



Would New Zealand benefit from new organic regulation?

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Requests for further copies should be directed to:

Publications Logistics Officer
Ministry for Primary Industries
PO Box 2526
WELLINGTON 6140

Email: brand@mpi.govt.nz
Telephone: 0800 00 83 33
Facsimile: 04-894 0300

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Submissions

The Ministry for Primary Industries is seeking feedback on a proposal to regulate organic production.

HAVING YOUR SAY

All interested people and organisations are invited to respond to the questions in this document or provide other information relevant to the regulation of organic production.

The consultation runs from **Monday 14 May to Monday 11 June 2018**.

Submissions are due by 5:00 pm on 11 June 2018

Throughout the document there are a series of questions designed to help us understand what impact the various options and approaches would have. We encourage you to answer the questions that apply to you and we seek your views on what these proposals would mean for you as an individual or business having an interest in organics.

Please include in your submission:

- your details, including:
 - name
 - your position within your organisation (if applicable)
 - your organisation's name (if you are submitting on behalf of an organisation)
 - your contact details (for example, phone number, address and email)
- your thoughts on the proposals, including reasons for your views
- the possible impacts of these proposals on you or your businesses
- any changes you would suggest, and why

Email

Please email your feedback to: organicsconsultation@mpi.govt.nz

Online

You may instead wish to use the feedback form available at this address:

<https://www.mpi.govt.nz/news-and-resources/consultations/proposed-changes-to-the-way-organic-production-is-regulated>

Letters

While we prefer email or online submissions, you can send your response by post to:

Food and Regulatory Policy
Ministry for Primary Industries
PO Box 2526
Wellington 6140
New Zealand

YOUR FEEDBACK IS PUBLIC INFORMATION

Any submission you make becomes public information. Anyone can ask for copies of all submissions under the Official Information Act 1982 (OIA). The OIA says we must make the information available unless there is a good reason for withholding it. You can find those grounds in sections 6 and 9 of the OIA.

Tell us if you think there are grounds to withhold specific information in your submission. Reasons might include that it is commercially sensitive or personal information. Any decision the Ministry for Primary Industries makes to withhold information can, however, be reviewed by the Ombudsman, who may require the information be released.

Executive Summary

Consumers in New Zealand and overseas are becoming increasingly interested in the food they eat and how it has been produced. While products marketed as organic are gaining popularity, there is no universally accepted definition of what 'organic' means. Producers can refer to a range of organic standards, and use a variety of methods to demonstrate that their products have been produced organically, and consumers have a mixed understanding about what these claims mean.

New Zealand's current regime aims to protect consumers and provide certainty to trading partners about the products sent to them. Consumers are protected by the Fair Trading Act 1986, which requires producers to be able to substantiate any claims that they are making on their products. To enable organic producers to send their products to particular overseas markets, the Ministry for Primary Industries (MPI) administers the Official Organic Assurance Programme, which involves independent certifiers checking that those producers have followed a set of rules.

There is no mandatory requirement to follow a defined set of rules in order to make organic claims in New Zealand. A variety of voluntary organic standards and practices are currently used. The absence of a single definition means businesses and consumers lack certainty about whether products meet their expectations of 'organic'.

In response to consumer demand and the increased volume and value of organic goods, several countries have introduced organic standards that are supported by legislation. This approach provides domestic consumers in those countries and their trading partners with certainty that organic products are made according to agreed standards. Of the world's top 25 organic markets (by value), all but New Zealand and Australia have developed mandatory domestic organic standards. Countries with such regimes increasingly expect their trading partners to have a regulatory system that produces similar outcomes to their own.

This is an opportunity for New Zealand to consider whether it too should take a stronger regulatory approach to organic production. Some representatives from the organic industry have also been asking Government to review the way organic products are currently regulated.

The most common regulatory approach used internationally is to introduce a mandatory national standard and associated regulatory regime for organic production. National standards incorporated into legislation can be good regulatory tools, as they can ensure that a product is processed in an acceptable way. But standards can also come with constraints and costs.

In order to decide whether regulating organics would have merit for New Zealand, it is important to consider how such an approach might work in practice and to understand its possible benefits, costs and impacts. This document proposes changes to the way organics are regulated, and sets out some options for what a new regime for organic products could look like. The first part of this document introduces the current framework, and why we are consulting on changes. The rest of the document focuses on options for what a national standard could look like. In particular:

- Should a national organic standard be voluntary or mandatory?
- How should we check that relevant businesses meet the standard?

We are now seeking your feedback to better understand what the impacts of these approaches would be. This will inform the decision on whether or not New Zealand would benefit from having a new regulatory regime for organic production and, if so, what a new regime could involve.

Part 1: Introduction, purpose and context

1 What do we mean by 'organics'?

Our supermarket shelves, farmers markets and export shipments are increasingly displaying the label 'organic'. This term is likely to have a range of different meanings to the different people who see it. Throughout this document, 'organic' is used as a term to describe products made or grown using farming or production methods that follow some key principles:

- Organics are produced without the routine use of artificial chemicals – instead, preference is given to on-farm nutrient recycling (e.g. compost) and non-chemical methods for managing pests and diseases. Only when these methods prove inadequate may a farmer resort to a restricted list of fertilisers or pesticides.
- Organics are produced without the use of genetically-modified organisms. For example, genetically modified seeds, animals, or medications are not acceptable.
- An emphasis is put on animal welfare, for example animals must be able to express natural behaviour, and access to pasture is usually mandatory.

In practice, many organic methods are derived from traditional conservation-based farming techniques, such as use of crop diversity and rotations. Organic production also often involves the use of modern equipment, improved crop varieties, and novel practices with respect to water conservation or livestock management.¹

Organic production can also include adherence to certain ethical principles, for example those relating to health, ecology, fairness, and care.² In New Zealand, traditional kaupapa Māori growing practices can represent a distinct indigenous approach to organic production.

2 Which organic products are we interested in?

While there are a broad range of organic products produced and available in New Zealand, this consultation is concerned with primary and processed products, including food and beverages, animal and plant products, live animals, and wool.

This high level scope is proposed as a starting point as these products form a large part of New Zealand's organic production, and are commonly regulated in other countries. These products are also currently covered under MPI's voluntary export programme.

Key trading partners such as the European Union or Canada also regulate organic aquaculture products, such as organic fish or seaweed. These are not included in the scope of the current MPI export programme for organics, however we are interested in feedback about whether these products should be covered by a new proposed standard.

1. Do you agree or disagree with the proposed scope? Are there any other products, for example aquaculture products, that should be considered? Please specify.

¹ Reganold JP, Wachter JM. 2016. "Organic agriculture in the twenty-first century (Article No. 15227)." Nature Plants.

