proposed regulation.

MPI does not have full information on who is affected by the proposals, including:

- the number of people currently making organic claims, as we only hold information about the number of people certified by private certification bodies operating in New Zealand;
- demographic information such as the size of organic businesses, as this is not collected;
- the amount of organic imports and exports to countries that do not require an official government assurance, as this is not currently tracked at the border; and
- the number of Māori and Pacific peoples using indigenous production methods and selling these products as organic, as this is not collected.

Information on the overall costs of the system is also limited. We are confident in the information we have received from within MPI, including:

- information from consultation;
- information on consumers' views on organic food and beverage products;
- information on market access and trade issues; and
- likely costs of MPI approval and processes that are likely to be cost recovered.

However, MPI does not have full and accurate information on fees and charges by third party agencies, as this information is commercially sensitive.

Due to this data being incomplete, assumptions have been made in order to estimate impacts on stakeholders, particularly monetary impacts. These assumptions are based on data we have from industry reports, and targeted interviews from some stakeholders. The assumptions have been outlined in this RIS, and data is presented as ranges to reflect the uncertainty.

Despite these limitations, MPI considers that Ministers can be confident using this analysis to inform their decisions. New Zealand is one of only two key organics markets that are currently unregulated. This means there is a body of international literature and case studies from other countries to draw from, to inform MPI's analysis.

MPI has developed these regulations before the Bill has been enacted to meet the deadlines for the EU trade negotiations New Zealand must conclude by the end of 2026. This timeframe has impacted on MPI's ability to undertake additional analysis of distributional impacts on certain Māori and Pacific organic producers. The Bill allows ministries to make regulations recognising different types of approval systems. MPI plans to use this ability to consider how to recognise tikanga Māori and Pacific indigenous production when approving businesses to make organic claims on primary products. This approval pathway will likely be set out in a separate set of regulations. For more information on this issue, see paragraph 177.

### Responsible manager

*Fiona Duncan*

*Director, Regulatory Systems Policy*

*Policy and Trade*

*Ministry for Primary Industries*



08/03/2023

### Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry for Primary Industries

Panel Assessment & Comment:

The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement (RIS): Proposals for regulating organic businesses in the primary sector produced by MPI dated 1 March 2023. The review team considers that it meets the Quality Assurance criteria.

Proposals for regulating organic businesses in the primary sector produced by MPI clearly defines the problem and sets out the feasible options for the operation of the new organics regulatory system. Consultation has occurred throughout the process both broadly with the public and with the organic business sector. There are recognised gaps in the available information affecting the ability to assess the full costs and benefits of the proposed regulation. However the analysis is clear on the information used, assumptions and the inherent uncertainty associated with any new regulatory system.

## Section 1: Diagnosing the policy problem

**What is the context behind the policy problem and how is the status quo expected to develop?**

**Organics is a growth market in New Zealand and overseas**

1. Global demand for organic products has grown rapidly in recent years. *The World of Agriculture 2021* report<sup>2</sup> states that consumer demand (as evidenced by retail sales) rose by up to 30% in some countries in 2019. Global organic food and drink sales reached more than 106 billion Euros in 2019. The largest organic markets are:
  - the US (44.7 billion Euros, 42% of the global market);
  - the EU (41.4 billion Euros, 39% of the global market); and
  - China (8.5 billion Euros, 8% of the global market).
2. New Zealand's organic sector has been growing rapidly since the 1990s. In 2020, New Zealand's organic market was estimated at \$723 million, compared to \$600 million in 2017. Approximately \$300 million in organic products are sold domestically, with just over \$400 million in exports. In contrast to other countries, most organic products made in New Zealand are exported (58% of organic sector output is exported).<sup>3</sup>
3. Consumers usually pay a price premium for organic products and expect to get what they pay for. Price premiums for selected fresh produce in the US in 2019 ranged from 23% to 94%, depending on the product. New Zealand organic exports to the US in the year ended June 2017 attracted a 53% price premium over conventionally produced food – those to the EU attracted a 47% price premium.

**Organic claims are currently regulated through New Zealand's consumer protection laws**

4. Currently, organic products in New Zealand are regulated through our consumer protection laws. Businesses selling organic products need to meet the requirements of the Fair Trading Act 1986, which requires them to be able to substantiate their claim that their product is organic.
5. Businesses can also join one of the voluntary, private, organic certification schemes operating in New Zealand. There are seven voluntary standards and five main certifiers operating in New Zealand.<sup>4</sup> In 2020, there were:
  - 1,223 certified businesses in New Zealand;
  - 1870 certified sites under organic management in New Zealand; and
  - 217 sites in the process of converting to organic production.<sup>5</sup>

**Government assurances for exports are provided through a non-regulated scheme**

6. MPI also administers an export programme, the Official Organic Assurance Programme (OOAP). This administrative (non-regulatory) programme enables

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<sup>2</sup> Willer, Trávníček, Meier and Schlatter (eds), (2021), *The World of Organic Agriculture: Statistics and Emerging Trends 2021*. Research of Organic Agriculture Fi, Frick, and IFOAM – Organics international, Bonn (v20210301).

<sup>3</sup> 2020/21 New Zealand Organics Sector Market Report. Commissioned by Organics Aotearoa New Zealand.

<sup>4</sup> The seven voluntary standards are: the AsureQuality Organic Standard; BioGro Organic Standards; IFOAM standard; NZS 8410:2003 New Zealand Standard Organic Production; MPI Organic Export Requirements Organic Production Rules; GL 32-1999 Codex Guidelines for the production, processing, labelling and marketing of organically produced foods; and the Demeter Standards. The five main certifiers are: AsureQuality; BioGro; Organic Farms New Zealand; Biodynamics New Zealand; and Te Waka Kai Ora.

<sup>5</sup> 2020/21 New Zealand Organics Sector Market Report. Commissioned by Organics Aotearoa New Zealand.



exporters to access seven key organic markets, including the US and EU, that require a government assurance that organic exports meet requirements. As part of this programme, exporters need to be registered with MPI, meet agreed requirements, and ensure that their products have been certified by recognised third party agencies.

7. Approximately 60% of New Zealand's organic exports are managed through the OOAP. In the 2021-2022 financial year, organic exports through the OOAP were almost \$165 million. Exports to the EU made up 35% of this value, at \$58 million. A total of 1,150 operations managed by 606 operators make products for export under the OOAP. Of these, 1,131 operations are certified to supply for export or export directly to the EU.

#### **The Government has introduced new legislation to regulate organic claims**

8. In 2020, the Government introduced new legislation regulating organic claims. The Bill is currently progressing through Parliament. The Bill is enabling legislation, with most of the details sitting in the standards and regulations. Since no single government department is responsible for all organic products in New Zealand, this approach allows any Ministry to regulate the products they are responsible for.
9. Key agencies that could regulate organic products are MPI (for primary industries), the Ministry of Health (for example, oral pharmaceuticals and natural health products), and the Ministry for Business, Innovation and Employment (for example, for organic cosmetics or clothing).
10. When passed, the new legislation will require businesses to be approved by the relevant ministry to make organic claims about their product. In 2020, the Government decided that the relevant ministry alone is the final approver of businesses making organic claims, instead of the relevant ministry and/or recognised third party agencies or persons performing this role [CAB-20-MIN-0025 refers]. MPI has therefore taken into consideration the Government's decision to have ministry approval when analysing the options for the design of the process for approving businesses to make organic claims. This excluded options such as self-regulation or delegating approval functions to third party agencies.

#### **Stakeholders broadly support the new regulatory system**

11. Consultation has occurred at several points during the development of the new organics system:
  - public consultation on whether to regulate organics in New Zealand in 2018;
  - Parliament's Primary Production Select Committee considering the Bill in 2020-2021;
  - public consultation on high-level proposals for regulating organic businesses in the primary industries in 2021, followed by re-engagement on the detail of these proposals in 2022; and
  - engagement with the whole sector on the objectives and principles for a new national standard for primary products in 2021, followed by working with sector technical working groups to develop a new national organic standard in 2022.
12. Feedback from the 2018 consultation on whether organics should be regulated in New Zealand was that 85% of submitters supported a change in how organics are regulated. Submitters who supported this change thought that increasing consumer confidence, supporting trade, levelling the playing field and growing the sector were key objectives. Submitters identified costs and administrative burden as key negative impacts associated with the new system.

13. Feedback in later consultation on the proposed regulations for organic food, beverages, and plant and animal products is consistent with these themes.

### **What is the policy problem or opportunity?**

#### **Our new organics system requires robust processes to deliver its objectives**

14. The Bill creates a new regulatory system which regulates how products can make organic claims. The Bill is a high-level, enabling piece of legislation, and it is intended that the detail of the new regulatory system be prescribed in regulations and standards. Without these regulations, the organic regulatory system will not function as intended or meet its objectives.
15. The Bill does not prescribe the processes or requirements for approval. It is important to have a robust process for approving and verifying organic products and producers. Without this, consumers will have reduced confidence that the products they are buying are organic, which creates disruption and uncertainty for businesses and trading partners.

#### **Robust approval and verification processes are important for the integrity of the system**

16. The international literature asserts that the incentives for non-compliance associated with organics and other products with credence claims are higher than for other food products. Organic products often achieve a large price premium but also incur increased costs. Like other credence claim products, organic non-compliance is harder to detect than some other types of food related non-compliance where testing is available. The literature indicates that the resulting loss in consumer confidence arising from false organic claims would significantly infringe on the ability of the overall regulatory system to meet its objectives.
17. A 2018 survey conducted by MPI shows a majority of consumers would be more likely to buy organic food and pay more if they had confidence in a standard and that organic products were checked for compliance with that standard. A 2020 market and consumer study by MPI found that 21% of consumers indicated they did not trust organic claims.

