

Coversheet: Organic Production and Processes

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| Advising agencies | Ministry for Primary Industries |
| Decision sought | Approval for new legislation that enables government mandated standards for organic products |
| Proposing Ministers | Hon Damien O'Connor |

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

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. This is because the current organic system in New Zealand is based on voluntary certification and organic claims are credence claims, which consumers cannot independently verify for themselves. Businesses in New Zealand choose whether or not to be certified to one of a range of private standards with differing requirements. New Zealand is one of only two of the top 25 organic markets in the world that does not have mandatory domestic organic standards, and the only one of those 25 without a mandatory export standard.

There are opportunities to improve our system to ensure that it:

- increases consumer confidence in purchasing organic products; and
- increases certainty for businesses making organic claims; and
- facilitates international trade in organic products.

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

The Ministry for Primary Industries (MPI) proposes mandatory national standards with compulsory, independent checks to demonstrate compliance. As all businesses would be subject to the same standards, this would provide the greatest clarity to businesses around the processes they should invest in, and the greatest certainty to New Zealand consumers and overseas markets that products meet a minimum standard.

Mandatory standards that apply to organic products that are both sold domestically and exported could not be developed under any of the existing legislative regimes in New Zealand. Therefore the proposal is to develop new primary legislation that would enable the development of technical standards and a supporting assurance and compliance regime. This approach is also similar to international approaches to regulating organic

products. However, we are proposing that, unlike international approaches, we will use government approval and not third party certification to provide greater oversight and assurance for consumers and overseas markets.

The proposed approach will enable requirements to be set for any products sold or intended to be sold as 'organic'. Any requirements will only apply to products to which a standard applies. Where a standard is yet to be developed, the Fair Trading Act will continue to apply. The Ministry responsible for overseeing particular products would develop and promulgate the standard for those products and monitor compliance. For example, the Ministry for Primary Industries could promulgate organic standards for food products.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The organic sector would receive the greatest benefits from a mandatory national standard. Mandatory standards replacing a range of voluntary standards would provide them with certainty about what the government considers to be organic. Mandatory standards would facilitate international trade as they would align with our trading partners' requirements and provide them with the certainty that New Zealand products meet standards. This may reduce the number of extra requirements that need to be met for many export markets. While the organic sector broadly would receive the greatest benefits, the benefit would not be evenly felt by all businesses within the sector. Some businesses will have a higher costs to benefits ratio than others.

Consumers are likely to benefit by being more confident that the product they are paying a premium for is produced organically according to a government mandated standard. A survey conducted by MPI in 2018 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.

Where do the costs fall?

Mandatory standards would come with increased costs for the organic sector.

Checking compliance

Businesses' compliance would be required to be checked against the standards. This check would be done by a recognised agency. The cost of checking compliance against private organic standards in New Zealand currently ranges from approximately \$350 per year for checking the compliance of a group (where systems and costs are shared amongst a group of businesses) to \$2,500 per year for individual compliance checks for exports. However this includes certification, whereas the approval part of the process is proposed to be separate in the regulatory regime.

Given that many businesses already choose to undergo voluntary certification against private standards, these costs will only be additional to those businesses that are not already voluntarily checked for compliance. However, businesses that adhere to lighter-

touch voluntary regimes may see their costs rise where more onerous requirements are introduced.

It is important to note that these costs will only apply to businesses that choose to make organic claims, and that consider it commercially beneficial to make those claims and be independently verified.

Approval by the administering department

All businesses who want to make organic claims (including those already undergoing voluntary compliance checks) would bear the cost of obtaining approval from the administering department, where there is a standard in place.

MPI approval under other Acts (such as the Food Act or the Wine Act) range from \$68 to over \$310 per year, depending on the complexity of the application. We expect the cost of organic approval to be similar. Significant changes to businesses' scope of approval would be subject to variation fees within a similar range.

It is likely that some businesses that would be within scope of the organics regime are already registered with MPI under other regimes such as the Food Act or the Wine Act. The primary legislation will allow for processes to be aligned and fees to be reduced or removed where possible to avoid unnecessary costs to businesses.

Costs to Government

The primary legislation would enable different departments to develop and administer organic standards for products within their expertise. For many departments this is likely to mean that they will have to set up a new function to approve organic businesses and carry out compliance and enforcement activities. The costs will depend on the existence or absence of certain functions within the administering department.

Cost recovery of Government services

The administering department would incur costs that may be recovered from the sector. These include:

- maintaining and implementing national organic standards;
- processing approvals and recognitions;
- monitoring enforcement of businesses and approved third parties; and
- negotiating trade arrangements for organic products.

The primary legislation would establish a principles-based framework to enable costs to be recovered using a range of methods, including levies and direct charges for services. Details of cost recovery, including fees and levies, would be set in regulations. Costs stated in this document are based on the costs of MPI's existing regulatory regimes.

Cost to third parties (recognised agencies)

There will also be costs for third parties to become recognised to check compliance under the legislation. This will include the cost of meeting the relevant competencies to become recognised, as well as the costs of the application process. Two third party agencies in New Zealand currently bear these costs already in order to certify organic products for

MPI's export programme. However this would be an ongoing cost for those agencies, and a new cost for any other agencies wanting to carry out this role. It is likely that these costs will be passed on to businesses as part of the cost of checking compliance.

Cost to consumers

Compliance costs incurred by regulated parties may ultimately be passed on to the consumer in the form of higher prices for organic products. However this will depend on the degree of competition in the market and the proportion of producers that are not already meeting a similar certification standard.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

There is a risk that businesses that are currently making organic claims but are not certified to a standard will decide not to come under the proposed regime by either no longer making organic claims or using different terms than "organic". This could ultimately reduce the range of products sold as organic. We do not consider this risk significant as products could still be sold, just no longer labelled as organic.

The current voluntary regime and many international organics regimes are based on third party certification of businesses (which expires). The proposed regime is based on government approval (which does not). While the processes are very similar, there is a risk that businesses and international markets will see the proposed regime as different from the way organics are usually regulated and not be supportive of it. However, this risk is mitigated by similar processes and a greater level of government assurance that organic products meet a standard.

There is a risk that by creating standards for some types of organic products (food products) but not all initially (such as cosmetic and beauty products), it will not increase clarity for consumers. This risk is mitigated by proposing a wide scope for the primary legislation so that further standards could be developed if considered appropriate.