² IFOAM. 2018. Principles of Organic Agriculture. Accessed March 07, 2018. <https://www.ifoam.bio/en/organic-landmarks/principles-organic-agriculture>

3 Demand for organic products is increasing

GROWING PRODUCTION AND DEMAND WORLDWIDE

The use of organic production methods is becoming more common worldwide. Between 2001 and 2016, the agricultural area organically farmed has more than tripled to reach 57.8 million hectares in 2016.³ Over these fifteen years, the total value of organic food and beverages sold globally has also increased by about 330%, reaching NZ\$124 billion in 2016.

Around the world, the supply of organic products is responding to increased demand, and, while the conversion of land is slowing down in North America and Europe, the demand for organic food and beverages is expected to continue growing in the near future.

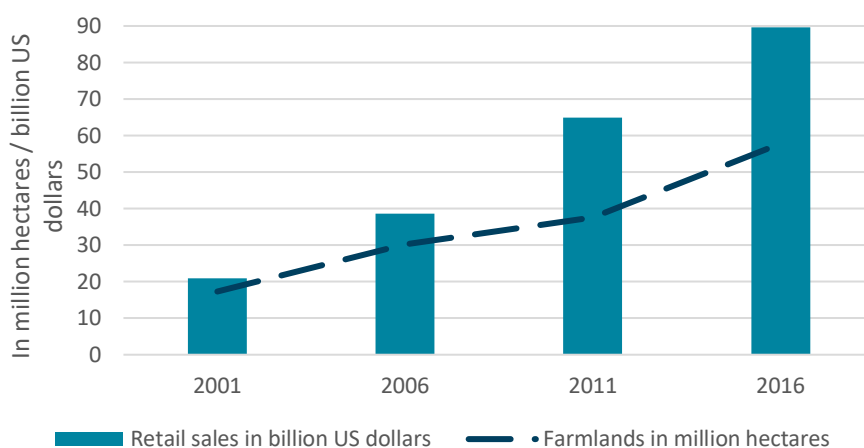


Figure 1: Global growth in organic food & drinks sales and farmlands, 2001-2016³

NEW ZEALAND'S ORGANIC SECTOR

New Zealand's organic primary sector started growing rapidly in the 1990s with the development of export markets for organic fruit and vegetables. By 2015, New Zealand's organic sector was worth approximately half a billion dollars, a 30% increase from 2012, comprising \$217 million of organic products sold domestically⁴ and almost \$280 million in exports.⁵ New Zealand organic exports have continued to grow steadily in recent years, particularly those of fresh fruit, vegetables, dairy products and beverages. Horticulture, wine and dairy are the major sectors exporting organic products overseas.⁵

In 2015, the area under organic certification in New Zealand was estimated as 74,134 hectares, with approximately 58% for livestock, 34% for horticulture, and the rest in mixed or other use. In the same year, about 1,000 farms and businesses were certified for organic production.⁴

Organic products are also becoming increasingly popular in New Zealand. A 2017 survey showed that 72% of New Zealanders buy organic products some, most or all of the time.⁶ Supermarkets have also noted an increase in sales of organic products, with Foodstuffs reporting a 6% increase in organic sales last year.⁷

New Zealand's organic sector is very diverse in terms of products, the size of organic producers and manufacturers, and the range of motivations businesses have for choosing an organic production method. Due to the inherent diversity of the sector, it is difficult to gather exhaustive information about organic businesses. There is no official data regarding the number of organic businesses who are operating without certification. This includes the size of these businesses, the type of organic products

³ Willer, Helga, and Julia Lernoud. 2018. *The World of Organic Agriculture. Statistics and Emerging Trends 2018*. Bonn: Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM - Organics International.

⁴ Organics Aotearoa New Zealand. 2016. "2016 New Zealand Organic Market Report."

⁵ Organic Exporters Association of New Zealand. 2018. *Organics in New Zealand*. Accessed March 7, 2018. <http://www.organictradenz.com/organics-in-new-zealand.html>.

⁶ Colmar Brunton. 2017. "Better Futures Report 2017."

⁷ NZ Herald. 2017. "Kiwis' hunger for paleo, protein and dairy free products unstoppable." *New Zealand Herald*. Accessed March 2018. http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=11957933.

and who their clients are. The origin, quantity and value of organic products imported into New Zealand is also difficult to assess because the organic status of a product is not captured by customs codes.

2. To what extent do you agree with the description of the current context for organics? Please explain why.

4 The regulatory environment for organics

INTERNATIONALLY, ORGANICS ARE INCREASINGLY REGULATED

Having a specific regulatory regime for organics is increasingly becoming the norm worldwide and a significant number of countries regulate organic claims. Of the world's top 25 organic markets (by value), all but New Zealand and Australia have developed mandatory domestic organic standards. They do so for a range of reasons, including consumer protection, access to foreign markets or environmental benefits.⁸

In regulated markets, the term 'organic' cannot be used unless the production methods and labelling comply with the national requirements. For example, claims such as '100% organic', 'organic', or 'made with organic ingredients' reflect strict composition and production requirements. In a similar manner, the use of national organic logos is also strongly regulated. In the United States, only products with more than 95% organic ingredients can use the organic seal.

In 2017, 87 countries had mandatory requirements for organic production and a further 18 countries were in the process of drafting mandatory requirements.⁹ This includes North America and Europe who generate 90% of international sales, and other key markets for organic products (such as Japan, South Korea and China). All of these regulated markets have strict requirements for organic products that are imported. Only products that are certified to a standard recognised or deemed as equivalent can be sold.

In drafting this document, we have considered how other countries have gone about regulating organics, and how the different models used internationally may or may not work in New Zealand. A high level comparison of how organics are regulated in key markets is attached as Appendix 1.

NEW ZEALAND'S CURRENT ARRANGEMENTS FOR ORGANICS

Organic products must comply with New Zealand laws

Although there is no law specific to organic products in New Zealand, organics must comply with a range of overarching laws that equally apply to non-organic products. The key requirements are that:

- Food sold in New Zealand must be safe and suitable for sale, as required by the Food Act 2014;
- Claims and labels must be true, not misleading, and able to be substantiated, as required by the Fair Trading Act 1986;
- Imports must comply with inspections and treatments required under the Biosecurity Act 1993; and
- Products which fall within the Animal Products Act 1999 and the Wine Act 2003 must also comply with those Acts.

MPI's Official Organic Assurance Programme

As with many other products, our trading partners sometimes want added assurances that organic products sent to them are produced according to minimum, or agreed, requirements. To facilitate exports to certain markets, MPI administers the Official Organic Assurance Programme.¹⁰

⁸ Rousset, Sylvain, Koen Deconinck, Hyunchul Jeong, and Martin von Lampe. 2015. Voluntary environmental and organic standards in agriculture: Policy implications. Food, Agriculture and Fisheries, OECD, Paris: OECD Publishing.

⁹ Willer, Helga, and Julia Lernoud. 2018. The World of Organic Agriculture. Statistics and Emerging Trends 2018. Bonn: Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM - Organics International.