#### **Imperfect competition between organic producers can arise from inconsistent rules and practice**

18. International literature suggests that market failure can occur in organic markets due to imperfect competition. In unregulated or poorly managed organic markets, businesses can make organic claims but not actually follow accepted organic practice. Businesses who claim organic but do not follow a private or regulated standard have a competitive advantage over other organic businesses due to reduced costs. This inconsistency can disincentivise businesses from investing in organics and can result in arrested growth to the market. This indicates the importance of robust and clear regulations that set out consistent and clear rules for approval and verification.

#### **New Zealand needs to ensure we have a robust regulatory system to protect and grow market access opportunities**

19. Our export markets are increasingly requesting comparable organic regulatory systems from their trading partners to demonstrate that similar outcomes to their own are being achieved. Without robust regulations supporting the primary legislation, it is likely our trading partners will not be satisfied that our system is comparable.
20. In 2018, the EU introduced revised regulations that introduced stricter import requirements, to increase consumer confidence. New Zealand is one of 13 countries with an equivalence arrangement with the EU that facilitates market access for our



organic products. The EU is phasing out these equivalence arrangements, and now require countries to enter into treaty level equivalence agreements.

21. This requires New Zealand to re-negotiate our current market access for organic products going to the EU by 31 December 2026. If this does not occur, our organic exports will either have to be certified to the EU rules or be imported from a third country recognised by the EU as equivalent under a trade agreement. This would add confusion and cost to the overall system as the New Zealand organic certifiers would have to be regularly audited by the EU officials, and producers would need to meet the EU requirements exactly, as well as the New Zealand organic standard.

### **What objectives are sought in relation to the policy problem?**

22. The new organics regulatory system aims to:
- increase consumer confidence in organic products: the regulations give consumers confidence that they are buying an organic product;
  - increase certainty for businesses to invest in organics: the regulations leave no doubt for business about what is expected of them to be able to claim that their products are organic; and
  - facilitate international trade in organics: the regulations make provision to facilitate the export and import of organic food, beverages, and plant and animal products.
23. The regulations should balance meeting the objectives of the Bill with ensuring that:
- the regulatory regime is simple to understand and administer;
  - the regime has flexibility; and
  - costs to businesses and consumers are proportionate to the overall benefits.
24. These objectives apply to all of the policy problems outlined in this document. MPI has identified further criteria related to these objectives, as set out below.

## **Section 2: Deciding upon an option to address the policy problem**

### **What criteria will be used to compare options to the status quo?**

25. The regulatory options throughout this document have been assessed against the following criteria:
- consumer confidence;
  - certainty for business;
  - facilitating trade in organic products;
  - ease of understanding and complying with the regulations; and
  - cost effectiveness.

#### **Consumer confidence**

26. Is the option effective at providing consumer confidence?
- consumers are confident in organic claims;

- the option is easy for consumers to understand;
- claims that a product is organic can be substantiated; and
- consumers know that decision making is consistent and impartial.

#### **Certainty for businesses**

27. Is the option effective at providing certainty for organic businesses?

- the regulations are clear in their processes and procedures;
- the processes and procedures set out in the regulations are compatible and/or aligned with other MPI regimes and avoid duplication; and
- the processes and procedures set out in the regulation allow businesses to understand costs to them from the regulatory system.

#### **Facilitates trade in organic products**

28. Is the option effective at facilitating international trade in organic products?

- the regulatory regime is similar to other trading partners;
- trading partners have confidence in the robustness of the New Zealand organics regulatory regime; and
- there is no discrimination between domestic and overseas businesses producing and/or selling organic products.

#### **Ease of understanding and complying with the regulations**

29. Is the option easy to understand and comply with?

- the regulations are simple to understand and administer;
- there will be minimal disruption to current practices and relationships;
- the regulations have sufficient flexibility for business to ensure compliance with the purposes of the organics regulatory system; and
- the regulations are fair and equitable.

#### **Cost effectiveness**

30. Costs to businesses are proportionate to benefits gained from the regulatory system.

#### **What is the scope for options for approving businesses to make organic claims?**

31. The regulations discussed in this RIS are being made under the Organic Products and Production Bill. As no single government department is responsible for all products in New Zealand, the scope of the regulations is limited to the products the relevant ministry is responsible for. This means that the scope of the options discussed here is limited to regulating organic food, beverages, and plant and animal products – the products that MPI is responsible for. Therefore, the design of the regulations considers how these products are currently regulated under similar regulatory systems administered by MPI (for example, food safety).

32. The options considered are a part of a wider suite of decisions about how to regulate organic products in New Zealand. The wider regulatory system is set out in the Bill, including the requirements to be approved to make organic claims, and for third party agencies to be recognised to provide their services. The Bill also contains wider

oversight, monitoring and enforcement provisions. Options for these regulations focus on implementing the system set out in the Bill and provide more detail or supplement the obligations in the Bill.

33. While the sector support businesses being approved to make organic claims, some have consistently expressed concerns about MPI being the final approver of organic businesses. Overall, this proposal was not supported in the 2021 consultation, with 66% of those who responded to this question disagreeing with MPI approving businesses. These submitters suggested self-regulation, or for MPI to recognise third party agencies and persons who would then certify businesses. This is how other countries typically regulate organic certification and the way organic businesses are currently being certified in New Zealand.
34. The Bill requires that the relevant Ministry approve businesses to make organic claims. Under the Public Service Act, MPI could obtain permission from the Minister of Agriculture to delegate its approval functions to someone outside the public service, like a sector body, or a recognised entity.
35. MPI considers that ministry (MPI) approval will better ensure consumer confidence and protect New Zealand's trading reputation. MPI approval is more suitable for New Zealand's small market, where conflicts of interest are more likely to arise. For this reason, MPI approval will better ensure impartial and consistent decision making. This analysis is discussed more fully in the two previous RISes on the development of new organics legislation.
36. MPI also considered other options when designing the compliance system in these regulations:
  - non-regulatory options such as improved education for consumers or a common code of practice established by industry;
  - an export only standard that would set mandatory requirements for all products being exported, but would not apply to products being sold within New Zealand; and
  - a two-tier approvals system with substantially stronger requirements for exports compared to those for products intended for domestic sale only.
37. These options were discarded early on as they were considered unlikely to meet the objectives.

#### Future regulatory work

38. Other regulations implementing aspects of the new organics system are likely to be developed in the future, including (but not limited to):
  - proposals for cost recovery of services provided by MPI e.g., approval;
  - infringement offences;
  - recognising tikanga Māori in the new system; and/or
  - recognising indigenous production by Pacific people in New Zealand and in Pacific Island countries.
39. Te Waka Kai Ora is a Māori organisation that oversees an indigenous verification and validation system for mahinga kai, including kai for sale, called Hua Parakore. Hua Parakore places importance on the philosophies of tradition, environmental and cultural sustainability and has overlapping values with organics. Hua Parakore recognises the New Zealand Standard 8410:2003 as part of its certification programme. Under the new system, Māori growers using tikanga Māori methods will need to meet the national organic standard and be approved if they sell their products as organic. MPI is continuing to work with Te Waka Kai Ora and the wider Māori sector to understand the

implications of regulating organic businesses in the primary sector on Māori, and how to meet our te Tiriti o Waitangi/the Treaty of Waitangi obligations.

40. MPI is also aware that organics regulation will affect Pacific commercial producers using indigenous growing methods – both in New Zealand and in Pacific Island countries. Pacific peoples in New Zealand growing using indigenous methods would need to meet the national organic standard and be approved to sell their products as organic in New Zealand. Imports from Pacific Island countries would need to meet import requirements. MPI is considering the most appropriate mechanism to account for Pacific indigenous production here and in the Pacific Islands. Consultation on these options with Pacific stakeholders has not yet occurred.

#### **Non-regulatory options will not increase certainty for consumers or businesses**

41. The literature surveyed by MPI<sup>6</sup> are clear that a consumer cannot reasonably be expected to overcome the information barriers associated with organics and other credence claims. Unlike large purchases like major kitchen appliances, food purchase decisions are typically made in under five seconds with little research prior or at the point of sale to inform these decisions.
42. A common code of practice may provide more consistency than the status quo about what production methods and related processes can be considered organic production. However, unless this code is mandatory it is unlikely to provide the certainty and oversight needed to ensure consumer confidence, provide a consistent set of rules for businesses, and facilitate trade.
43. As organic markets grow international experience shows that there are often calls for one national standard and a regulated certification scheme. Some commentators therefore suggest that government regulation is a key factor for the successful growth of organic markets. This is because government regulation is seen by consumers to provide further assurance that products labelled as organic meet their expectations, and consumer confidence is a key factor in the growth of organic markets.

#### **Export focused legislation will not facilitate trade**

44. An export-only standard, or creating different systems or requirements for exported versus domestic products, will not facilitate trade. New Zealand's trading partners are increasingly looking for similar organics' regulatory regimes to their own, where export and domestic requirements are similar. For this reason, adopting an export only standard or different systems for export and domestic products is likely to make it difficult to successfully negotiate for better access for our organic exports or a trade equivalency agreement.