There is a risk that products that do not meet the New Zealand standards could be imported from Australia and sold as organic in New Zealand. New Zealand and Australia are parties to the Trans-Tasman Mutual Recognition Arrangement (TTMRA). The terms of this arrangement mean that products meeting Australian regulatory 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, including the Competition and Consumer Act 2010 that regulates misleading, false or deceptive claims. Australia does not currently have mandatory domestic standards for organic products. If New Zealand adopts a mandatory organic regime, products that are legally able to be sold in Australia, and are imported to New Zealand from Australia, would still be able to be sold in New Zealand, even if they do not meet the organic standards.

This risk will be mitigated by ensuring our Australian partners in the TTMRA are aware of our approach to introducing an organics standard and its implications. We also anticipate that the communication programme supporting the introduction of the national organics standard in New Zealand will raise consumer awareness of the New Zealand standard and its application to New Zealand organic products.

There is also a risk that developing mandatory standards will not facilitate international market access any further than the current voluntary regime. This would mean that the sector has increased costs to continue marketing as organic, but there are few benefits gained. However, we consider this a low risk because markets have been requesting similar regimes to their own in order to demonstrate equivalent outcomes. This risk will be mitigated by engaging with our trading partners to explain the approach we are adopting and how it will meet their expectations.

Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.

None

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

We are confident in the information we have received from within MPI. This includes information from consultation, information on consumers’ views on organic food and beverage products, information on market access and trade issues and likely cost per business for approval and for the processes that would be cost recovered.

We are confident about the number of voluntarily certified organic businesses operating in New Zealand but we have no detailed information on those businesses, such as the size of the businesses and product types. There are no data on uncertified businesses except some estimated values of the total sales from this group in a 2018 industry annual report¹. Assumptions have therefore been made in order to estimate the impacts on currently uncertified businesses.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Ministry for Primary Industries

Quality Assurance Assessment:

The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement “Organic production and processes”, produced by MPI. The review panel considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the quality assurance criteria.

Reviewer Comments and Recommendations:

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

¹ <http://www.oanz.org/publications/reports.html>

export, and import business will experience. However, stakeholders will have an opportunity to comment on these changes through the Select Committee process, and the authors should ensure stakeholders are aware of what is proposed and the potential to comment further.

The Panel also notes that during the development of any new legislation it will be good legislative practice to consider different options to achieve verification, compliance, enforcement, etc. The panel expects further detail on at least some of these aspects will be included in subsequent Regulatory Impact Statements that support the regulations developed under the proposed legislation.

Impact Statement: Organic Production and Processes

Section 1: General information

Purpose

MPI is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment (RIA), except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions by Cabinet to proceed with a proposed new legislative regime for organic products.

This RIA presents a summary of the analysis of a proposal to create a new Act and associated regulations in order to implement national standards for organic products. The proposals include providing a power to set technical standards that organic products must meet, and setting a compliance regime to ensure that standards are met. The proposal addresses a number of opportunities that have been identified.

Key Limitations or Constraints on Analysis

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 and the lack of a regulatory definition for what constitutes 'organic', it is difficult to gather information about all organic businesses. While we have information on businesses that are currently voluntarily certified, there is no official data regarding the number of organic businesses that are operating without certification. This includes the size of these businesses, the type of organic products and who their customers 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 tariff codes.

Due to the data being incomplete, assumptions have been made in order to estimate the impacts, particularly the monetary impacts, on stakeholders. These assumptions are based on data that we have from industry reports on the sector. The assumptions have been outlined in the RIS, and we have presented data as ranges to reflect the sensitivity of the assumptions.

We carried out public consultation, including 10 public meetings, which provided options around whether a standard should be voluntary or mandatory, and around how businesses' compliance could be checked against the standard. The majority of submissions were from currently certified organic businesses so may not provide a comprehensive view of how the range of businesses within the organics sector could be affected.

In addition, as public consultation focussed on these high level options around how a regime could work, the organic sector and the public have not yet had the opportunity to see the more detailed implementation decisions, which are different to what they will be

expecting. They will, however, get the opportunity to assess and provide submissions on these features of the proposed regulatory system during the Select Committee process.

Any proposed charges for government services will be set out in regulation that would be consulted separately prior to implementation. Cabinet will be provided with a Cost Recovery Impact Statement (CRIS) setting out the impacts of any proposed charges to inform their decisions at the time the proposed cost regulations are consulted on.

Responsible Manager (signature and date):

Fiona Duncan 

Acting Director, Food Science and Skills

Policy and Trade

Ministry for Primary Industries

30 / 1 / 2020

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

The term 'organic' is used to describe products made or grown using farming or production methods that follow some key principles, such as production without the routine use of artificial chemicals or genetically-modified organisms. There is also an emphasis on animal welfare and sustainable practices. Organic products usually command a premium over non-organic products.

The use of organic production methods is becoming more common worldwide. According to a recent market report, between 2001 and 2016 the total value of organic food and beverages sold globally has increased by about 330%, reaching NZ\$124 billion in 2016. By 2017, New Zealand's organic sector was worth approximately \$600 million, a 30% increase from 2015, comprising \$245 million of organic products sold domestically and \$355 million in exports. Horticulture, meat/dairy and wine are the major sectors exporting organic products overseas, accounting for 38%, 28% and 13% of total organic exports respectively. Organic cosmetic and beauty products were valued at \$28 million (8%).

Because organic products are defined by the process that is used to produce them, not the products themselves, it is not easy to differentiate organically produced products from non-organic products. A key challenge for the organic sector is to demonstrate that the products it sells are authentic and can justify the price premium. To help with this, a number of private standards have been developed by different organisations, for example:

- AsureQuality Organic Standards - private standards developed and owned by AsureQuality;
- BioGro Organic Standards - private standards developed and owned by BioGro,
- IFOAM Norms - International guideline developed by the International Federation of Organic Agriculture Movements (IFOAM); and
- Demeter - combines biodynamic methods and key organic principles.

If a business chooses to meet one of these standards, it can become 'certified' as compliant. This involves an independent third party acting as an external auditor that assesses and decides whether the methods used by a business are compliant with a standard. There are several private organisations that provide third party certification in New Zealand. In some cases, businesses choose to 'self-certify', which means they assess their own compliance with a private standard.

Te Waka Kai Ora (the National Māori Organic Authority) also runs an indigenous food verification system based on tikanga Māori (Hua Parakore). Although Hua Parakore is not a standard, the system has values that combine mātauranga Māori and key organic principles.