¹⁰ The Official Organic Assurance Programme covers the United States, the European Union, Switzerland, Taiwan, Japan (and China when implemented).

As part of this programme, exporters need to be registered with MPI, ensure that their products have been certified by recognised agencies, and meet agreed requirements. In return, MPI provides assurances to the importing countries that these requirements have been met. Activities undertaken by MPI are typically cost recovered. Under this programme activities relating to approvals, registrations or issuing official assurances are funded through either a flat fee, a per-hour fee or a combination of both, charged directly to the relevant business.

Approximately 60% of our organic exports are now managed through MPI's Official Organic Assurance Programme. The value of exports facilitated through this programme was NZ\$151.4 million in the year ending June 2017, which was an increase of 19% over the previous year.¹¹ In 2017, most exports under the programme went to either the United States (NZ\$86.4 million) or the European Union (NZ\$60 million).

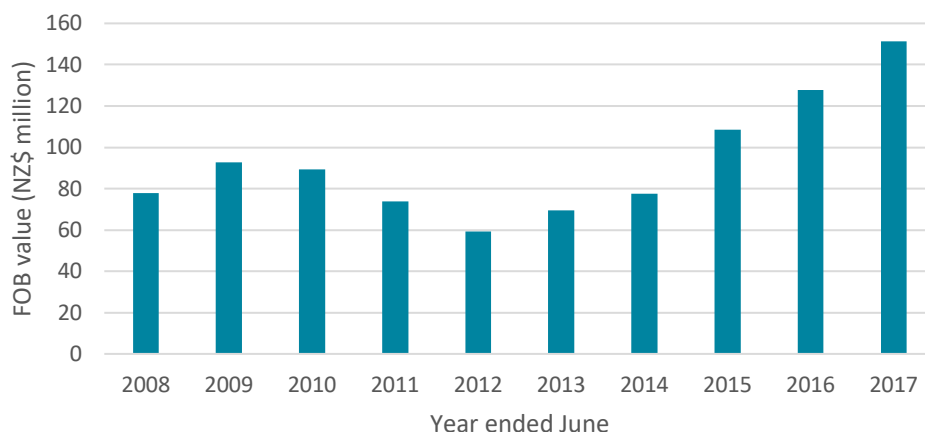


Figure 2: Organic exports through MPI's Official Organic Assurance Programme (MPI 2017)

Domestic organic standards are available, certification is voluntary

While no organic producer in New Zealand is legally required to meet any particular organic standard, there is one domestic public standard, and a range of private standards relating to organic production that growers, producers and others can choose to use to demonstrate that their product is organic. These standards set the technical requirements for organic production and describe practices and inputs that can or cannot be used. Some standards also include high level principles and recommendations that organic producers should embrace, such as principles of health, ecology, fairness and care.¹²

New Zealand Standard 8410 - Organic Production

This domestic standard was developed by Standards New Zealand in consultation with industry representatives in 2003, with the objective of setting minimum requirements for the production, handling, processing and labelling of organic products.¹³ Using this standard, or being certified to it, is voluntary.

This standard has not had significant uptake: MPI is not aware of businesses or certification bodies who are currently using this standard. Reasons for the lack of uptake may include:

- the standard is not accredited by the International Federation of Organic Agricultural Movements (IFOAM) unlike other organic standards available in New Zealand. Being accredited to IFOAM helps an organic standard to have international recognition;
- certification bodies are not currently accredited to assess organic products against the NZS standard. It costs the certification bodies to become accredited, and without market demand it is likely they did not consider this accreditation worthwhile;
- the standard is not recognised as providing equivalent outcomes by our trading partners; and
- obtaining a copy of the standard incurs a fee (currently \$80).

¹¹ MPI. 2017. "Analysis of Free on Board (FOB) declarations collected as part of annual cost recovery exercise from organic exporters registered to participate in the Official Organic Assurance Programme." Food Production and Processing Team.

¹² IFOAM. 2018. Principles of Organic Agriculture. Accessed March 07, 2018. <https://www.ifoam.bio/en/organic-landmarks/principles-organic-agriculture>.

¹³ Standards New Zealand. 2003. "New Zealand Standard - Organic Production." Wellington: Standards Council.

Private organic production standards

Examples of private standards referring to organic principles in New Zealand include:

Standard	Description
AsureQuality Organic Standard BioGro Organic Standards	<ul style="list-style-type: none"> Private standards developed and owned by private certification bodies in New Zealand
IFOAM Norms	<ul style="list-style-type: none"> International guideline developed by the International Federation of Organic Agriculture Movements (IFOAM)
Hua Parakore	<ul style="list-style-type: none"> Combines matauranga Māori and key organic principles
Demeter	<ul style="list-style-type: none"> Combines biodynamic methods and key organic principles

If a business chooses to meet one of these standards, it can become ‘certified’ as compliant with whichever one it has chosen to meet. This involves an independent third party assessing whether the methods used by a business are compliant with a standard. There are several private organisations in New Zealand who assess compliance with private organic standards and provide certification services. In some cases, businesses choose to ‘self-certify’, which means they assess their own compliance with a private standard.

To show that products are certified to a specific standard, a certification mark is often displayed. You may be familiar with some of the logos below, which are all being used in New Zealand.



Figure 3: Example of logos used in New Zealand

3. To what extent do you agree with the description of the current regulatory environment for organics? Please explain why.

5 Why change how organics are regulated?

AN OPPORTUNITY TO IMPROVE THE CURRENT REGIME

The current regime for organics in New Zealand is flexible and allows organic businesses to adopt production methods that suit them best and that reflect their personal beliefs on what being 'organic' means. Using the MPI Official Organic Assurance Programme as a basis for trade negotiations with key markets has also been successful in providing access to key markets.

The current regime is supported by voluntary use of private and public standards, and overarching New Zealand laws. The standards currently available are based on similar values and general principles but often have different requirements to be met for a business to obtain certification. Organic industry groups have asked Government to explore taking a stronger regulatory approach to organic production, in the form of a mandatory organic national standard. Government has agreed that there is an opportunity to check whether our current arrangements could be improved on.

A new regime could provide businesses and consumers of organic products with increased certainty in making or relying on organic claims. Agreeing on a definition of what 'organic' means, or developing additional measures to ensure claims are transparent, could help consumers to know what production methods are used when a product is marketed as organic.

Changing the way organics are regulated could also reduce the gap between the government's ability to provide oversight of the sector, and consumers' expectations that all organic claims are truthful. Organic claims relate to production methods, rather than to any particular characteristic that could be tested for or identified on the final product. Officials could be provided with additional tools to check organic claims are genuine, which could help address the difficulty for consumers in checking if a product is indeed organic.