#### **What options are being considered for approving businesses to make organic claims?**

45. The proposed regulations for the approval and compliance system for organic food, beverage, and plant and animal products use a conformance assessment model to provide certainty and trust in organic claims. The international literature is clear that well-functioning organic markets rely on consumer confidence and trust in the oversight systems for organic products. The literature is also clear that conformance assessment models<sup>7</sup> – an organic certification scheme – is the key way to achieve this oversight.
46. Organic markets have generally addressed the consumer information barriers and scepticism about organic claims by developing private certification schemes to monitor

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<sup>6</sup> MPI conducted a literature review of 23 economics, policy and other academic papers on food fraud, credence claims, organic imports and organic compliance.

<sup>7</sup> Conformance assessments check that goods, services, personnel and systems meet standards or comply with regulatory requirements. The conformance infrastructure includes the regulations, institutions and arrangements for carrying out conformity assessments. Examples of conformity assessments include certification schemes and laboratory testing programmes.

and check that the organic producers are following the scheme's private organic standard. Often, these schemes also have labelling requirements and use logos to signal to consumers that the product made to their standard is organic.

47. The use of a conformance model approach for overseeing organic compliance is universal internationally. This model is a broad one that can be implemented in a range of ways, depending on the circumstances. Therefore, there are options within this broad approach.

#### **Option 1 – Counterfactual**

48. Without regulation, the organics market food, beverages, and plant and animal products will continue to be regulated under the Fair Trading Act, and the Bill will not be operationalised. Businesses will still be able to join private certification schemes and produce to private organic standards, but there will not be a consistent set of rules that apply to all businesses.

#### **Option 2 – Regulations prescribe requirements to be approved to make organic claims**

49. The regulations propose using a four step process for getting approved to make organic claims:

- have a plan;
- do pre-approval checks of the plan and the business;
- apply for approval to MPI to make organic claims; and
- ongoing verification.

##### *Step 1: Have a plan*

50. The first step in the proposed approvals process is the requirement that businesses have a plan demonstrating how the business will meet the national organic standard.
51. Under other MPI regimes, the OOAP and private sector organic certification regimes, operators are expected to keep a plan that demonstrates compliance with the regime or voluntary scheme. We propose not setting a format for the plan in regulations, although the regulations will set requirements on what the plan should contain. Further details on the plan will also be set in notices.
52. The requirement to have a plan is a well-accepted practice in the organics sector and in other primary industries. 93% of submitters from the 2021 consultation who responded to the question supported having a plan.
53. Having a plan is a key tool in managing the risks to the organic integrity of a product. Not having a set format will enable the plan to be combined with another plan (e.g., a food safety Food Control Plan). Setting the contents in regulations will allow the regulations to establish clear expectations about what the plan should contain without being overly prescriptive. Providing for detailed requirements to be set in notices provides for flexibility to tailor plan requirements to specific sectors and production rules.

##### *Step 2: Pre-approval checks of the plan and business*

54. The second step in the proposed approvals process is pre-approval checks of the plan and the business. This should include:
- an evaluation of the plan; and
  - an on-site assessment of the business to assess how it is operating against its plan and meeting the national standard.
55. The regulations will set out what these checks need to cover. The checks need to be done in the six months prior to applying for approval. The reports of these checks will



form part of the application for approval. Completing the checks within six months prior to applying means that MPI has recent information to confirm that the plan is complete, meets the requirements and is appropriate for the current operations of the business.

56. In the 2021 consultation, there was strong support for this proposal. 93% of submitters who responded to this question agreed with this requirement.
57. The Bill requires MPI to take any assessment from a recognised entity into account when deciding whether to approve a business to make organic claims. This information is a key input into its approval decision.
58. The recognised person who did the the pre-approval plan evaluation (including the on-site assessment) should not undertake ongoing verification of the business for two years, unless MPI agrees otherwise in writing. This should also apply to a person who provided advice to help design or develop a plan, or a significant amendment to the plan. These provisions manage the potential conflict of interest that occurs when the same person effectively checks their own work. Having another recognised person check their peer helps ensure the evaluation or verification check is robust.

### *Step 3: Apply to MPI for approval*

59. The third step in the proposed approval process is applying to MPI for approval. The regulations will prescribe the application process, including:
  - requiring a business to submit a plan to be approved as part of their application for approval;
  - clarifying that MPI will approve both the plan and the business;
  - the information a business must provide in their application, such as the reports from the business' pre-approval check;
  - 'fit and proper person' requirements MPI must consider before approving a business; and
  - requirements MPI must follow when notifying a business that their application has been granted or refused.
60. The proposed regulations will also set out duties on businesses to:
  - ensure the operations of the business do not contravene the relevant regulatory requirements, including the requirements set out in its plan;
  - ensure their plan is consistent with requirements in regulations;
  - adequately implement and resource all operations under its plan, including providing for the instruction, competency and supervision of staff;
  - ensure the operations under the plan correspond with the capability and capacity of the premises/place, facilities, equipment, and staff to make organic products that meet the standard, and comply with any export requirements;
  - give relevant recognised entities freedom and access to allow them to carry out their functions and duties, including for verification; and
  - notify MPI of a change in the business' verification agency or verifier.
61. Once approved, the business will be placed on a public register.
62. The regulations will require businesses to renew their approval every three years. The renewal application will also include the business' latest verification check. This should be mostly administrative unless the business has made significant amendments to its



plan. Significant amendments may trigger a re-evaluation and re-approval of a business' plan.

63. The regulations will set out what constitutes a significant amendment, including changes in the scope of the operation, introducing new processes, and changes to the physical boundaries of the operation that could introduce new hazards.
64. Renewing approval and re-approving significant plan amendments enables MPI to be sure that the business' plan is up to date and the business is following it. It also ensures that the public register is kept up to date.

#### *Step 4: Ongoing verification*

65. The fourth step in the proposed approval process is for businesses to be verified on an ongoing basis. The proposed regulations will use the step system used in other MPI regulatory regimes to determine the frequency of ongoing verification. The step system uses risk-based criteria to determine how often a business needs to be checked. After considering feedback from the sector in the 2022 re-engagement, the proposed steps are:
  - Step 1: 6 months
  - Step 2: 12 months
  - Step 3: 18 months
  - Step 4: 24 months.
66. Businesses will start on Step 2 and be checked annually. Recognised agencies and persons will reduce the timing of a business' check if it has two acceptable outcomes. It is important to note that operations producing products for export, and exporters, may still need to be verified annually to meet the requirements of the market they are exporting to.
67. Verification that the business is following its plan and that its operations are compliant is a key tool in ensuring that organic integrity is maintained over time. Verification checks are the main way to pick up any non-compliance, which can then be addressed. Knowing that organic products are checked gives consumers and our trading partners confidence that New Zealand products are actually organic. This trust is necessary for organic markets to operate successfully.
68. Adopting a flexible approach to verification balances the need for an appropriate level of assurance that businesses are compliant with the standard and regulatory requirements, and minimising compliance costs.
69. The 2021 consultation did not consult on firm options for ongoing verification. Instead, the discussion document set out three straw man options to prompt feedback on how wide and how frequent the verification check should be. The straw man options discussed a mix of paper based and on-site checks, combined with pushing out the verification check to three years. Currently, organic businesses are checked annually, in a widely scoped, on-site verification check. For many businesses, this on-site verification check is the most expensive part of organic approval. MPI preferred option was to use risk-based criteria to determine the verification frequency or nature, to reduce the costs while maintaining organic integrity.
70. There was strong support for flexible verification. In the 2021 consultation, 79% of those who responded to this question agreed with this proposal. Overall, there was also broad support for the proposed risk-based criteria.

#### *Other general requirements*

71. The proposed regulations will contain a number of other requirements to enable the effective administration of the new regulatory system, including:
  - record keeping;

- labelling;
- keeping a public register of businesses and recognised agencies and persons; and
- developing a national organics logo.

Proactively Released

## How do the options for approving businesses to make organic claims compare to the status quo/counterfactual?

	Option 1 – Counterfactual	Option 2 – Regulations prescribe a four step approvals process
Consumer confidence	0	++ Consumers will know that the products they purchase have been made by approved businesses, who are checked for compliance on an ongoing basis.
Certainty for businesses	0	++ Having one set of regulatory requirements will support businesses having certainty to invest in organics, as all businesses claiming organic will follow the same rules.
Facilitates trade in organic products	0	+ Our trading partners will have greater reassurance about our organic products than they do now, due to all businesses needing to meet a consistent set of rules and be checked regularly for compliance. A robust domestic system will therefore support New Zealand's trade negotiations for better market access. New EU rules mean that costs for producers exporting to the EU are likely to rise unless New Zealand re-negotiates our access to that market.
Ease of understanding and complying with the regulations	0	++ Businesses will have certainty about what is required of them, as there will be one set of regulations implemented by a consistent and impartial regulator.
Cost effectiveness	0	0 There will be costs for businesses to get approved to make organic claims, such as application fees, and potentially a cost recovery levy. The regulations have been designed to work in with MPI's other regulated systems, to minimise compliance costs for businesses.
<b>Overall assessment</b>	<b>0</b>	<b>8</b>

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

72. Option 2 is the preferred option for approving businesses to make organic claims. This option addresses the information barriers currently experienced by consumers, who cannot differentiate between organic marketing claims, and multiple organic standards and associated certification systems. As all businesses will need to be approved to claim their product is organic, consumers can have confidence that any product they buy meets a consistent set of production rules, and is checked for compliance to those rules consistently and impartially.
73. In the same way, businesses can have greater confidence to invest in organics as the imperfect competition currently in our organics market will be reduced. All businesses will need to follow the same rules to produce and sell their products as organic, so all businesses will have clarity about what is acceptable and what is not.
74. Under Option 2, New Zealand's trading partners will have greater assurance that New Zealand's organic products meet accepted organic production rules. Having a robust domestic regulatory system also supports maintaining, enhancing and gaining access to international organic markets, as our trading partners are increasingly looking for comparable systems before commencing any trade negotiations for equivalence.
75. Option 2 has clear benefits that outweigh the status quo: increased consumer confidence when purchasing organic products, removing imperfect competition that undermines businesses confidence to invest in organics, and providing greater assurance to our trading partners. These benefits outweigh the increased costs associated with approval. MPI is seeking to minimise the cost of the system by allowing organic requirements to dovetail with other MPI regulatory regimes, such as food safety.
76. Much of the feedback from the sector has focused on the Bill establishing the relevant ministry as the final approver of businesses making organic claims. Feedback on the design of Option 2 has been positive, but some in the sector continue to oppose MPI approval of businesses. For this reason, only 49% of submitters who responded to the relevant question supported the proposed approvals process, but support for each individual part of the process has been high (for example, 93% of respondents agreed with requiring an organic management plan). MPI approval is out of scope for consideration in this RIS, as it was established by the overarching Bill and previous decisions.