Of the world's top 25 organic markets (by value), all but New Zealand (ranked in 2015 at number 23) and Australia have developed mandatory domestic organic standards. This includes North America and Europe, which generate 90% of international sales, and other key markets for organic products (such as Japan, South Korea and China). New Zealand is the only market of the top 25 without mandatory export standards.

All of these regulated markets internationally 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 as organic.

Internationally, standards cover a broad range of organic products, including:

- food, plant and animal products;
- aquaculture;
- products destined for animal consumption;
- fibres wood and paper;
- textile products; and
- body care products and cosmetics.

To enable exporters to provide assurances to export markets requiring them, MPI administers the Official Organic Assurance Programme (OOAP). To participate, exporters must register with MPI and have compliance checked by an independent third party against the OOAP technical rules and/or any relevant market specific requirements. In return, MPI issues an official assurance to confirm that the consignments comply with the importing country's requirements. This process is an administrative programme and is not supported by legislation.

2.2 What regulatory system, or systems, are already in place?

Organic products must comply with a range of overarching laws that apply equally to non-organic products, such as the Fair Trading Act 1986, which aims to prevent false and misleading claims. There is no specific law that applies to organic products produced for domestic consumption or export in New Zealand.

| Legislation | Key elements for current organic framework |
|------------------------------|--|
| Fair Trading Act 1986 | <p>One of the purposes of the Fair Trading Act is to contribute to a trading environment in which the interests of consumers are protected, businesses compete effectively, and consumers and businesses participate confidently. The Fair Trading Act requires that claims and labels must be true, not misleading, and able to be substantiated.</p> <p>The term 'organic' is regulated under the Fair Trading Act but is not specifically defined.</p> <p>Section 27 of the Fair Trading Act enables the development of consumer information standards. No consumer information standards have been promulgated relating to organic products to date.</p> |
| The Food Act 2014 | <p>The Food Act requires that food sold in New Zealand must be safe and suitable for sale. Organically produced food is covered under this legislation in the same way as all other food, in that it must be safe, and the end product must be suitable for its intended use.</p> |

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|---|--|
| | Given that organic claims relate to production methods rather than to any particular characteristic that could be tested for in the final product, 'suitability' in the Food Act does not extend to organic production. |
| Animal Products Act 1999 | <p>The Animal Products Act (APA) regulates animal products and materials for domestic consumption, and to facilitate international trade by providing assurance.</p> <p>The APA provides for the regulation of the production of organic animal products for domestic and export purposes under that Act. There are export requirements for organic animal products to the European Union under the APA, however this provision has not yet been used for organic animal products more broadly.</p> |
| Wine Act 2003 | <p>The Wine Act regulates all wine which is produced for reward or export.</p> <p>The Wine Act regulates the production of organic wine for domestic and export purposes, however this provision has not yet been used to ensure whether wine claimed to be organic aligns with organic production methods.</p> |
| Standards and Accreditation Act 2015 | <p>Under the Standards and Accreditation Act, New Zealand standards can be developed, that can then be referenced in certain legislation as legally required, or acceptable means of compliance.</p> <p>The Standard 8410 – Organic Production was developed by Standards New Zealand in 2003. However, this standard has not been adopted under any legislation, or had any uptake from businesses or certification bodies.</p> <p>The standard is not accredited by the International Federation of Organic Agricultural Movements (IFOAM) and has not been recognised as providing equivalent outcomes by our trading partners.</p> |

2.3 What is the policy problem or opportunity?

Organic claims are credence claims, which consumers cannot independently verify for themselves. They also command a price premium which. Because of the difficulty consumers have in differentiating organic products from non-organic products, certification systems that reflect organic production are important tools for all participants in the system, and are widely used internationally by all of our key trading partners.

As discussed in the section above, businesses currently rely on voluntary, private certification agencies to certify their organic products, boosted by the non-legislative MPI OOAP supporting some businesses that trade their products overseas.

While this system has worked until now, there are issues emerging with the current voluntary approach. As a result, there are opportunities to improve our system to ensure that:

- consumers have confidence in their organic product purchase decisions

- businesses have certainty to invest and innovate in organic products; and
- New Zealand is effective at facilitating trade in organic products.

In December 2018 Cabinet agreed these opportunities should be the objectives for and organics regime.

Opportunity: Consumers have confidence in their organic product purchase decisions

There is an opportunity to increase consumer confidence in organic products in New Zealand. It is not clear to consumers what the differences are between the current voluntary set of organic standards and, more broadly, which assurances are reliable. The Organics Aotearoa New Zealand (OANZ) 2018 Market Report indicated that the range of private standards is leading to consumer confusion and uncertainty about what constitutes organic products.

In addition, a consumer survey commissioned by MPI for this analysis showed that approximately one quarter of people who do not currently purchase organic food and beverage products feel they cannot rely on the sellers' claims that they are organic. Likewise, approximately one third of people who do purchase organic food and beverage products would buy more if they felt they could rely on the sellers' claims. Consumers who currently buy organic food and beverages indicated that they would be willing to pay 5-10% more for improved clarity.

Protection of consumer rights to have confidence in the products they are purchasing is a core feature and principle underpinning New Zealand's trading system. Organic products usually attract a premium price so it is important that consumers are confident that they are getting what they pay for.

Opportunity: Businesses have certainty to invest and innovate in organic products

There is an opportunity to provide organic businesses with certainty to invest.

Certainty that production methods are indeed 'organic'

Under the current regime, claims must not be false or misleading. However, because there is no single definition of what organic means, it can be difficult for businesses to assess whether their production methods and activities would be deemed as organic.

The variety of private and public standards available sometimes have conflicting requirements. For example, some allow the use of antibiotics, while others do not. In addition, some people follow organic practices that match their own views on what organic means as opposed to following the requirements of a standard.

Providing certainty to organic businesses (including importers) about what the New Zealand Government considers as organic would provide them with the certainty that if they meet the standards, their claims would be considered to be accurate by consumers, competitors and authorities, and therefore the confidence to invest in practices that meet the standards.

Certainty about what records are acceptable to substantiate organic claims

Under the current consumer protection regime, businesses making organic claims must also be able to substantiate their claims with facts and credible sources. However, there are no rules prescribing what type of processes or records would be acceptable to demonstrate compliance.