Finally, there is an opportunity to put New Zealand in a better position to negotiate new and more secure market access in the future. The environment in which our current regime operates is changing. Many overseas markets, including some of our key trading partners, have or are considering specific regulatory regimes to manage organic products. Those countries are increasingly requesting comparable organic regimes from trading partners to demonstrate that similar outcomes to their own regimes are achieved.

4. Do you agree that this is a good opportunity to change the way organics are currently regulated in New Zealand? In your opinion, what needs to change? Please explain why.

WHAT WE THINK AN ORGANIC REGIME SHOULD ACHIEVE

We consider New Zealand's regime for organic products should meet the following objectives:

- Consumers have confidence in the way organic products are produced, and a variety of products to choose from;
- Businesses have regulatory certainty to invest and innovate in organic products;
- New Zealand's regulatory regime is effective at enabling trade in organic products;
- The regulatory regime has flexibility and is simple to understand and administer; and
- The costs to businesses and consumers are proportionate to the overall benefits.

We do not consider that the status quo adequately meets all these objectives. It is not currently clear to consumers what the differences are between the current organic standards and, more broadly, it is unclear which assurances are reliable. Organic businesses can be faced with difficult decisions about which standard to use. Further, our overseas trading partners are increasingly expecting New Zealand to have a comparable organic regulatory regime to theirs to demonstrate similar outcomes are achieved, which may put trade in our organic products at risk.

Because of these concerns, the rest of this document focuses on possible components of a revised regime for organic production, involving a national organic standard. Before a decision can be made on whether the way organics are regulated needs to change, we need to identify how a new regime

could work, and assess whether such a regime would achieve the above objectives better than the status quo. It is also important to consider the costs and risks a new regime may create for the organic sector, including consumers, businesses, verification bodies and government.

In Part 2, we have identified different ways in which a new regime could work, including whether compliance with an organic standard should be voluntary or mandatory, and how compliance should be verified. In Part 3, we discuss possible features of legislation that would be developed in order to implement any new mandatory regime.

We are now seeking your feedback to better understand what the impacts of these different approaches would be. This will inform the decision on whether or not New Zealand would benefit from having a new regulatory regime for organic production and, if so, what that regime could involve.

5. Do you think that the appropriate objectives for a new organic regime have been identified? What would you suggest a new regime should achieve? Please explain why.

Part 2: Options for how a new regime for organics could work

In order to consider whether a new framework for organics would benefit New Zealand it is important to first understand how such an approach might work in practice. We have considered two issues relating to a new framework for organics.

Specifically:

- Issue 1: Should a national organic standard be voluntary or mandatory?
- Issue 2: If a mandatory standard is chosen, how should we check that relevant businesses meet the standard?

Several options were considered in response to these questions. Your feedback on these options will help us understand what the likely costs and benefits might be. We have indicated our preferred options. Please let us know if you prefer a different option, or if you think there are other approaches to consider. In thinking about whether these options meet the objectives set out above, we have considered:

- Is the option effective at providing certainty for organic operators and consumers?
- Is the option effective at enabling trade in organic products?
- Will the compliance burden be proportionate to risks being managed or avoided?
- Is the option practical for stakeholders to understand, implement and monitor?
- What are the costs, benefits and impacts of the option?

ORGANIC STANDARDS ARE TYPICALLY PROCESS-BASED

Enforceable standards either set out requirements relevant to the desired outcomes (outcome-based standards), or describe the production methods that must be followed to achieve an outcome (referred to here as process-based standards).

Outcome-based regulation can enable flexible approaches to compliance as it allows businesses to use different methods to reach a similar output. This approach rewards innovation and can reduce costs for businesses. For example, the Food Act 2014 is outcome-based, which means there could be a number of different ways for a business to show they comply with the Act, as long as they produce food that is safe for consumption.

However, as noted in Part 1, organics is defined by particular production methods or by the production context rather than by the ultimate product. It is not possible to describe a set of outcomes that can reliably demonstrate whether a particular product has been produced organically or not. For this reason, organic standards used globally are process-based rather than outcome-based.

Accordingly, we recommend that any new standard for organics in New Zealand is process-based. Such a standard would set out rules for the production methods that organic operators need to meet in order to be able to make organic claims, including production methods, inputs and additives that are acceptable for use.

Because it would clearly set out what organic businesses need to do to meet the standard, this approach would provide certainty for operators and consumers. Having clear rules also means it would be easier to check whether operators are meeting the rules. A process-based standard would also be in line with international approaches to regulating organics.

The development of a new national standard would draw on existing standards and be subject to further public consultation. This would ensure requirements are relevant and suited to New Zealand's context.

6. Do you think that a standard setting out requirements for production methods would be best suited to organic production? Please explain why.

ISSUE 1: SHOULD A NEW STANDARD BE VOLUNTARY OR MANDATORY?

In this section we seek your opinion on whether the requirements of a national organic standard should remain voluntary or become mandatory, and for whom.

Generally, organic standards cover those people or businesses who commercially grow, process, pack, import, export or label organic products for sale. In this consultation paper, we refer to these businesses as 'relevant businesses'. The standard would not cover businesses who only market or sell organic products, without growing, processing, packing, importing, exporting or labelling those products.

In the options set out below, relevant organic products for sale in New Zealand, whether produced here or imported, would be subject to similar requirements. Imports would be required to either meet the requirements of the New Zealand standard (for example through an equivalence agreement), or the terms of a trade agreement. Relevant organic products produced in New Zealand and then exported would need to comply with any domestic rules, plus any requirements of the importing country if these are different.

New Zealand and Australia are parties to the Trans-Tasman Mutual Recognition Arrangement. The terms of this arrangement mean that products meeting regulatory Australian requirements for sale can be sold in New Zealand, and vice versa. Under this arrangement, organic products can be imported from Australia and sold in New Zealand as long as they meet domestic Australian laws, such as food safety and consumer laws. This arrangement would continue if New Zealand adopts a new organic regime. The proposed standard and associated compliance requirements would apply to all organic products that are processed, packed or labelled in New Zealand – whether they are intended for domestic sales or export.

Option 1A: Encourage the uptake of the current national voluntary standard

Under this option, the New Zealand Standard 8410 – Organic production could be reviewed and updated to align with current practices and its use would remain voluntary. The New Zealand government could also increase awareness of the standard by promoting it amongst consumers and businesses. If this option is preferred, efforts to overcome the other obstacles to businesses using this standard (such as its lack of international recognition) could be made.

Encouraging the uptake of this voluntary standard would mean that a relevant business could continue having several ways to substantiate their organic production methods, such as being certified to a private or public standard, or choosing to use different methods to substantiate their claims. However, it could provide increased clarity about what government considers to be acceptable organic practices. It also presents the advantage of not imposing new costs on relevant businesses as the use of the standard and certification would remain optional.