## Imports: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

77. Currently, organic imports are regulated under the Fair Trading Act. Importers certified under the voluntary certification schemes have their third-party agency confirm that their imported products meet the requirements in that agencies voluntary, private standard. Importers also make decisions about which international standards they consider appropriate, focusing on obtaining products certified to the EU, US or IFOAM standard.
78. The Bill requires all imported products to meet the New Zealand's national organic standard as far as practicable. Clause 45AAA requires a person selling or marketing an imported product to meet any requirements set out in regulations or a trade equivalency notice. Without setting requirements in regulations for importing organic products, all organic importers must decide what meets the New Zealand national organic standard as far as practicable, when there is no trade equivalency notice in place. MPI considers that regulations are required to clearly set out obligations and requirements on importers to avoid ambiguity and uncertainty.

### The international approach is to meet strict requirements or have equivalence

79. Internationally, some developed markets (e.g., the EU) require imported organic products to be accompanied by a government issued assurance that the consignment meets their organic requirements (or terms of a trade arrangement such as equivalence). To provide this assurance, a certification process requiring checks of the businesses in the supply chain of the organic products is required. These checks are carried out by third party agencies (organic certifiers) who have been recognised by the exporting countries government, or in some cases directly by the importing country's government.
80. Many countries, including the EU and US also provide for equivalence arrangements to facilitate trade, where the exporting country's organics system is recognised as having equivalent outcomes. The EU imports from over 60 countries, and currently has equivalence arrangements with 13 countries including New Zealand (which need to be re-negotiated by 2027 under its new organic rules).

### What is the policy problem or opportunity?

81. Organic imports can have:
  - longer, more complex supply chains;
  - multiple actors accessing the organics system under more than one regulatory regime; and
  - the increased reliance on appropriate checking and associated paperwork that makes it more susceptible for non-compliance to pass unnoticed through the system.
82. A literature review indicates that lack of appropriate controls for organic imports has led to several major organic non-compliance scandals.<sup>8</sup> Commentators asserted this resulted in a loss of consumer confidence in these markets. Ensuring consumer confidence by preventing fraud in organic imports was stated as a reason for the

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<sup>8</sup> Examples include: the US organic feed incident between 2011-2017 which resulted in the perpetrator receiving 10 years in prison for fraud and being ordered to forfeit 128 million USD; and the organic raspberry incident where at least 12 million USD worth of raspberries that were deliberately falsely labelled as organic were sent to Canada between 2014-2016 via China and Chile: this was only discovered due to a whistle blower.

stronger regulatory settings – including for imports – introduced in recent organic rule changes made by the US in 2023.<sup>9</sup>

## Section 2: Deciding upon an option to address the policy problem

### What scope will options be considered within?

#### International obligations

83. Technical regulations are subject to New Zealand's international obligations. This includes the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT), which requires New Zealand not to discriminate against foreign products (compared to domestic products) or between products from different importing countries. In addition, the TBT Agreement requires technical regulations to be not more trade restrictive than necessary to fulfill a legitimate objective. The TBT Agreement lists prevention of deceptive practices as a legitimate objective. New Zealand also has transparency obligations under the TBT Agreement, and has submitted relevant notifications to the WTO TBT Committee.<sup>10</sup>

#### New Zealand has an open market with Australia, including for organic imports

84. Along with New Zealand, Australia is one of the last two in the top 25 organic markets that does not have a domestic regulatory organics system. However, Australia does have a national standard for organic exports.
85. New Zealand has a shared food system with Australia and a long standing open market arrangement under the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Under this arrangement, Australian organic products could continue to be imported and sold on the New Zealand domestic market if they meet Australian domestic laws. This includes meeting Australia's consumer protection laws.

#### The Bill covers some of the pathways discussed in the options

86. The Bill contains provisions for establishing bilateral and unilateral equivalence arrangements for organic imports. This option is discussed alongside the other pathways we have identified for selling imported products in New Zealand.

### What options are being considered?

#### Option 1 – Counterfactual

87. Each importer will need to decide what meeting New Zealand's national organic standard as far as practicable means. This leads to inconsistent decision making across the system.
88. Imported products have a heightened risk of non-compliance and economically motivated adulteration. Importers are not well placed to identify this on a case-by-case basis and it would be inappropriate to make individual importers responsible and liable for assessing whether the products they import meet the New Zealand standard without a regulatory framework.

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<sup>9</sup> USDA Agricultural Marketing Service, National Organic Program. (2020). *Regulatory impact analysis and proposed regulatory flexibility threshold assessment and certification*.

<sup>10</sup> Three notifications have been submitted to the WTO TBT Committee regarding this work to date (in 2018, 2020 and 2021). The most recent notification was submitted in March 2021 (Discussion document: Seeking your views on proposals for regulating organic businesses in the primary sector: Approving businesses and checking compliance with organic standards).



89. Products that are imported without adequate checks creates risks that imported products may not meet consumer expectations, which could lead to a loss of confidence in our regulatory system. Imports that differ substantially from our standard will also lead to our domestic businesses having to compete at a disadvantage with products produced to less strict requirements in the importing country's standard. No requirements on imports could jeopardise consumer confidence in New Zealand (and may perversely lead to a consumer bias against imports).

#### **Option 2 – Prescribe pathways for selling imported products in New Zealand**

90. MPI proposes providing for three pathways for imported products to be sold as organic in New Zealand:
- Pathway 1: come from a country recognised by New Zealand as having a system equivalent to ours (either bilateral or unilateral equivalence). This option is provided under the Bill;
  - Pathway 2: strictly meet the New Zealand standard and provide documentation to show this. This option is provided under the Bill;
  - Pathway 3: Regulations place duties on importers to:
    - import products that meet the New Zealand standard as far as practicable (a defence for an offence in the Bill);
    - require them to provide documentation to demonstrate this; and
    - be an approved operator.
91. These options discussed do not include border controls: they are about whether the product can be sold as organic once in New Zealand.

## How do the options compare to the status quo/counterfactual?

	Option 1 – <i>Counterfactual</i>	Option 2 – <i>Prescribe pathways for selling imported products in New Zealand</i>
Consumer confidence	0	<p>+</p> <p>Under all three pathways, consumers can have a high level of confidence that imported product meets our standard as far as practicable or an overseas standard with equivalent outcomes. This means that New Zealand consumers can have confidence that the products they buy are organic regardless of where they are produced.</p>
Certainty for business	0	<p>++</p> <p>Imported products will either meet New Zealand's national organic standard as far as practicable, or an overseas standard with equivalent outcomes. This means that all businesses will follow similar rules regardless of where they are located.</p>
Facilitates trade in organic products	0	<p>++</p> <p>Products can be imported via multiple pathways and supply is maintained.</p>
Ease of understanding and complying with the regulations	0	<p>++</p> <p>Importers' obligations and responsibilities are clearly set out in regulations.</p>
Cost effectiveness	0	<p>0</p> <p>Pathway 1 has the potential to reduce costs for importers as it reduces compliance costs associated with substantiating organic claims. Pathway 2 may add costs to producers who must now strictly meet the New Zealand national organic standard. Pathway 3 reflects current practice and will therefore have no additional costs to importers who currently do this.</p>
<b>Overall assessment</b>	<b>0</b>	<b>8</b>

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

92. Option 2 is the best option for ensuring our consumers have access to organic imports that meet their expectations, ensuring our businesses can compete in the domestic market without disadvantage, and facilitate international trade.
93. MPI is proposing multiple pathways to minimise the disruption to organic imports into New Zealand.
94. Pathway 1 is our preferred option as it best facilitates trade and reduces costs for importing. However, we recognise that determining equivalence is a process that can take time, even when done unilaterally.<sup>11</sup> MPI does not think it feasible to undertake equivalence assessments of all imported organic products in a reasonable implementation timeframe. For this reason, the regulations will prescribe alternative pathways for selling imported products in New Zealand. However, it is difficult to determine the size of the potential impact as we have limited data on what imports come into New Zealand, where they come from, and whether the standard and compliance systems in these countries could be considered to have equivalent outcomes.
95. Pathway 2 would ensure consumer confidence and certainty for our domestic businesses, because imported product would be produced to New Zealand requirements. However, MPI recognises that this option may not be feasible in practice. The defence provision in the Bill recognises that producers from overseas countries exporting into New Zealand are unlikely to change their production processes to strictly meet our standard, given our small market and geographical location. MPI therefore considers that making Pathway 2 the only pathway would impact imports as overseas producers will not be incentivised to produce to our standard like they are for US and the EU. Imports should, however, meet the New Zealand standard as far as practicable for consumer confidence and to ensure that we do not have imperfect competition between domestic and importing products. The regulations will provide for Pathway 2 for producers from overseas who are willing to produce to our standard.
96. As overseas producers are unlikely to produce directly to our standard due to our market size, Pathway 3 will put duties on importers and requiring them to be approved as operators, instead of requiring overseas exporters to be approved. This is the best way to ensure imported products meet New Zealand expectations, as is legal requirements cannot be put on overseas producers. Importers would therefore need to have a plan and get this verified regularly. MPI expects the plan and verification requirements to be pitched to the risks associated with importing activities. We anticipate this will mainly involve documenting processes for deciding what to import, and a paperwork check. MPI will provide criteria for importers and recognised entities to consider when deciding whether their imports meet our requirements.
97. Pathway 3 will protect the flow of organic imports to New Zealand while providing consumers with sufficient confidence that imports substantially (if not completely) meet New Zealand requirements. While not as robust as Pathway 2 or as trade facilitating as Pathway 1, MPI anticipates most imports to enter via this pathway until a suite of equivalence arrangements are put in place under Pathway 1.
98. The regulations will not contain border controls, as the level of intervention has been set by the level of risk the regulations seek to manage. In this case it is consumer protection and it is about credence claims, not food safety, so the appropriate point of intervention is at the point of sale, not at the border.