The Commerce Commission has investigated three cases of products being fraudulently sold as organic. Previous prosecutions have not resulted in a case law definition of organic as the defendants have either pleaded guilty, or the judgement was made in relation to whether a product was certified organic or not (i.e. certified to a private standard).

Although the Commerce Commission suggests that certification is a way of demonstrating compliance, it is unclear which certification scheme or what other practices could be deemed as acceptable. For example, a poultry farmer may only keep invoices for farming inputs, while another might also have exhaustive written procedures, record when veterinary treatments are administered, and be checked regularly by a recognised agency.

This makes it difficult for a business to know what an acceptable process for organic is, and the kind of records and systems would stand up to scrutiny and be sufficient to demonstrate compliance.

Opportunity: New Zealand is effective at facilitating trade in organic products

There is significant value for New Zealand in the export of organic produce. In the year ended June 2017, the average organic premium achieved by New Zealand organic exporters to the United States was 53% over conventionally produced food. Similarly, the premium achieved by New Zealand organic exporters in the European market is 47% over conventionally produced food.

Approximately 60% of our organic exports are managed through MPI's OOAP. The value of exports facilitated through this programme was NZ\$129 million in the year ending June 2019. In 2019, most exports under the programme went to either the United States or the European Union, together accounting for 95% of the value of exports through the OOAP.

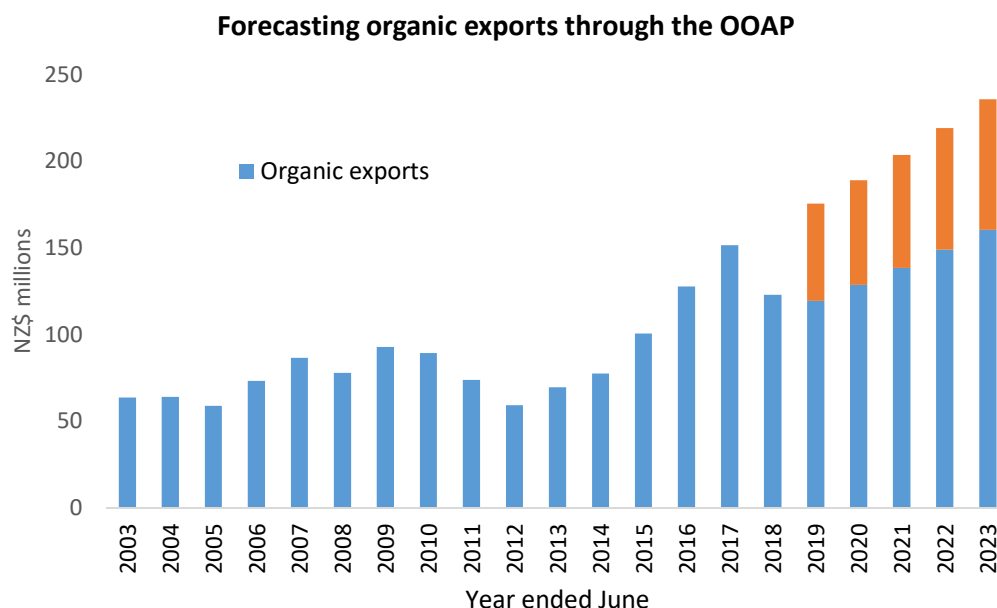
The OOAP as a basis for trade negotiations with key markets has been successful in providing access to key export markets. However, future success of this administrative solution may not be guaranteed. New Zealand is now one of only two countries in the top 25 organic markets exporting organic produce that is not controlled through domestic legislation or a mandated standard and the only one of those 25 markets that does not have a mandatory standard for exports.

Our export markets are increasingly requesting comparable organics regimes from trading partners to demonstrate similar outcomes to their own regimes are achieved. For example, the new European Union rules require that from 2026, imports of organic products either have to be certified to its rules or be imported from a country recognised by the European Union as equivalent under a trade agreement.

It is difficult to demonstrate equivalent outcomes when our system is voluntary, while other trading partners' organic production is controlled through legislation, putting New Zealand in a weaker position when entering negotiations with our trading partners.

The risks to New Zealand’s reputation in the event of failure of our organic export claims are high. The graph below shows the at-risk export revenue (the orange sections of the 2019-2023 estimates) is approximately \$16 million per annum if market access for New Zealand organic products was lost to the United States, requiring those products to enter the market as conventional products. For the European Union, the total potential loss in value is \$22 million per annum. This loss is estimated assuming that those exported products would not go to another market (i.e. loss of organic premium), however, as the organics sector is growing worldwide it is possible that some exports would be redirected to other markets.

Graph 1: Forecast of potential losses, should market access to the United States and European Union be lost for organic products exported through the OOAP



More widely, failure to provide effective assurance on our organic claims has the potential to also affect New Zealand’s wider reputation as a competent authority that has oversight over its industries. Trading partners may lose confidence in claims on non-organic products.

2.4 Are there any constraints on the scope for decision making?

Cabinet has approved drafting of an Organic Products Bill.

2.5 What do stakeholders think?

Stakeholders were consulted from 14 May – 11 June 2018. Consultation was widely publicised through the MPI website, press releases, social media, newspaper adverts, and emails, with the assistance of representative organisations and interested parties that forwarded the information on to their members. Meetings were held with:

- key representative groups (Food and Beverage Forum, Dairy Products Safety Advisory Council, OANZ, Organic Exporters Association New Zealand);
- Te Waka Kai Ora and OrganicFarmNZ; and
- public meetings in 10 locations across the country (Wellington, Dunedin, Christchurch, New Plymouth, Whangarei, Auckland, Napier, Hamilton, Nelson and Tauranga).

208 submissions were received from the following groups:

| Submitter type | Number |
|-------------------------------------|--------|
| Small organic businesses | 76 |
| Large organic businesses | 63 |
| Consumers | 40 |
| Sector and consumer representatives | 23 |
| Consultants | 11 |
| Retailers | 6 |
| Organic certification bodies | 5 |
| Other groups | 13 |

Note: business size estimation based on the following criteria:

- “small” businesses: 5 FTE or less, and/or local sales (gate sales, self-identified “small” businesses)
- “large” business: 6+ FTE and/or exporters

Note: The numbers above add up to more than the total of 208 submissions because some submitters identified as being in more than one category. More than half of the submissions came from businesses that are currently certified.