Under this option, it would remain uncertain whether a product sold as 'organic' met a defined minimum set of requirements. It would continue to be difficult for consumers to identify what practices were used to produce an 'organic' product. From a trade perspective, this approach would not put New Zealand in a better position to negotiate access with other countries and it may not meet other countries' requirements in the future.

Option 1B: A mandatory standard for some organic operators

Under this option, some, but not all, relevant businesses would be required to meet a national organic standard. This option could mean that larger businesses, or businesses who are not selling direct to consumers, could be required to meet the standard, but it could be voluntary for small or low risk businesses. Care would need to be taken in determining who the standard should and should not be compulsory for.

A standard that is mandatory for only some relevant businesses would give government more oversight about what is produced and sold as organic, compared with the current regime. Consumers could be provided with increased confidence that more organic products meet a single standard.

However, organic claims from those businesses excluded from compliance could continue to reflect a variety of production methods. In practice, there may also be some uncertainty about which businesses would need to meet the standard. Businesses required to meet the standard may incur more costs than those who do not have to meet the standard. Setting a threshold may also create barriers for businesses to grow and expand, as production methods may need to change significantly where the threshold is exceeded.

This option is also unlikely to support trade. It may be difficult for New Zealand to explain to our trading partners why we have set a minimum accepted standard for some relevant businesses, but allow others to operate outside this minimum.

Option 1C: A mandatory standard for all organic operators

Under this option, all relevant businesses would be required to meet the technical requirements of a defined minimum organic standard. This means that any organic products falling under the scope of the national standard would follow the same production methods and use similar inputs set by the standard. This approach would be in line with international approaches to regulating organics.

This option would provide the most transparent set of expectations to businesses and consumers about what government considers organic production to be. It would also provide the greatest certainty for consumers that organic products meet a clear set of standards. It is likely that this option could support trade, as it would provide certainty for New Zealand's trading partners that organic products are produced to a defined minimum standard.

But this option could also come with costs on operators, and potentially consumers, as operators may have to change production methods, or stop labelling their products as organic, to adhere to the new standard. These costs may be highest, proportionally, on small businesses and may lead to increased costs for consumers and/or reduced organic choices.

A standard would need to be empowered through primary legislation in order to become mandatory. There would also need to be a range of compliance and enforcement tools associated with the standard to ensure that the rules were effective. More details are presented in Part 3.

If a new standard was mandatory, organic claims such as 'organic' or 'made with organic ingredients' would become regulated. A national organic logo could be developed to allow products who meet the standard to easily be recognised. Rules around when any such logo could be used (for example, in terms of the amount of ingredients of a processed product which are organic) could be considered when consultation on a specific standard was done.

Under this option, private organic standards could continue to operate if businesses still wanted to use them.

Preferred option: 1C - A mandatory standard for all organic operators

On balance, we consider that having an organic standard that all relevant businesses are required to meet would provide the greatest benefit, despite coming with costs. Overall it provides certainty to consumers and businesses about what government recognises as organic production methods, and confidence for consumers that organic products have met those methods. It also best facilitates trade as New Zealand's approach would be comparable to those around the world.

There would be costs from this option, both for businesses required to comply with the standard, and potentially for consumers. There may also be some costs to government associated with enforcing compliance and taking action for non-compliance. These costs could be partially mitigated by how the standard is implemented (see following sections).

Appendix 1 presents a comparison of the status quo, the preferred option and examples of how other countries approached compliance with a national standard for organic production.

Issue 1: Should a new standard be voluntary or mandatory?

In this section, we have identified and analysed the following options:

- 1A – Encourage the uptake of the current national voluntary standard,
- 1B – A mandatory standard for some operators,
- 1C – A mandatory standard for all organic operators (preferred option).

7. Do you think that the correct options have been identified? Are there alternative option(s) that should be considered? Please describe.
8. Are there positive or negative impacts of any options that are not described? Please describe any impacts that we've missed.
9. If a standard became mandatory for all organic operators, what would be the positive and/or negative impacts on you or your business?
10. To what extent do you support or oppose the use of a logo to help distinguish organic products from non-organic products? Please explain why.

ISSUE 2: HOW SHOULD WE CHECK THAT RELEVANT BUSINESSES MEET THE STANDARD?

This section sets out three options for ways to check (verify) that relevant businesses are operating in compliance with a new standard for organic production. The following options would only apply if a new organic standard became mandatory for some or all relevant businesses (See Options 1B and 1C above).

The following set of options assumes that, irrespective of the approach taken to verification, businesses who are required to meet the requirements of a new standard would also have to keep complete and accurate records.

Just like under the current Official Organic Assurance Programme, independent verifiers would be required to be accredited by the relevant agencies in order to provide verification services against a new national standard. This would ensure that verifiers are impartial and use the standard correctly.

Option 2A: Ongoing verification for all organic businesses

Under this option, businesses involved in the organic production chain would be subject to regular assessment and onsite audits by an approved independent verifier.

Verification would be likely to result in an organic certificate being issued to confirm that the products and activities undertaken meet the requirements of an organic standard. Such a certificate would be evidence that the business had met the standard. Under existing private certification schemes in New Zealand, organic operators are assessed and audited at least once a year.

Independent and ongoing verification is recognised internationally as being the best tool to provide certainty that organic products meet the requirements of a standard. It would also deliver the best outcomes in terms of strengthening an overseas country's confidence in New Zealand's organic regime, and ensure organic businesses have equal opportunities to compete. However, it imposes costs on businesses. Currently, based on the type of organic production and its location, private certification fees range from a few hundred dollars to more than \$2,000 (excl GST) annually. Costs associated with verification activities undertaken by government would be likely to be cost recovered from organic businesses.

Measures to reduce compliance costs for relevant businesses could be introduced if ongoing verification was mandatory for all businesses. For example, a group of businesses could potentially share the responsibilities and the costs of verification. Also, it could be possible to adjust the audit frequency based on the risk associated with the operation: this would be consistent with compliance mechanisms under the Food Act 2014. Such approaches could help to reduce compliance costs for operators, but could also mean less oversight over what is produced or labelled as organic.

Option 2B: Spot check verification for all organic businesses

Under this option, relevant businesses would be required to notify government they are making organic claims. A sample of businesses would then be selected and audited periodically to ensure the claims they are making are genuine and comply with the requirements of the new standard. The frequency of audit could be adjusted based on the risk associated with the operation.

Spot checking would provide some level of confidence to consumers as sampled businesses would be actively checked for compliance against the technical requirements of the standard. However, verifying compliance only through spot checking is unlikely to be sufficient to gain international recognition. Most countries that have a national organic standards have more stringent requirements to demonstrate compliance, and would be likely to continue to require New Zealand exporters to be verified on an ongoing basis.