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<sup>11</sup> An overseas product or system is assessed against our own to determine whether it meets outcomes equivalent to those under our system. This is detailed and technical work that typically takes upwards of 6 months per country.

## Exports: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

99. The new organic regulatory system requires the inclusion of appropriate controls on organic exports. The Bill has provisions that allow New Zealand to demonstrate equivalence with other countries to facilitate and grow our organic exports. Export provisions will be a mix of direct powers in the Act and requirements in the regulations.
100. Currently, the Official Organic Assurance Programme (OOAP), an administrative programme that provides official assurances, manages organic exports according to market requirements from specific importing countries. Without regulations outlining these export requirements there will be no legislative process in place to replace the OOAP and manage organic exports.
101. Regulations seek to provide an additional level of detail to resolve issues of: who needs to be registered as an exporter; the requirements of approval; how an export exemption process would work; and how official assurances and statements of compliance will be issued. Clarity around the export process under the new organic regulatory system, is necessary to create certainty for the sector, and those seeking to export.

### What is the policy problem or opportunity?

102. The continued growth of organic exports is dependent on a robust organic regulatory system setting clear standards and processes that support any organic claim. This is critical to establish and maintain the confidence that trading partners and markets have in our system. Regulations play a key part in maintaining this confidence by prescribing the process, standards, and controls around organic exports. Regulations that clarify the process around organic exporting will add simplicity and certainty to businesses who are intending to export. The Bill does not contain this level of detail.

## Section 2: Deciding upon an option to address the policy problem

### What scope will options be considered within?

103. The scope of options was limited by what was permitted by the enabling legislation.

### What options are being considered?

#### Option 1 – Counterfactual

104. Without regulations prescribing the process, standards, and controls around organic exports, there will be no consistent framework for which MPI can demonstrate equivalence with other countries. This creates risks to the confidence trading partners will have in our system and the overall robustness of the organics system. In addition, some trading partners require official assurances, which sets the level of robustness required for these exports to meet importing country requirements. The OOAP programme only covers those countries who require an official assurance, not all organic exporting.

#### Option 2 – Regulations prescribe export provisions

105. Organic exporters will need to be approved by MPI, but only via a basic registration requirement. This will not be the same overall approval process that other operators undergo, but a simplified registration process. This applies only to exporters who only export, such as freight forwarders. Exporters who also produce or process the product will be subject to the baseline approval process, given they are producing organic

products. This approach recognises the reduced risk associated with exporters who are not directly producing and processing products for export.

106. The duties on exporters will be set out in regulations, and replicate the requirements in other MPI export assurance regulatory systems, such as the Animal Products Act. This provides consistency and confidence that they are appropriate controls. These duties include:
- Ensuring their exports meet domestic and importing country requirements;
  - Maintaining good records to prove the organic integrity of their product; and
  - Telling MPI if they have any issues with importing country authorities accepting their product as organic.
107. Any products produced and intended for export that do not meet the national organic standard will not be able to be sold as organic in New Zealand. They can still be sold without the claim.
108. The regulations will also outline the process for official government assurances and statements of compliance. These will replicate the processes existing under equivalent MPI Regulatory systems. This minimises costs and provides clarity and certainty for operators and our trading partners.
109. The proposed process to obtain official assurances will be similar to the current OOAP process for generating official assurances. The OOAP process has worked well to date and is accepted by both domestic stakeholders and foreign markets. This would give certainty and clarity to exporters and operators about their duties and obligations for obtaining an official assurance.

## How do the options compare to the counterfactual?

	Option 1 – <i>Counterfactual</i>	Option 2 – <i>Regulations prescribe export provisions</i>
Consumer confidence	0	++ The processes proposed replicate and strengthen the requirements from other MPI regulatory systems, including Animal Products, Wine and the OOAP. A robust organic regulatory system is key to supporting the integrity and confidence consumers have in our organic system.
Certainty for business	0	++ Prescribing the process requirements for organic exporters provides more certainty and consistency for businesses in the regulatory system. Replicating the requirements from other systems provides alignment and consistency for businesses in their operation.
Ease of understanding and complying with the regulations	0	+ All exporters will now be subject to a consistent set of requirements. These requirements replicate the requirements of other MPI regulatory systems, including animal products, wine and the OOAP. Many organic exporters will already be working in these systems and keeping requirements the same makes it easier for them to implement.
Facilitates trade in organic products	0	++ Robust transparent requirements reassures our trading partners of the strength of our organics system, and will support us in obtaining market access and negotiating equivalence.
Cost effectiveness	0	0 Replicating other regulatory systems requirements minimises costs to businesses, which minimises flow on costs to consumers. While cost may increase, this is balanced by the overall benefit to all stakeholders of enabling a robust regulatory system.
<b>Overall assessment</b>	<b>0</b>	<b>7</b>



**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

110. Option 2 is the preferred option, as it provides a clear benefit over the counterfactual. It meets the policy problem by clearly setting out process requirements for exporters. This clear framework is consistent with other regulatory regimes, reducing the administrative and regulatory burden, and making it easier for new businesses to enter the market. A clear and consistent framework will support trading partners confidence in our system, improving market access and equivalence opportunities. It will also support the system to be robust, allowing more certainty for businesses and consumers.
111. This option provides a clear net benefit over the counterfactual. It minimises costs for businesses wherever possible by aligning processes to what many exporters are familiar with and expect, while delivering a system our trading partners and consumers can be confident in.

Proactively Released

## Supporting small businesses: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

112. The costs of approval, particularly for ongoing verification, can be high for small businesses. If the business is very small, these costs can be disproportionate to the benefits of approval. These costs can discourage small and fledgling businesses from becoming or staying organic.
113. To address this the approval system contains two proposals to enable small businesses to participate in the new organics system:
  - a group scheme, where small businesses can seek approval as a group; and
  - a class exemption from approval requirements for very small business.
114. Group schemes are a feature of the organics sector internationally, as a way of supporting small businesses so they can participate in regulated organics systems. The most well-known group scheme is the Participatory Guarantee System (PGS) model. The PGS scheme was developed by the International Federation of Organic Agriculture Movements (IFOAM) as an alternative to third party certification of organic products and businesses. New Zealand has a current, voluntary group scheme based on IFOAM's PGS model, with approximately 130 members.
115. Several other countries also exempt very small businesses from approval requirements, including the EU and the US.

## Section 2: Deciding upon an option to address the policy problem

### What scope will options be considered within?

#### The proposed group scheme is based on the Internal Control System model

116. Internationally, there are two models for group schemes. As mentioned above, the first is IFOAM's PGS model. PGS schemes are quality assurance models based on peer assessment and support, where groups can develop their own certification and assurance systems. They are typically found in developing countries with short, localised supply chains, where they often support local social and economic development.
117. The second type of group scheme is the Internal Control System model (as adopted by IFOAM). This model is more structured and rules based, and requires third party agency verification of compliance and certification. The group comes up with their documented internal control system, and a third party agency will assess the effectiveness of the control system and carry out checks on a proportion of the members of a group.
118. Submitters to Parliament's Primary Production Select Committee and in the 2021 consultation suggested adopting the current PGS scheme operating in New Zealand could be used as the group scheme, and that this should be the approval system for all domestically focused businesses.
119. However, MPI developed its group scheme option based on the Internal Control Systems model rather than the PGS model. Because PGS groups each develop their own assurance and certification systems, this approach could lead a high level of variation when checking compliance. In addition, because PGS uses peer verifiers, people with different qualifications and levels of relevant expertise assess each other and the quality of these checks can vary accordingly. This could lead to inconsistent

and less rigorous decision making about the organic integrity of operations and products.

120. In addition, a domestic organic approval system based on PGS would depart from the regulatory regimes in our key trading partners. Most countries require imported organic products to be certified by a third party accredited to ISO standards. This is not a typical feature of PGS schemes, as the costs of accreditation is part of the reason that verification costs can be high. Adopting PGS as our approval system would also create challenges for domestic businesses that wish to expand into the international market, as they would still need to meet the full certification requirements demanded by our trading partners.
121. For these reasons, MPI does not consider that PGS will meet the objectives of increasing consumer confidence in organic products (especially as the organic market develops and consumers' expectations are likely to become stronger) or facilitate international trade.