As part of that consultation, stakeholders were asked about their thoughts on the current regime for organics and anything that needed to change. The consultation document was set at a high level, and did not consult on specific administrative approaches to implementing mandatory organic standards, such as certification. Submitters’ responses are likely to be based on the assumption that regulation would largely replicate the existing certification approach. Stakeholders will have an opportunity to give feedback on the administrative approach at Select Committee.

2.5 What do stakeholders think?

Of the submissions, 177 (85%) supported a change in the way organics are currently regulated, saying that the current regime lacks clarity, causes confusion amongst consumers and producers and is hindering the growth of the organic sector.

Submitters who supported a change thought that increasing consumer confidence (132) and supporting trade (90) were key outcomes of a new regime. Levelling the playing field (45) and growing the sector were also identified as being key objectives.

However, 64% of submitters also stated support for a flexible regime that caters for businesses of all sizes, particularly to reduce compliance costs for small businesses.

A very small subgroup of submitters (3%) supported the status quo as they considered that the current regime is adequate and the costs of other options would be unjustified. A number of submissions identified the introduction of new costs and administrative requirements as key negative impacts of implementing a new regime.

12% of submitters did not comment on whether they supported a change in the way organics are regulated or not.

The consultation document was emailed to the Federation of Māori Authorities and Te Waka Kai Ora. We received one written submission from a Māori representative group – Māori Organics Aotearoa, Te Waka Kai Ora. This organisation oversees an indigenous verification and validation system (Hua Parakore) for mahinga kai, which places importance on philosophies of tradition, environmental and cultural sustainability, and has overlapping, but not identical, values with organics. The Authority believes that its values cannot be regulated.

Section 3: Criteria and options identification

3.1 What options are available to address the problem?

The following options were considered for government intervention:

- A voluntary national standard (enhanced status quo)
- A mandatory national standard for some organic businesses only
- A mandatory national standard for all organic businesses

Option A: A voluntary national standard

This option would be similar to the status quo in that it would remain voluntary for businesses that make organic claims to meet a standard or to become certified. Existing private and public standards would continue to exist and be used. Organic claims would continue to be regulated under the Fair Trading Act.

Government intervention would consist of encouraging businesses to follow an existing organic standard by ensuring standards are up to date, readily available to domestic producers, and internationally recognised. For example, the current voluntary public organic standard (New Zealand Standard 8410 – Organic Production) could be reviewed and updated to align with current practices and foreign market requirements. The fee

businesses currently have to pay to access this standard could also be removed to encourage its uptake.

The government would also promote the benefits of existing private and public standards, as well as independent certification. Education campaigns would be run to improve consumers and businesses understanding of organic claims and practices, as well as the meaning of private certification schemes and public standards.

This option would provide increased clarity about what the government considers to be acceptable organic practices. As using the standard would remain optional, businesses would continue to be able to choose whether to be certified against an organic standard or not, and which organic standard they wanted to be certified against. This would continue to allow businesses to make organic product claims, without having to be certified.

Option B: A mandatory national standard for some organic businesses

Under this option, a mandatory national organic standard would be developed. Mandatory would mean that relevant businesses would be required to meet the standard if they wished to market products as organic. Under this option, while relevant organic businesses would be required to follow this standard, carve outs could be created for some businesses. For example, larger businesses or businesses not selling directly to consumers would 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 for whom the standard should and should not be mandatory.

The standard would be set in legislation to ensure it was mandatory for those who fell within the scope. This would also mean that a compliance regime would need to be set in legislation, which would require those businesses that would fall within the scope of the national organic standard to prove that they comply with the standard in order to be able to make organic claims.

Under this option, the government would have greater oversight over the sector, and there would be increased clarity about what the Government considers acceptable organic practices. There would also be increased certainty for consumers that organic products meet a standard.

Option C: Mandatory national standards for all organic businesses

This option is similar to option B in all respects, except that all organic businesses would be required to meet national organic standards. This would mean that any organic products falling under the scope of the national standards would need to follow the same production methods and use similar inputs set by the standards.

This approach would be in line with international approaches to managing organic products. The standard would be set in legislation to ensure it was mandatory, and would also have an associated compliance regime to ensure that all businesses met the standard.

Under this option, the government would have greater oversight over the sector, and there would be increased clarity about what the Government considers acceptable organic practices. There would also be increased certainty for consumers that organic products meet a standard. Businesses could only make organic claims if they were approved as meeting the national standards.

Amendments arising from consultation

The following table summarises stakeholders' views on the options consulted on. Sixty-five per cent of consumers supported mandatory standards for all businesses, with 85 per cent of businesses and 100 per cent of retailers who submitted also in favour.

| | Consumers | | Businesses | | Retailers | | All submissions | |
|--|-----------|------------|------------|------------|-----------|-------------|-----------------|------------|
| Should a standard be voluntary or mandatory (preferred option in bold)? | | | | | | | | |
| Voluntary | 1 | 3% | 4 | 3% | 0 | 0% | 6 | 3% |
| Mandatory for some | 0 | 0% | 1 | 1% | 0 | 0% | 1 | 0% |
| Mandatory for all | 26 | 65% | 112 | 81% | 6 | 100% | 158 | 76% |
| Other or not stated | 13 | 33% | 22 | 16% | 0 | 0% | 43 | 21% |
| Total | 40 | 100% | 139 | 100% | 6 | 100% | 208 | 100% |

No amendments were made to the options as a result of consultation.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

The following criteria for assessing the impact of the three options are based on the opportunities to improve the system, with consideration of the ease of implementing the changes:

- Is the option effective at providing certainty for consumers?
 - The option is easy for consumers to understand
 - Consumers are confident in organic claims
 - Consumers are confident organic claims are substantiated
 - Consumers know that decision making is consistent and impartial
- Is the option effective at providing certainty for organic businesses?
 - Organic businesses will face simple choices
 - Costs will be known and predictable
 - The option bears similarities to/could align with other regulatory regimes
 - The option keeps disruption to current practices and/or relationships to a minimum
- Is the option easy for organic businesses to understand and implement?
 - Arrangements are as simple as possible
 - Arrangements are fair and equitable
 - Costs are proportionate to the benefits
- Is the option effective at facilitating trade in organic products?

- The option is similar to other countries' approaches
- The option provides sufficient oversight for other countries to be confident in its robustness
- The option treats all organic businesses equally, regardless of whether they are domestic or overseas businesses

3.3 What other options have been ruled out of scope, or not considered, and why?

Other options that were considered were:

- non-regulatory options, such as improved education for consumers or a common code of practice established by the sector; and
- an export-only standard that would set mandatory requirement for all products being exported, but would not apply to products being sold within New Zealand.