If a spot check verification regime was chosen, another key question would be how to fund it. Spot checks would contribute to the robustness and credibility of the regime, which would benefit the organic industry. A cost recovery option could be to design a levy¹⁴ that would be administered by government and apply to the organic sector as a whole. It would be designed to recover the costs of verification activities undertaken by government. However, additional public consultation would occur before such a levy could be introduced. For example, consultation would be necessary to confirm the mechanics of any such levy, including who would be required to pay and how a levy would be calculated.

We estimate that the costs on a business of being subject to a spot check verification regime are likely to be less than gaining ongoing verification (see Option 2A). Because only sampled businesses would be verified on any given year, it would also minimise disruption in terms of time and preparation required for the verification.

Option 2C: Ongoing verification, with limited exceptions

Under this option, all relevant businesses would need to comply with the standard. However, not all businesses would be required to have their activities independently verified on an ongoing basis. For example, small businesses that produce or process organics that are sold directly to the final consumer may not be required to be verified or certified. The basis for the exclusion is that the associated compliance costs would be disproportionate to the risk that their products were not produced in an organic way. Such businesses could still be subject to enforcement action if it was shown that they were not meeting the standard.

Such an approach is common overseas. For example, the European Union allows member states to exempt organic businesses who sell directly to the final consumer from verification requirements.¹⁵ In the US, some producers are exempted from verification based on their annual turnover.

There could be a range of ways in which certain small or local businesses could be described in regulation in order to be able to take advantage of the verification exception. For example the exception could:

- Cover those producers or processors who sell directly to a consumer (though this exemption would probably not cover online sales); or
- Cover those relevant businesses who have less than a certain threshold of annual turnover; or
- Cover those relevant businesses who produce less than a certain volume of produce annually; or
- A combination of these approaches.

¹⁴ In this document, "levy" refers to a charge designed to recover costs incurred to government in delivering a service that benefit to all members of an industry or sector. Levies are generally calculated based on actual costs incurred to government.

¹⁵ Council Regulation (EC) No 834/2007 on organic production and labelling of organic products. Official Journal of the European Union, L 189/5.

The intention would be that the relevant business can self-determine whether they fall within the exception, rather than needing to apply for a specific exemption.

Preferred option: 2C – Ongoing verification, with limited exceptions

Our preferred option is for most relevant businesses to have their activities independently verified on an ongoing basis, while a small category of businesses would not be required to be verified – for example, small businesses that produce or process organics that are sold directly to the final consumer. These businesses would still need to meet the standard, but the exception would allow a reduction in disproportionate compliance costs for a small category of businesses. Enforcement action could still be taken in respect of these small businesses, if needed, when they claim that their products are organic.

All other relevant businesses would be required to meet the standard, and to be independently verified on an ongoing basis. Measures to reduce compliance costs could be introduced for such businesses if needed, for example through group certification or by adjusting the audit frequency.

Appendix 1 presents a comparison of the status quo, the preferred option, and examples of how other countries verify compliance against their national standard.

Issue 2: How should we check that relevant businesses meet the standard?

In this section, we have identified and analysed the following options:

- 2A – Ongoing verification for all organic businesses,
- 2B – Spot check verification for all organic businesses,
- 2C – Ongoing verification, with limited exceptions (preferred option).

11. Do you think that the correct options have been identified? Are there alternative option(s) that should be considered? Please describe.
12. Are there positive or negative impacts of any options that are not described in the above section? Please describe any impacts that we've missed.
13. If ongoing verification (with limited exemptions) was used to check compliance, what would be the positive and/or negative impacts on you or your business?
14. If some businesses were not required to be verified on an ongoing basis, what do you think the criteria for exemption could be? *For example, method of sale, annual turnover, volume sold, others...*

SUMMARY OF PROPOSALS

In summary, the options considered, and the preferred options are:

Component of proposed regime	Options considered	Preferred combination of options
1. Whether the proposed standard should be voluntary or mandatory, and for whom	1A: voluntary compliance for all 1B: mandatory compliance for some businesses only 1C: mandatory compliance for all relevant businesses	1C: mandatory compliance for all relevant businesses
2. How should we check that relevant businesses meet the standard?	2A: ongoing verification for all 2B: spot check verification for all 2C: ongoing verification, with limited exceptions	2C: ongoing verification, with limited exceptions

Overall, this consultation document proposes a preferred option of a mandatory standard for all relevant businesses. Those businesses would need to keep appropriate records. Ongoing verification would apply to most businesses, although a limited number would not be required to be verified, as is common in overseas regimes.

This approach would provide a robust and enforceable definition of what ‘organic’ means for everyone, and it is likely to enhance trade in New Zealand’s organic products. It will provide certainty for consumers that organic products meet a clear set of standards. However, the requirement for all relevant businesses to comply with the standard, and for most to be independently verified, would impose costs.

The diagram on the next page presents the combination of preferred options and what it would mean in practice for a business making organic claims.

We are interested to hear your thoughts on this preferred overall option.