## What options are being considered?

### Option 1 – Counterfactual

122. In the absence of any measures to support small businesses, all businesses will need to follow the overall approvals process set out in the proposed regulations: have a plan; get pre-approval checks done; apply to MPI for approval; ongoing verification. This means they will face the full range of costs, particularly for verification services provided by recognised third party agencies.

### Option 2 – A group scheme for small businesses

123. The proposed regulations include a group scheme to support small businesses to participate in the new organics system. The group scheme allows small businesses to group together to share the costs of ongoing verification.
124. Three or more producers or processors will be able to apply to be approved as a group. The regulations will require MPI to take the following into account when approving group schemes:
- the size of the members' businesses;
  - how similar members' production systems and organic management plans are;
  - how complex members' operations and organic management plans are;
  - how complex supply chains are;
  - how near members are to one another;
  - how competent members are and their performance history; and
  - if members lack the resources to support an internal control system that means they all comply with the standard.
125. The regulations will also require that group members will need to have a plan demonstrating how they will meet the standard. Members can have individual plans or one plan can cover the whole group.
126. In addition, the group will also need to have a plan setting out how they will operate as a group.
127. The group will then get a recognised entity to check each member's plan and business before applying to MPI for approval.

128. The key difference with group approval is the ongoing verification check. Instead of everyone being checked by a recognised entity, group members will be checked annually by a group peer reviewer. Recognised agencies or persons will assign group peer reviewers, who will be trained for this role. Each group member will be checked by a recognised entity once every five years.
129. The recognised entity will also check how well the group is running each year.
130. Group schemes will be able to export if they can meet importing country requirements and if this is acceptable to trading partners.
131. Feedback from the 2021 consultation supported providing for a group scheme, with 70% of respondents to this question agreeing with the proposal. These submitters recognised that costs of third party certification can be high, and therefore prohibitive for some businesses. Comments from submitters indicated that people support the idea of a group scheme in principle, but some had concerns about maintaining the overall integrity of the organic regulatory system and stressed the need for third party agency oversight over the group.

### **Option 3 – Class exemption from approval and requirements for very small businesses**

132. The proposed regulations will also contain a class exemption from approval for very small businesses.
133. The class exemption will apply to businesses who turn over less than \$10,000 a year in organics (averaged over three years). This figure was derived from statistics on business size from Stats NZ.
134. These businesses will not need to be approved to make organic claims, but will have to meet the following requirements:
- the business must meet the standard;
  - they do not need to have a formal plan, but they must keep records to show that they meet the standard and their regulatory requirements;
  - must sell direct to consumers from a single physical location (the farm gate);
  - cannot use ingredients from another exempt business;
  - cannot export;
  - cannot use the logo; and
  - the business will not be on the register of approved businesses.
135. Overall, submitters in the 2021 consultation and the 2022 re-engagement did not support exempting very small businesses from approval requirements. While recognising the costs of approval can be high, these submitters had concerns about: confusing customers; how vulnerable this part of the sector is to compromising the integrity of their products due to a lack of knowledge; and the potential to undermine the integrity of the organics regulatory system and New Zealand's reputation with our trading partners.
136. MPI also consulted on proposals to exempt retailers who sell organic produce in bulk bins from approval requirements. Submitters in the 2021 consultation did not support this proposal, so it was dropped.

## How do the options to support small businesses compare to the counterfactual?

	<b>Option 1 – Counterfactual</b>	<b>Option 2 – A group scheme for small businesses</b>	<b>Option 3 – Class exemption from approval</b>
Consumer confidence	0 Consumers have assurance of organic integrity as all businesses are approved.	- Consumers can be confident that group members are checked, but not as confident as checks by recognised entities.	- Consumers can talk to businesses at the farm gate and make their own judgement about the integrity of these products.
Certainty for business	0 All businesses are following the same rules, so businesses have certainty to invest.	0 Group members have different verification requirements, but are still checked annually and follow the standard.	0 Exempt businesses must still follow the standard. The restriction to selling at the farm gate avoids imperfect competition at the local farmers market or online.
Facilitates trade in organic products	0 A robust regulatory system gives our trading partners assurance in the integrity of our organic products.	0 Group schemes can export if they meet the importing country requirements.	0 Exempt businesses cannot export, minimising any risk to New Zealand's trading reputation. Verification checks will pick up any inappropriate use of exempt ingredients in products for export.
Ease of understanding and complying with the regulations	0 There is one set of rules that everyone follows, with no exceptions.	0 The requirements for group schemes will be set in regulations.	0 The requirements for exempt businesses will be set in regulations.
Cost effectiveness	0 The costs of approval, particularly ongoing verification costs, may be disproportionate for small businesses.	++ Costs for small businesses are significantly reduced as verification costs are reduced and shared amongst the group. Note there are additional group costs e.g., check of group plans.	++ Exempt businesses are not subject to costs of approval.
<b>Overall assessment</b>	<b>0</b>	<b>1</b>	<b>1</b>

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

137. The regulations could prescribe either Option 2 or Option 3, or Options 2 and 3 could be adopted together as a package to support small businesses.
138. Together, Options 2 and 3 are the preferred options to address the need to support small businesses to participate in the organics regulatory system.
139. While both options have the potential to affect the integrity of organic products and the system as a whole, MPI considers reducing the disproportionate costs of approval for these businesses to outweigh the risk. This is particularly so for the exemption for very small businesses. MPI considers that the case for these exemptions is strong, despite opposition from the sector. We consider the risks to the integrity of the system are mitigated by the requirements placed on exempt businesses, such as only selling from the farm gate. We consider widening this to selling at a farmers market risks undercutting approved operators who have paid the cost of on going verification. Selling online risks undermining consumer confidence as consumers cannot as easily substantiate organic claims online compared to in person.
140. International experience shows that group schemes are an effective way of supporting small businesses to participate in the system and grow organic markets. However, as group schemes include peer review, the regulations are designed to mitigate any risks to the integrity of the organic product and system as a whole. The design of the group schemes is regulated and includes recognised entity oversight because, internationally, these groups can get quite large. Although the current group scheme in New Zealand is currently small, the Pacific PGS had over 2500 members in 2019. The group scheme settings as set out in regulations are designed for multiple groups of different sizes.



## Recognised Entities: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

141. The new organic regulatory system for primary products requires evaluation, verification and other services as needed. The Bill will establish 'recognised entities' who can be agencies or people that are responsible for carrying out specified functions and duties relating to organic compliance. It is intended that these recognised entities will undertake evaluation and verification and other services on behalf of MPI.
142. However, the Bill does not specify the competencies or qualifications of these recognised entities. Without regulations outlining these aspects there is no framework to consider when determining if someone is competent to carry out functions and duties, or what their responsibilities are when performing those functions. This creates uncertainty for the sector, and those seeking recognition. Uncertainty reduces people's willingness to enter the sector, either as operators or as recognised entities, and reduces the confidence of consumers and trading partners.

### What is the policy problem or opportunity?

143. A robust organic regulatory system is dependent on competent and qualified people undertaking the necessary evaluation and verification to ensure that those claiming organic status for their products do, in fact, meet the standard. Without regulations to clarify what competencies and qualifications are required, there could be some uncertainty and inconsistency introduced that could undermine the confidence consumers and trading partners have in our system.

## Section 2: Deciding upon an option to address the policy problem

### What scope will options be considered within?

144. The scope of options was limited to recognising external entities and individuals to undertake this verification. Given the relevant ministry will be responsible for giving the final approval, it is preferable for an external party to undertake the evaluation and verification of organic businesses.

### What options are being considered?

#### Option 1 – Counterfactual

145. Without regulations prescribing the qualifications and requirements for who can become a recognised entity, there will be no clear or consistent framework for MPI to consider. This creates risks in terms of the quality of recognised entities, the confidence trading partners will have in our system, and the overall robustness of the organics system.

#### Option 2 – Regulations prescribe recognition requirements

146. To be recognised, individual persons should be capable of demonstrating:
- knowledge and understanding of applicable requirements of the organic legislation and any other relevant legislation;
  - knowledge and understanding of organic production and processing methods;
  - the relevant skills for the role they are applying for (i.e., evaluation or verification);

- how to operate in accordance with the standard operating practices of their agency (if they are working for a recognised agency);
  - maintaining impartiality, and management of conflicts of interest; and
  - when specialist technical expertise is needed and how it could be obtained.
147. To be recognised, recognised agencies, including sole person agencies, will need to be accredited to either:
- ISO 17020 (Conformity assessment – Requirements for the operation of various types of bodies performing inspection); or
  - ISO 17065 (Conformity assessment – Requirements for bodies certifying products, processes and services).
148. An alternative pathway to recognition is having a Quality Management System (QMS), which meets prescribed requirements relating to:
- conflicts of interest;
  - confidential information;
  - staffing and resourcing;
  - reporting;
  - record keeping;
  - non-compliance and corrective actions;
  - complaints and disputes;
  - internal management;
  - review of performance; and
  - contractual arrangements.
149. These requirements replicate the existing requirements under the food, animal products and wine regulatory systems. These are long standing regulatory systems which many of the organics sector are already familiar with. This minimises the entry barriers for recognised entities, as those providing services in other regulatory systems will already have the required Accreditation or QMS in place. These requirements are also well established and have delivered positive outcomes with regard to regulatory robustness and acceptance by trading partners.
150. Permitting sole person agencies provides more options and opportunities for those wanting to become a recognised agency, which may provide more options for organic producers, and improve competition. This currently occurs under the Food Act.
151. Enabling assessment of a QMS as an alternative to ISO accreditation replicates other MPI regulatory systems, provides alternatives to make it easier for agencies to be recognised, and still ensures they meet our expectations and undertake their duties to a high standard. Note that producers of products for export and exporters will need to use an ISO accredited agency.