These options were discarded early on as it was considered they would be unlikely to meet the objectives. Non-regulatory options would not provide the certainty and oversight needed to facilitate trade. An export-only standard would not increase domestic consumer confidence or provide business certainty within New Zealand, and would not facilitate trade, particularly as New Zealand would still be an outlier by not having a standard for its domestic market.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

4.1 Options for approach

| | Option A: Encourage the uptake of the current national voluntary standard (enhanced status quo) | Option B: A mandatory standard for some organic businesses | Option C: A mandatory standard for all organic businesses |
|---|--|---|---|
| Provides certainty for consumers | <p>0</p> <p>Would not increase certainty for consumers compared to the status quo. Organic claims would continue to reflect inconsistent production methods, as following a standard would remain voluntary.</p> | <p>0/+</p> <p>Would be an improvement on the status quo, as some products would meet the requirements of a single standard. However, there would still be uncertainty for consumers as not all producers would be subject to the standard.</p> | <p>+</p> <p>Would provide increased certainty for consumers compared to the status quo as all products labelled as organic would meet the same standards. If some businesses continue to be certified against private standards in addition to meeting the new standards, this could lead to uncertainty for some consumers.</p> |
| Provides certainty for organic businesses | <p>0/+</p> <p>May increase certainty for businesses in understanding what the government considers as organic production methods. However, it would remain optional for businesses to meet a standard, and there would continue to be a variety of public and private standards to choose from.</p> | <p>+</p> <p>Would likely increase consistency amongst big players, compared to the status quo. Businesses of a similar size or category would be subject to similar requirements.</p> <p>Provides increased clarity on what the Government considers as organic. However, it does not necessarily meet the needs of smaller organic businesses</p> | <p>++</p> <p>Would provide increased clarity and certainty for businesses, compared to the status quo.</p> |

| | | | |
|---|---|---|--|
| <p>Is easy for organic businesses to understand and implement</p> | <p>0</p> <p>A single business may continue to have to comply with several private and export requirements. It would remain unclear what could be considered as 'organic' if the product was not meeting any standard.</p> | <p>-</p> <p>It would not be clear to businesses which businesses the standards would apply to.</p> | <p>++</p> <p>Would be clear and easy for businesses to understand what the Government considers as organic, as all businesses would be required to meet the same standards.</p> |
| <p>Facilitates trade in organic products</p> | <p>0</p> <p>Existing regime is voluntary so this would be no change from the current status.</p> <p>However, key trading partners are increasingly requiring countries they trade with to have mandatory domestic regulations for organics. Using voluntary organic standards could hinder trade in the future, and possibly stop New Zealand from maintaining existing market access.</p> | <p>0/+</p> <p>Imposing requirements on some businesses would increase government oversight of the sector, and might be sufficient to retain existing trade arrangements, which is an improvement from the status quo. However, it is unlikely to put New Zealand in a better position to negotiate new market access as we would still not have oversight of all organic claims and products in New Zealand. This would not align with World Trade Organisation requirements for equal treatment, as all importers would need to meet the standard and compete with domestic businesses not required to meet the standard.</p> | <p>++</p> <p>Would put New Zealand 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 having domestic regulation for organics could support negotiation for more secure market access.</p> |
| <p>Overall assessment</p> | <p>This standard already exists but it is not used. Promoting its uptake would result in another voluntary standard competing with the existing range of standards that are used. This would not improve on the status quo and may create more uncertainty not less. In addition, it would</p> | <p>This option would result in an improvement in the status quo, but there would still be issues to manage associated with who must comply and who does not have to, and ensuring the</p> | <p>This option is preferred, as for almost all criteria, it is a significant improvement on the existing system compared to option 'B'. This option will also only have a marginal further impact on costs to</p> |

| | | | |
|--|--|---|---|
| | likely hinder negotiation with trading partners in the future. | system aligned with international expectations. | government and businesses, but will result in significantly greater benefits. |
|--|--|---|---|

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

4.2 Given the preferred option, what options are possible for decision making?

There are two options available for setting the level at which decisions are made about whether organic businesses comply with mandatory standards: third party approval or government approval.

Option A: Third party approval is an approach where third party agencies check compliance of operators, and decide whether they comply or not. The business would then be able to market products as organic. This would be consistent with how other countries usually regulate organics, with government oversight of the third party agencies to ensure processes are robust and decision quality is maintained at a high level.

Option B: Government approval would replicate existing regulatory models for other food related regimes administered by MPI, with closer government scrutiny of organic businesses. Third party agencies would still check compliance but would not make the final decision whether organic businesses are complying with the standards.

| Criterion | Option A: Third party agencies make certification decision | Option B: Government makes approval decision |
|---|--|--|
| Provides certainty for consumers | <p style="text-align: center;">+</p> <p>Consumers will only be able to purchase certified products, increasing certainty that products labelled organic are actually organic.</p> | <p style="text-align: center;">++</p> <p>Consumers will only be able to purchase approved products, increasing certainty that products labelled organic are actually organic.</p> <p>A higher level of government oversight of compliance activities will ensure that decisions on compliance are made in a consistent and impartial manner, which is likely to increase consumer confidence in organic claims.</p> |
| Provides certainty for organic businesses | <p style="text-align: center;">0</p> <p>Existing certified businesses would see little difference in their current relationships with third party agencies who already carry out both compliance checking and approving the business for organic products.</p> | <p style="text-align: center;">0</p> <p>Existing certified businesses would see changes in their current relationships with third party agencies as any continuation of certification would be optional.</p> |
| Easy for organic businesses to understand and implement | <p style="text-align: center;">0</p> <p>Businesses who are not already certified would need to develop a relationship with only one agency.</p> <p>For businesses who already have a relationship with MPI through the food system are likely to see little difference.</p> | <p style="text-align: center;">-</p> <p>All businesses would need to understand the new role of, and increase their interactions (and costs) with the government to ensure they achieve approval. For businesses who do not already have a relationship with government, the transition would be more difficult. However, for organic food businesses who already are already registered with MPI, the transition is likely to be easier as they already operate in a similar regime.</p> |
| Facilitates trade in organic products | <p style="text-align: center;">0/+</p> <p>Similarity to other countries' certification regimes may facilitate recognition by other countries.</p> | <p style="text-align: center;">+</p> <p>Not using third-party certification like international organics regimes may not facilitate recognition by other countries any more than the status quo</p> |

| | | |
|--------------------|--|---|
| | If third party agencies' oversight of organic businesses is ineffective resulting in breaches of the organic standard in exported products, this option may pose risks to New Zealand's reputation extending beyond organics | Increased oversight of the entire organics sector would enable the administering department to manage any concerns from trading partners. This would provide protection for New Zealand's reputation extending beyond organics |
| Overall assessment | This option, while requiring fewer changes and could be administratively simpler for organic businesses, would provide less protection to New Zealand's trading reputation, extending beyond organics. | This is the preferred option. While it could be more administratively complex than option A for all parties, it provides greater government oversight of businesses, which is likely to lead to greater protection for New Zealand's trading reputation and increased confidence in claims for consumers. |