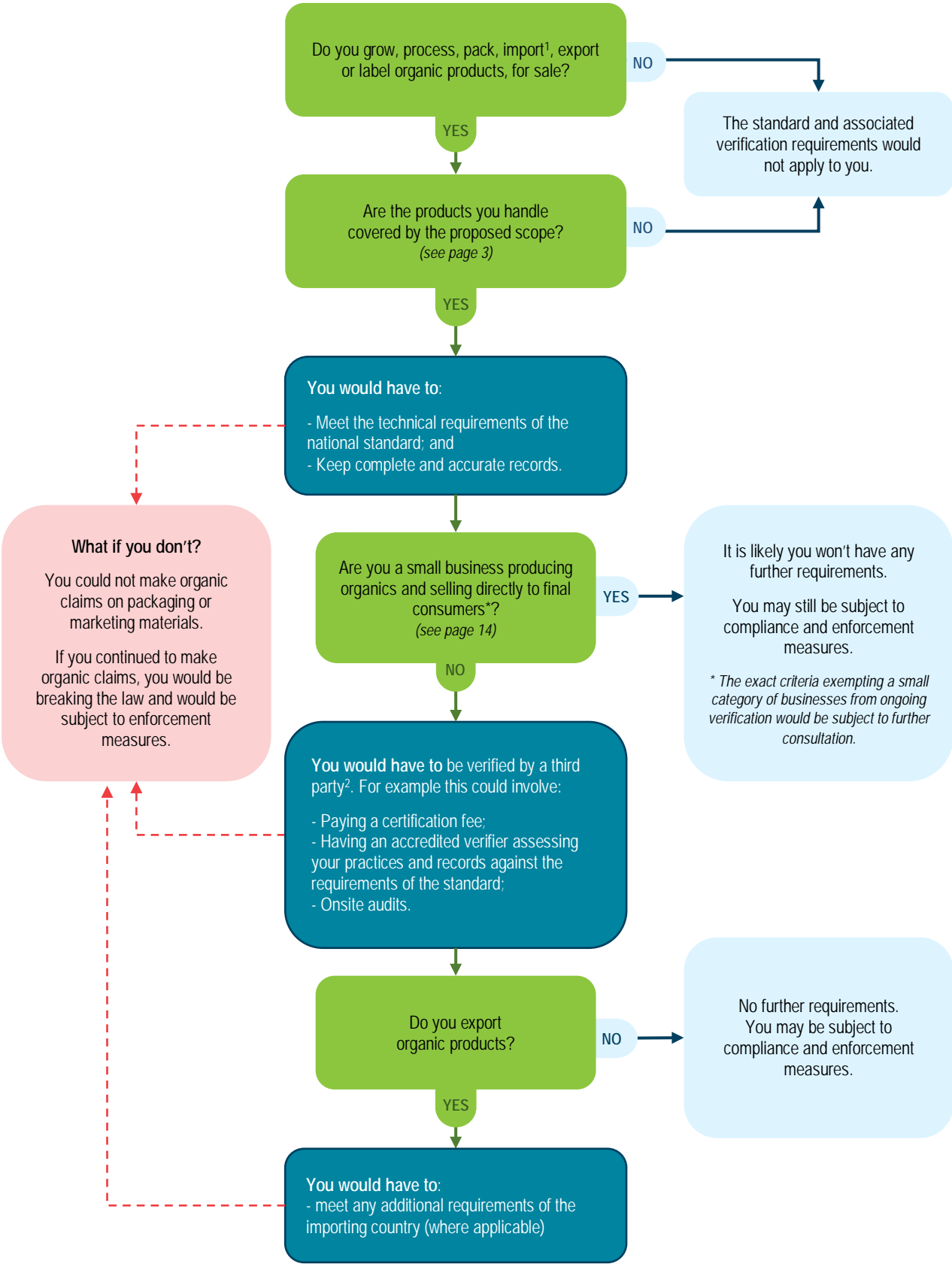
Summary of Proposals

In this section, we have identified the preferred combination of options:

- a mandatory standard for all relevant organic businesses; and
- ongoing verification, with limited exceptions.

15. To what extent do you support this combination? Please explain why.
16. What changes or impacts would this combination of options involve for you and/or your organisation?
17. What would be your preferred combination of options? *This can include any listed options and any other possible option not listed.*

Diagram: Combination of preferred options: How would it work for a business in New Zealand?



¹ The Trans-Tasman Mutual Recognition Arrangement would apply to organic products imported from Australia (see page 11).
² Measures to reduce compliance costs for relevant businesses could be introduced, such as group certification or adjusting the frequency of audits.

Part 3: If needed, Proposed Features of Empowering Legislation

Either maintaining the status quo, or encouraging the voluntary use of a national standard, would not require legislative change. However, legislative change would be required for a national standard for organic production to become mandatory and enforceable. A preliminary assessment indicates that developing a new Act would be most suitable, rather than amending an existing Act.

At a high level, we propose that the key features of any such bill that enables a mandatory standard for organic production could include:

Proposed feature	Details
1 Providing for the creation of one or more standards for organic production	<ul style="list-style-type: none"> Government could have power to set rules for the production of organic products The proposal being consulted on here is to develop one standard for products listed on page 3, but the legislation could empower additional standards to be developed in the future, as required
2 Setting out the scope of any standard	<ul style="list-style-type: none"> Standards could be set in relation to organic primary and processed products However, the specific standard that is being consulted on in this document would cover a narrower scope: organic food and beverages, animal and plant products, live animals, wool (and possibly aquaculture) A standard would also set rules concerning the production, processing and distribution of organic products, and the use of organic claims in labelling and advertising We do not consider the legislation should enable standards to be set in relation to other organic products
3 Enabling the designation of recognised agencies and persons to verify compliance with the standard	<p>This could include processes for government to recognise agencies and persons as official verifiers, and the ability to charge for the recognition process.</p> <p>Requirements to become and remain recognised would be set, as well as the scope and duration of recognition.</p>
4 Providing means for government to cost recover for the activities it undertakes, including charging fees or imposing levies if applicable.	<ul style="list-style-type: none"> Legislation could set key principles and processes to introduce cost recovery mechanisms, such as equity, efficiency, justifiability and transparency. Possible models for this could include those currently found under the Animal Products Act 1999 or the Food Act 2014.
5 Enabling any required regulatory powers in respect of exports of organic products	<ul style="list-style-type: none"> This could include the ability for government to set additional requirements where these are required for access to negotiated markets (such as exporter registration, additional technical requirements or restrictions) as well as the conditions, form and content for official assurances.
6 Providing for a range of compliance and enforcement tools, including offence provisions as needed	<p>Government could be granted with the following compliance and enforcement powers:</p>

- Issue formal warnings, notices, powers of entry, powers to sample and test, and orders to rectify aspects of production,
- Seize or recall non-compliant goods,
- Issue fines for non-compliance,
- Suspend a business from being able to make organic claims.

Note: Information tools such as providing education/ advice would not need to be empowered by legislation

7	Providing transitional arrangements if needed	<ul style="list-style-type: none"> • Conversion to organics usually takes up to three years. • Legislation would provide for transitional arrangements in terms of what claims and methods can be used before the requirements of a new Act would come into force.
8	Allowing standards to incorporate other information by reference	<ul style="list-style-type: none"> • If needed, this would allow an organic standard to be briefer than it otherwise would be. It would also enable technical information to be updated more easily than if it was found in the delegated instrument itself.
9	Allowing exemption powers	<ul style="list-style-type: none"> • Where it is appropriate to grant temporary or permanent exemptions, government could have the ability to exempt selected businesses from specified requirements.

Note that organic products would continue to be subject to any other relevant New Zealand laws. If the decision was made to develop a mandatory standard for organic production, a bill would be drafted, which could include details referred to in the table above, including specific enforcement tools.

There are several stages that the bill would go through before becoming an Act of Parliament. These stages ensure that it is subject to public debate and scrutiny. Public submissions would be invited by the Parliamentary Select Committee. Any stakeholders who wished to comment on the specific proposals contained in the bill could do so at that stage.

Powers needed to implement a new regime

In this section, we discuss the need to develop a new piece of legislation, if compliance and verification became mandatory. We discussed the key components of a new regime, including:

- Providing for the creation of one or more standard(s),
- Setting out the scope of any standard,
- Enabling the designation of recognised agencies and persons,
- Providing means for government to cost recover for the activities it undertakes,
- Enabling any required regulatory powers in respect of exports of organic products
- Providing for a range of compliance and enforcement tools,
- Providing transitional arrangements, if needed,
- Allowing standards to incorporate other information by reference,
- Allowing exemption powers.

18. Have the powers required to implement a new regime been correctly identified? Are there any other components you think would be necessary?
19. Do you have any comments on the range of proposed compliance and enforcement tools?
20. Do you have any other comments about the proposed legislative settings?