## How do the options compare to the status quo/counterfactual?

	Option 1 – <i>Counterfactual</i>	Option 2 – <i>Regulations prescribe recognition requirements</i>
Consumer confidence	0	++ Robust transparent requirements gives consumers confidence in the strength of our organic system.
Certainty for business	0	++ Prescribing the requirements for recognised entities provides more certainty and consistency for businesses in the services they can expect from their recognised entities. Replicating the requirements from other systems provides opportunities for recognised entities to work across multiple systems, and minimise the barriers to entry.
Facilitates trade in organic products	0	++ Robust transparent requirements gives our trading partners confidence in the strength of our organic system, and will support us in maintaining and obtaining market access and negotiating equivalence.
Ease of understanding and complying with the regulations	0	++ These requirements replicate the requirements of other MPI regulatory systems, including animal products, wine and food. Many recognised entities will already be working in these systems, and keeping requirements the same makes it easier for them to implement.
Cost effectiveness	0	+ Replicating other regulatory systems requirements minimises costs to businesses, which minimises flow on costs to consumers, while enabling a robust organic system.
<b>Overall assessment</b>	<b>0</b>	<b>9</b>

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

152. Option 2 is the preferred option, as it provides a clear benefit over the counterfactual. It meets the policy problem by clearly setting out the minimum qualifications needed by recognised agencies and recognised individuals. This clear framework is consistent with other regulatory regimes, reducing the administrative and regulatory burden, and making it easier for new entities to enter the market. A clear and consistent framework will support trading partners confidence in our system, improving market access and equivalence opportunities. It will also support the system to be robust, allowing more certainty for businesses and consumers.
153. This option provides a clear net benefit over the counterfactual, and has minimised costs for businesses wherever possible while delivering a system our trading partners and consumers can be confident in. The sector, including existing certifiers, were consulted on and largely supportive of this option.

## National organic standard: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

154. The Organics Products and Production Bill requires a product to comply with the standard (if one exists) to be able to be described as organic. Without an organic standard set out in regulations, a system for organic primary products will not be put in place and organic products and producers will not be required to meet any of the requirements in the Act. They can continue to choose whether to meet a voluntary standard, such as a private standard or the Standards New Zealand's organic production standard. Some producers and processes may choose not to meet a standard at all. Businesses currently exporting under the OOAP may continue to do so and follow the OOAP production rules. Businesses producing for export could also follow the production rules, and be certified, to a non-OOAP market.

### What is the policy problem or opportunity?

155. To best meet the purposes of the Act, a mandatory standard will be put place for organic food, beverage, and plant and animal products (see the previous RIS for more information). MPI must develop this standard which will be made into law through a combination of regulations and notices. MPI has the option to either adopt an existing voluntary standard as the national organic standard, or create a bespoke standard.

## Section 2: Deciding upon an option to address the policy problem

### What scope will options be considered within?

156. The Government agreed to develop a mandatory organic standard in 2018 (CAB-18-MIN-0592 refers). The options therefore focus on which standard should become the national organic standard for New Zealand.

### What options are being considered?

#### Option 1 – Counterfactual

157. No national organic standard for primary products is created, therefore the system for organic primary products is not stood up. Organic businesses choose whether they want to meet a voluntary standard. Private standards differ when setting out the technical rules for each class of product.

#### Option 2 – Bespoke standard

158. Under option 2, MPI and sector representatives would develop a bespoke standard that creates one set of organic rules and technical requirements for each class of product.
159. To achieve this, MPI completed a side-by-side analysis across five organic standards:
- NZS 8410:2003. New Zealand Standard Organic Production;
  - MPI Organic Export Requirements Organic Production Rules (20 Dec 2021);
  - AsureQuality Organic Standard (June, 2020, Version 8);
  - BioGro Organic Standards (May 2009 – Amendments 2014); and
  - GL 32-1999 Codex Guidelines for the production, processing, labelling and marketing of organically produced foods (Adopted 1999. Revisions 2001, 2003, 2004 and 2007: amendments 2008, 2009, 2010, 2012 and 2013).

160. As part of this analysis, the sections of each standard were categorised into a list of topics (e.g., livestock). These topics and analysis were then used as the basis for discussion with 'Technical Working Groups' included sector representatives with knowledge of technical requirements in the existing standards. During this co-design process with the sector, MPI found that no one existing standard fully met the needs of the organic sector in New Zealand. The technical working groups often took the most appropriate pieces from several standards to form a set of proposals for a particular topic.

### **Option 3 – Adopt an existing standard**

161. There are a number of existing standards that could be adopted into New Zealand law as the national organic standard. These standards include New Zealand specific standards and international standards.

#### *Adopting the existing standard held by Standards New Zealand*

162. Standards New Zealand hold an organic standard (NZS 8410:2003 New Zealand Standard Organic Production) that was published in 2003. Standards New Zealand have not maintained the standard due to extremely low uptake and have not agreed to update the standard for the purposes of the new organics system. If Standards New Zealand did agree to update this standard, it likely that the update could not be achieved within the time constraints for the EU market access negotiations.

#### *Adopting a private standard owned by an existing certifier, such as the AsureQuality or BioGro standard*

163. There are several private organic standards owned by New Zealand organic certifiers. However, there are differences between these private standards when compared on the same class of products, and each of these standards do not cover all the same classes of products.

#### *Adopting the IFOAM standard or CODEX guidelines*

164. The IFOAM standard and CODEX guidelines do not account for organic preferences within individual countries. Most countries develop their own bespoke standards that reflect the organic organic practices best suited within their own country. It is appropriate for New Zealand to decide these practices for ourselves.

#### *Adopting the OOAP Organic Export Requirement: Organic Production*

165. These rules are applied to the production and processing of organic products for export to markets with which MPI has negotiated a trade arrangement. They reflect specific international requirements for organic production and processing and are supplemented by market specific Overseas Market Access Requirements. It is appropriate for New Zealand to decide the requirements for organic production and processing that align with our organic sector's views about appropriate environment, and farming and food production practices.



## How do the options compare to the status quo/counterfactual?

	Option 1 – Counterfactual	Option 2 – Bespoke standard	Option 3 – Adopt an existing standard
Consumer confidence	0	++ Provides increased certainty for consumers compared to the status quo as all products labelled as organic will meet the same standard, and this standard has been developed with sector representatives.	+ Although consumers can be confident that products are meeting one consistent standard, they cannot be confident that this standard is up to date, consistent, and reflects organic values in New Zealand.
Certainty for business	0	++ Will provide increased clarity and certainty for businesses, compared to the status quo. Businesses can trust that the standard is fit for purpose as sector representatives, including organic businesses, were heavily involved in its development.	+ Will provide increased clarity and certainty for businesses, compared to the status quo.
Facilitates trade in organic products	0	++ New Zealand is in a better position to negotiate new and more secure market access, and improve New Zealand's reputation as an organic producer as a whole – creating a common platform for the development of the sector. Key trading partners have indicated that domestic regulation for organics will support negotiation for more secure market access.	++ New Zealand is in a better position to negotiate new and more secure market access, and improve New Zealand's reputation as an organic producer as a whole – creating a common platform for the development of the sector. Key trading partners have indicated that domestic regulation for organics will support negotiation for more secure market access.
Ease of understanding and complying with the regulations	0	++ Will be clear and easy for businesses to understand what New Zealand considers as organic, as all businesses will be required to meet the same standard.	++ Will be clear and easy for businesses to understand what New Zealand considers as organic, as all businesses will be required to meet the same standard.
Cost effectiveness	0	0 Costs are expected to be similar across all options.	0 Costs are expected to be similar across all options.
<b>Overall assessment</b>	<b>0</b>	<b>8</b>	<b>6</b>

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

166. Option 2 is preferred as it allows a national organic standard to be developed that is consistent, up to date and accounts for the organic practices best suited for New Zealand. Option 2 also allows the sector to be involved in the development of the standard, so organic businesses and consumers can be sure that it meets their expectations and is fit for purpose. Option 3 was not chosen as MPI and sector representatives agreed that no one existing standard met the needs of the organic sector in New Zealand.

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## What are the marginal costs and benefits of approving businesses to make organic claims?

### Where do the benefits and costs fall?

167. The literature reviewed by MPI considers experience from international organics markets indicates that regulation is a key factor for the growth of organic markets. This is due to greater consumer trust in organic products and greater assurance to trading partners. The organic industry as a whole is therefore likely to receive the benefits from a regulated conformance model. However, this benefit will not be experienced evenly by all businesses: some businesses will have a higher costs to benefits ratio than others.
168. The largest costs are likely to fall on small, domestically focused businesses and those who are not currently certified with one of the two private certification schemes operating in New Zealand currently. Many businesses already choose to join a voluntary certification scheme that is similar to the proposed approvals process, so the costs for regulatory compliance will be small for this group. Additional compliance costs will fall on those businesses not already checked for compliance in a voluntary scheme: MPI does not hold information on how many businesses this might cover. Additional costs could also fall on businesses that are part of a lighter touch voluntary regime if more checking is required to meet the new requirements.
169. In addition, the Government would incur costs that may be recovered from the industry, including:
- developing, maintaining and implementing national organic standards;
  - negotiating trade arrangements for organic products; and
  - monitoring and evaluation of the system to ensure it is operating efficiently and effectively.
170. The Bill allows these costs to be recovered through regulations that will be developed and consulted on when MPI's implementation planning has fully identified the services it will be providing.