4.3 Preferred option

Overall the preferred option is option B. While option A requires fewer changes for businesses and is administratively simpler for organic businesses not interacting with MPI already, it would also provide less protection to New Zealand's trading reputation, which extends beyond organics. Option B, while more administratively complex than option A for organic businesses not already interacting with MPI, provides greater government oversight of businesses, which is likely to lead to greater protection for New Zealand's trading reputation and increased confidence in claims for consumers. Option B is also likely to lead to greater consistency in decision making when approving businesses to make organic claims. Either option would be relatively easy for government to administer.

4.4 What approach to cost recovery should be used?

Two options have been considered for cost-recovering government services relating to organics. Option A is to cost recover from all those who create risks or derive benefits from an organic regime, regardless of their approval status. Services such as approval would be fully cost recovered from those organic businesses accessing the services, while compliance, development of the standard and enforcement would be cost recovered from all those who benefit or create risks.

Option B is to cost recover only from businesses which are approved. Services such as approval would be fully cost recovered from those organic businesses accessing the services, while compliance, development of the standard and enforcement would be cost recovered from the approved businesses.

| | Option A: Cost recover from all who create risks or derive benefits | Option B: Cost recover from only approved organic businesses |
|---|--|--|
| Provides certainty for consumers | 0 This would have no effect on consumer certainty | 0 This would have no effect on consumer certainty |
| Provides certainty for organic businesses | + | + |
| | All those who create risk or derive benefits from an organics regime would know they can be cost-recovered from. | All approved businesses would know they will bear the cost of regulation |
| Easy for organic businesses to understand and implement | + | - |
| | Easy to implement. Organic businesses using individual government services such as approvals would pay for those services. Actions such as the cost of compliance, developing standards and enforcement would be shared among all businesses that benefit from the regime. As it captures more businesses for the same cost, the cost per business could be lower than option B. | Easy to implement. Approved businesses might find it difficult to understand why they are bearing the costs of the regime while others operating in the organic regime benefit without bearing costs. The costs could be shared across fewer businesses than option A while costing the same, raising the costs for approved businesses. |
| Facilitates trade in organic products | + | - |
| | Equal treatment of all organic businesses would minimise complaints from trading partners. | Exceptions from contributing to the cost of an organics regime could give rise to complaints from trading partners that domestic organic businesses are being treated more favourably than importers. |
| Overall assessment | This is the preferred option. Cost recovering from all who generate risks or derive benefits would be easier for organic businesses to understand, while | Cost recovering from only approved businesses would be harder for organic businesses to understand, and could |

| | | |
|---|---|---|
| | facilitating trade. It would not impact consumer certainty. | give rise to complaints of unequal treatment for importers by our trading partners. |
| 4.5 Preferred option | | |
| <p>Overall the preferred option is option A. Making organic claims is an opt-in regulatory regime. Organic businesses are only subject to regulation if there is a mandatory organic standard for the products which they produce, and they describe their products as organic. They can still use organic production methods without being subject to cost recovery, provided that they do not describe products as organic.</p> <p>Option A is more equitable and efficient than option B as it ensures all businesses that use or benefit from aspects of the regime pay for those services, rather than having government approved organic businesses cover the costs of non-approved businesses.</p> | | |

Key:

- ++ much better than the status quo
- + better than the status quo
- 0 about the same as the status quo
- worse than the status quo
- much worse than the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Overall, the preferred option is to develop mandatory standards that apply to all organic businesses. This option is preferred because it will provide the greatest clarity about what is considered organic, as well as certainty to businesses and consumers about the standards organic products need to meet. As it will apply to all organic businesses implementation, and it is also in line with international regimes for managing organics and so will facilitate trade.

Seventy-six per cent of submitters supported the introduction of a mandatory standard for all. Most submitters supporting this option were certified businesses and sector representatives. It was felt that despite the potential to reduce innovation and introduce costs, this option would best increase consumer confidence and facilitate the trade of organic products.

As the current system in New Zealand has worked to date, the proposal for a new regime is based on the current system of standards and checking compliance against the standard. However, in making compliance with the standards mandatory, it would incorporate the aspects of the current system into legislation.

Assuming mandatory standards, the next preferred option is that the relevant ministry approves organic businesses is preferred. Government approval provides greater government oversight of businesses, which is likely to lead to greater protection for New Zealand's trading reputation and increased confidence in claims for consumers. It is also likely to lead to greater consistency in decision making when approving businesses to make organic claims.

It would be more equitable and efficient to cost recover from all organic businesses as it ensures all businesses that use or benefit from aspects of the regime pay for those services.

5.2 Summary table of costs and benefits of the preferred approach

| Affected parties | Comment | Impact | Evidence certainty |
|------------------|---------|--------|--------------------|
|------------------|---------|--------|--------------------|