Part 4: Next steps

Once we have received submissions from interested parties, we will consider all of the new information and perspectives that have been provided. We will use this to further inform our analysis and test whether our preliminary analysis is still valid. We will make a summary of the information we have received through consultation available.

If this proposal is to be further progressed, there will be further opportunities for you to comment on more detailed proposals. For example, through public consultation on proposed legislation run by the Parliamentary Select Committee, and on any proposed standard being developed under such legislation.

Other comments

- 21. What evidence should be examined to inform further analysis of this proposal?
- 22. If you have any other comments or suggestions please let us know.

Appendix 1: Comparison of organic regimes: New Zealand, Australia, Canada, EU and USA

	Scope	Is the standard voluntary or mandatory?	How are relevant businesses verified?	Current requirements for New Zealand exporters to access this market?
New Zealand (current)	Products such as food and beverages, animal and plant products, live animals and wool.	<p>Voluntary</p> <p>Operators must meet other overarching legal requirements, including food safety and consumer laws.</p>	<p>Not prescribed</p> <p>There is no prescribed way to demonstrate compliance, however claims must be substantiated.</p>	N/A
New Zealand (preferred options)	As above, with possibility to include aquaculture.	<p>Mandatory for all</p> <p>Would apply to domestic sales, imports and exports.</p>	<p>Ongoing verification with exceptions</p> <p>Businesses required to meet the standard would also have to be verified, except small or local sales.</p>	N/A
Australia	Same as New Zealand, with aquaculture, cosmetics and biodynamics included.	<p>Mandatory for some</p> <p>Applies to exports only. No mandatory requirements for imports or domestic sales.</p>	<p>Independent verification</p> <p>Exporters must be certified by an independent verifier</p>	Overarching Australian Laws (including biosecurity, consumer and food safety)
Canada	Same as New Zealand, with aquaculture included.	<p>Mandatory for most</p> <p>Applies to domestic sales, imports and exports. Products produced and sold within a same province are exempted.</p>	<p>Independent verification</p> <p>Businesses required to meet the standard must be certified by an independent verifier.</p>	Independent verification and certification to the Canada Organic Regime.
United States, European Union	Same as New Zealand, with aquaculture also included in the EU.	<p>Mandatory for all</p> <p>Applies to domestic sales, imports and exports.</p>	<p>Ongoing verification with exceptions</p> <p>All must be independently verified, except direct sales (EU) or businesses with small turnover (USA).</p>	OOAP pathway, including any extra requirements imposed by importing countries.

Appendix 2: Summary of questions

We seek your views on what these proposals would mean for you as an individual or business having an interest in organics. Answering these questions is optional, however you may like to use this list to help you provide a submission.

Please tell us a bit about yourself

Understanding who you are will help us best understand your feedback and address any concerns you may have.

- Please select all those that apply to you. Are you...

a **business**...

- a. How many employees do you have? 0-5 6-10 10-20 20+
- b. What activities, if any, does your business carry out in relation to organic products?
 - produce organics sell organics in New Zealand
 - process organics export organics
 - store organics import organics
 - provide contracted services in relation to organics
 - other (please specify)
- c. What kind of products do you deal with? (please select all that apply)
 - certified organic products
 - uncertified organic products
 - non-organic products
 - non-organic products, but I intend to deal with organic products in the future
- d. What type of products do you currently handle? (Select all that apply)
 - Processed food and non-alcoholic beverages (organic),
 - Processed food and non-alcoholic beverages (non-organic),
 - Live animals and/or animal products (organic),
 - Live animals and/or animal products (non-organic),
 - Plant products (including fresh fruit and vegetables) (organic),
 - Plant products (including fresh fruit and vegetables) (non-organic),
 - Wine (organic),
 - Wine (non-organic),
 - Other (please specify product and organic status)
- e. Do you sell organic products...
 - directly to consumers (e.g. farmers markets, gate sales)
 - to a retailer or distributor (e.g. speciality shops, supermarkets)
 - to a foreign customer (e.g. exports)
 - other (please specify)

and/or

a **consumer**...

- a. Do you purchase organic products?
 - Yes, all the time Yes, sometimes No
- b. To what extent do you consider the certification status of organic products that you buy and use?

and/or

other...

- a. Please tell us who you are or who you represent (e.g. industry group, supermarket, service provider)
 - b. What is your interest in organics?
- Is there anything else you'd like to tell us that could help us understand your feedback?
For example: size of your business, key markets, experience related to the organic sector

Part 1: Introduction, purpose and context

Page 3

1. Do you agree or disagree with the proposed scope? Are there any other products, for example aquaculture products, that should be considered? Please specify.
2. To what extent do you agree with the description of the current context for organics? Please explain why.
3. To what extent do you agree with the description of the current regulatory environment for organics? Please explain why.
4. Do you agree this is a good opportunity to change the way organics are currently regulated in New Zealand? In your opinion, what needs to change? Please explain why.
5. Do you think that the appropriate objectives for a new organic regime have been identified? What would you suggest a new regime should achieve? Please explain why.

Part 2: Options for how a new regime for organics could work

Page 10

6. Do you agree or disagree that a standard setting out requirements for production methods would be best suited to organic production? Please explain why.

Issue 1: Should a new standard be voluntary or mandatory?

Page 11

7. Do you think that the correct options have been identified? Are there alternative option(s) that should be considered? Please describe.
8. Are there any positive or negative impacts of any options that are not described? Please describe any impacts that we've missed.
9. If a standard became mandatory for all organic operators, what would be the positive and/or negative impacts on you or your business?
10. To what extent do you support or oppose the use of a logo to help distinguishing organic products from non-organic products? Please explain why:

Issue 2: How should we check that relevant businesses meet the standard?

Page 13

11. Do you think that the correct options have been identified? Are there alternative option(s) that should be considered? Please describe.
12. Are there any positive or negative impacts of any options that are not described? Please describe any impacts that we've missed.
13. If ongoing verification (with limited exemptions) was used to check compliance, what would be the positive and/or negative impacts on you or your business?
14. If some businesses were not required to be verified on an ongoing basis, what do you think the criteria for exemption could be? For example, method of sale, annual turnover, volume sold, others...

Summary of proposals

Page 16

15. To what extent do you support or oppose this combination? Please explain why.
16. What changes or impacts would this combination of options involve for you and/or your organisation?

17. What would be your preferred combination of options? This can include any listed options and any other possible option not listed.

Part 3: If needed, proposed features of empowering legislation

Page 18

18. Have the powers required to implement a new regime been correctly identified? Are there any other components you think would be necessary?
19. Do you have any comments on the range of proposed compliance and enforcement tools?
20. Do you have any other comments about the proposed legislative settings?

Part 4: General comments and next steps

Page 21

21. If you have any other comments or suggestions please let us know.
 22. What evidence should we examine to inform further analysis of this proposal?
- Feel free to attach documents or links to your submission.