### The overall benefits of these regulations are expected to be positive

171. In September 2021, MPI commissioned Sapere to undertake a cost-benefit analysis of introducing regulations for approving businesses to make organic claims about food, beverages, and plant and animal products.
172. The estimated benefit-cost ratio (BCR) of introducing regulations ranged from 2.7 to 8.2. The central estimate is a BCR of 4.2. The central driver of benefits is from the continued access to key markets for organic primary products.
173. The analysis set out the following impacts from the introduction of regulations:
- increase in administrative costs: MPI will incur costs to set up the regulatory system and ongoing costs to maintain and operate it.
  - compliance cost on producers: cost may increase or decrease, depending on the current practices of individual business relative to the practices and processes set out in the proposed regulations and standard. These costs include application fees to MPI, and the costs of ongoing verification.
  - compliance cost on certifiers: they may face additional costs to meet requirements to become a recognised entity under the new regulatory system. The change of systems and processes to comply with the proposed regulations and standard may also generate costs for certifiers.

- consumer welfare: likely to increase from the assurance that the products they buy are indeed organic and comply to a standard. However, there may be a reduction in consumer welfare if producers follow the regulations and standard, but do not label their products as organic because the costs to seek approval is high or other barriers are in the way.
- production of organic products: producers may benefit if the regulatory system strengthens the perceived surety of organic primary products. This may increase demand for these products.
- market access for exports: in some export markets the regulatory regime may improve market access and increase exports. For a few key export markets, the introduction of the regulatory system will ensure continued access to them. The system may increase exports in these markets as well.

174. The table below sets out the present value of benefits and costs from the introduction of a regulatory system over the next 20 years. Due to the uncertainty in the nature of the organic market and trading conditions in the future, this has led to a wide range of estimates in costs and benefits.

**Table 1: Present value of benefits and costs from low to high range estimates**

	Low range	Mid range	High range
<b>Total benefits</b>	\$29.40 m	\$106.20 m	\$318.00 m
<b>Total costs</b>	\$11.00 m	\$25.32 m	\$39.00 m
<b>BCR</b>	2.7	4.2	8.2

175. MPI may seek additional funding for IT set up costs which have not been factored in the benefits and costs analysis. These costs were not known at the time of developing the analysis. MPI is still working through its systems and existing funding to determine whether additional funding would be needed. The additional funding would be sought through a future Budget bid. If additional funding is sought, it is very likely that the BCR would remain positive.

### The regulations will have distributional impacts on some groups

176. MPI's analysis indicates that the proposed approval process may have impacts on Māori and Pacific peoples using indigenous production methods.

#### Impacts on Māori

177. This section provides an analysis of the possible impacts regulations for organic primary products may have on Māori. Māori organic producers and processors will be impacted by these regulations, as all primary product producers and processors will need to comply with the regulations to be able to sell their products as organic. It is likely that Māori who produce kai by traditional methods for sale will be impacted, since there is alignment between organic production and traditional Māori production methods, and this kai is sometimes sold as organic.

178. Requiring traditional kai producers to comply with the proposed regulations and get sole approval from MPI to sell their products as organic holds risks for meeting the Crown's obligations to the principles of te Tiriti o Waitangi/the Treaty of Waitangi, in particular the principle of rangatiratanga.<sup>12</sup> This is because these regulations do not

<sup>12</sup> Article Two of te Tiriti o Waitangi/the Treaty of Waitangi.

empower Māori decision making, which has the potential to prevent Māori from exercising kaitiakitanga over mahinga kai.

179. More information is needed about how some details in the following proposals work alongside traditional kai verification frameworks. For example, the requirement to have an organic management plan implies it must be written, which may not enable people to communicate in the way they are most comfortable about how they manage land. Other proposals that have been identified here include proposals for: regulating multi-site and multi-business producing or processing organics; definitions within the regulations; the public register; transition arrangements; record keeping; logos and labelling.
180. To date, MPI have received mixed feedback on the regulatory proposals from a small number of Māori submitters. Some submitters expressed strong disagreement with the new system, in particular the requirement to get MPI approval to make an organic claim. However, support for the regulatory proposals was also received. The feedback to date has largely focused on the Bill and has been partially addressed by Supplementary Order Paper 262.
181. As noted in paragraph 38, further work is required to better recognise tikanga Māori and to uphold the Crown's obligations to the principles of te Tiriti o Waitangi/the Treaty of Waitangi. MPI is continuing to engage with Māori stakeholders on a potential alternative pathway for approving operators who produce or process primary products using traditional Māori methods. This pathway will likely be set out in a separate set of regulations. If an alternative pathway for approval is not set out in regulations before businesses are required to get approved to make organic claims, traditional kai producers who want to make organic claims will need to get approved through the four step pathway outlined in the process regulations.

#### **Impacts on Pacific peoples**

182. This section provides an analysis of the possible impacts regulations for organic primary products may have on Pacific peoples – domestically and for communities in the Pacific Islands. The international impact has been considered because of the strong cultural, geopolitical, and historical connection between the Pacific and New Zealand engagement with Pacific peoples.
183. During the Select Committee process of the Bill, submissions were made by the governments of Samoa and Fiji, the Pacific Island Farmers Organisation Network (based in Fiji), the Pacific Organic and Ethical Trade Community (also based in Fiji), and a grower in Samoa. The submitters were unanimous in their view that the approval of organic products from the Pacific Islands be based on the IFOAM family of standards, and products certified under Grower Groups and the PGS be recognised. No engagement has taken place with stakeholders in Pacific Island nations in developing these regulations, but they have been informed under the WTO notification for the proposed regulations.

#### ***Impacts on Pacific peoples within New Zealand***

184. MPI has not engaged directly with Pacific people within New Zealand. As the organic sector has been unregulated, MPI does not have any information on how many Pacific people own organic farms or organic food businesses. The current set of regulations makes no provisions for Pacific practices within New Zealand in the production of organic foods.
185. Once the current set of regulations have been developed and approved, MPI will engage with the Pacific community involved in the production and sale of organic foods. MPI will look to develop further regulations to accommodate the practices of Pacific peoples within New Zealand, unless this has already been covered by the processes and procedures in the regulations.

*Regulations will impact organic products from the Pacific Islands*

186. The organics regulatory system for primary products will have an impact on imports from Pacific Island nations. Prior to the introduction of legislation, the organics market for food, beverages, and plant and animal products has been unregulated.
187. As noted, MPI has not engaged with producers of organic foods in the Pacific Islands. Therefore, MPI cannot yet decide whether their processes and procedures would be equivalent to the ones being considered for New Zealand. As an interim measure to ensure imports of organic food products are not disrupted, MPI would look to issue notices to facilitate these imports.
188. Once the current set of regulations have been drafted and approved MPI, will engage with Pacific Island organics community. This engagement would also help MPI to make a decision on equivalence, or to develop a further set of regulations that would set out clear processes and procedures for the imports of organic primary products from the Pacific Islands.

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## Section 3: Delivering an option

### How will the new arrangements be implemented?

189. Regulations will be made by Executive Council under the Organics Product and Production Bill.
190. Like the Bill, the process Regulations will not have legal effect until the national organic standard has been passed. Once the standard has been passed, there will be a three year transition period.
191. MPI is responsible for administering the regulatory system and supporting the transition. MPI has engaged with stakeholders on transition times, and have agreed the following plan to support transition:
  - the first year of the transition period will be focused on bringing third party agencies and persons into the system. They are integral to moving existing businesses until the new system;
  - as recognised entities are brought into the system, the focus will then move to bringing any businesses currently certified under the voluntary system in to the regulated system. There will be minimal changes for this group, and it will be mainly administrative;
  - the OOAP and existing arrangements for export will continue until they are no longer needed, which will be after the end of the transition period when all businesses have been incorporated into the regulatory system; and
  - businesses not currently certified as organic will need to meet all requirements, which may require a three year conversion period. The three year transition period supports them to meet the requirements while still selling as organic.
192. MPI will provide guidance and public communications to support the sector, consumers, trading partners and prospective organic businesses to understand the new system and the obligations under it.

### How will the new arrangements be monitored, evaluated, and reviewed?

193. MPI will have oversight over the organics regime and will provide ongoing maintenance to ensure the regulatory system remains fit for purpose. This will include keeping the organic standard and regulations up to date and in line with best practice.
194. MPI will review the regime as a whole around five years after commencement of the first organic standard in regulations. The timing and scope of such a review will be subject to decisions on prioritisation of the work programme of MPI.
195. The regime will be evaluated against the three key objectives presented in Section 2. Indicators used to assess whether the regime is successful for those products where an organic standard is developed may include:
  - *Objective: Increase consumer confidence when buying organic product*
    - total value of the organic domestic market; and
    - consumer surveys to determine changes in confidence in organic products.

- *Objective: Increase certainty for businesses to invest in organic products*
  - land area farmed organically;
  - number or value of imported and exported consignments of organic products; and
  - business surveys to understand businesses' views, opportunities and barriers.
- *Objective: Facilitate international trade in organic products*
  - total value, volume and variety of organic imports and exports;
  - existing market access is maintained and more secure;
  - access to new markets under negotiation or implemented; and
  - number of approved exporters and importers of organic products.

196. Such a review would also take into account information gathered while the regime has been in place, for example:

- complaints and investigation about misleading organic claims;
- the number and nature of non-compliance with organic standards or other aspects of the regime;
- the frequency and nature of reviews of recognised entity decisions and performance;
- information from working closely with industry representative bodies; and
- surveys of key stakeholders such as consumers, businesses and recognised agencies and persons.

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