Additional costs² of proposed approach, compared to taking no action

| | | | |
|-------------------|---|--|--------|
| Regulated parties | Verification costs <i>Currently certified businesses</i> These are currently being checked against private standards already, which will continue. | Low | Medium |
| | <i>Currently uncertified organic businesses</i> Being checked against the standard will be a new ongoing cost to businesses that are not currently | From \$350 (group certification) to over \$2,500 (exporters) per year. | Medium |

| | | | |
|--|--|---|--------|
| | certified as organic. | | |
| | Changes to business practices to comply with the new standard | | |
| | Currently certified businesses | Low | Medium |
| | Currently uncertified organic businesses | Medium | Medium |
| | Ministry approval | | |
| | The proposed approach is for the administering department to take responsibility for approving businesses. This would likely be a one-off approval. One-off charges would be charged at an hourly rate, consistent with other regimes. The cost of services would depend on the complexity and time taken. | \$135 per hour ³ | Medium |
| | <i>Importers</i> | | |
| | Importers would need to be approved to ensure their products either meet the mandatory standard, or a standard deemed to be equivalent | Low | Medium |
| | Compliance activities | | |
| | Government could recover the costs of services related to the implementation of the standards, compliance activities and negotiating market access from organic businesses. | 0.1-0.3 cents per dollar of goods produced ⁴ | Low |
| | Recognised agencies | | |
| | Recognised agencies may have to hire more staff to improve their capacity to meet any increased demand. | Medium | Medium |
| | Market adjustments to regulation may lead to clients shifting between recognised agencies. | Medium | Medium |
| | Other activities | | |
| | One-off services such as issuing export assurances and assessing case-by-case exemptions would be charged on an hourly basis by the relevant body. | \$135 per hour | High |

³ Based on current MPI charges

⁴ Based on cost of regulation ranging from \$0.6 million to \$2 million, and gross value of exports and domestic production of organic products of \$600 million (2017 estimates)

| | | | |
|---------------------|---|--------------------------------|--------|
| Regulators | <p>Administrative costs</p> <p>Administering departments would need to develop and administer standards, approve third parties to become recognised agencies, approve businesses to trade in organics, manage information related to the legislation, and ensure overall compliance with the regime. Many of these services could be cost recovered.</p> | Medium | High |
| | <p>Establishment costs for ministries without pre-existing approval functions</p> <p>Some administering departments may need to set up functions to be able to carry out activities such as approving organic businesses, and compliance and enforcement.</p> | \$350,000 (estimated) | Low |
| | <p>Prosecution actions</p> <p>Administering departments will also bear the costs of prosecution actions.</p> | Medium | Medium |
| Consumers | <p>Costs passed on</p> <p>Costs to organic businesses are likely to be passed on to consumers, although efficient markets would limit the extent of the proportion of costs passed on.</p> | Low | Medium |
| Other parties | <p>Third parties that wish to become recognised agencies under the regime would need to meet the requirements to be approved by MPI. However they may recover these costs through the fees charged to businesses.</p> | \$50,000–\$60,000 ⁵ | Low |
| Non-monetised costs | <p>Some unapproved producers may exit the organic market and imports of unapproved organic goods may also decrease, leading to reduced choice</p> | Low | Medium |

Examples of who may bear costs

| | Verification cost | Ministry approval cost | Change to business practices | Administration costs (could be cost recovered) |
|--------------------------------|-------------------|------------------------|------------------------------|--|
| Currently uncertified business | √ | √ | √ | |
| Currently certified business | | √ | | |

⁵ Estimated range provided by a stakeholder

| | Verification cost | Ministry approval cost | Change to business practices | Administration costs (could be cost recovered) |
|---|-------------------|------------------------|------------------------------|--|
| Service provider to organic businesses (opt-in) | √ | √ | | |
| Importer | | √ | | |
| Existing recognised agency | | √ | | |
| New recognised agencies | | √ | √ | |
| Regulator | | | √ | √ |

| Expected benefits of proposed approach, compared to taking no action | | | |
|--|---|----------------------------|--------------------|
| Affected parties | Comment | Impact | Evidence certainty |
| Regulated parties | <p>Organic businesses</p> <p><i>Streamlined organic requirements</i></p> | Low | Medium |
| | <p><i>Reduced liability risks for businesses making organic claims.</i></p> <p>Increased sales; a quarter of people who currently don't buy organic produce are willing to buy organic products if they can trust the claims made, and a third of people who currently do buy organic products are willing to buy more if they can trust the claims made; and</p> | 10% increase in sale price | Medium |
| | <p><i>Increased prices for organic products</i></p> <p>Consumers are willing to pay up to 10% more if they can trust the products they are buying are organic. This may not translate to increased profits however if cost of production goes up due to regulation and those costs cannot be passed on.</p> | Low | Medium |
| | <p><i>Lower cost of verification</i></p> <p>Economies of scale for verifiers from increased business should lower the cost of verification for organic businesses</p> | Low | Low |
| | <p>Organic exporters</p> <p><i>Improved market access</i></p> <p>New Zealand will be more likely to be able to negotiate trade agreements with a mandatory standard.</p> | Medium | Medium |
| | | Low | Medium |

| | | | |
|------------------------|---|--|--|
| | <p><i>Simplified export requirements and reduced compliance costs</i></p> <p><i>New Zealand's current exports are protected</i></p> <p>The preservation of organic premium in our major markets (US and Europe) by preventing a loss in confidence in New Zealand organic products</p> <p>Recognised agencies</p> <p><i>Increased demand for compliance checking services</i></p> <p>Based on estimates of the number of uncertified organic businesses, which would need to be verified. This assumes all uncertified organic businesses would opt into the regime</p> <p><i>Reduced costs associated with the maintenance of private standards</i></p> <p>Recognised agencies could choose not to maintain their private standards, lowering costs, or could offer certification to their private standard in addition to the mandatory standard</p> | <p>47-53% premium on average</p> <p>18% increase in business</p> <p>Medium</p> | <p>Medium</p> <p>Low</p> <p>Medium</p> |
| Regulators | <p>Better oversight over the organics sector</p> <p>A better position to negotiate trade arrangements.</p> | <p>High</p> <p>Medium</p> | <p>Medium</p> <p>Medium</p> |
| Other parties | No significant benefits identified | | |
| Non-monetised benefits | Requiring all organic products to meet minimum standards will make it clearer to consumers that products labelled as organic must reliably meet or exceed that common standard. Consumers may have renewed confidence in purchasing organic products, and feel more empowered to make decisions based on the labelling of products. | Medium | Medium |

5.3 What other impacts is this approach likely to have?

The impacts of a new regime for organics are difficult to quantify for a number of reasons. Firstly, given that the current system is voluntary, we do not know how many uncertified organic businesses are operating, and this group will feel the greatest impact. In addition, as businesses will have the choice to label as organic and therefore comply with the standards or not label as organic, we cannot estimate the overall impact. This section therefore discusses the costs and benefits of the proposed approach on each of the major players in the system, giving monetised impacts where these are available.

Impacts on organic businesses without voluntary certification

There are currently just over 1,670 certified organic operations in New Zealand, according to the OANZ 2018 Market Report. Around 200 of those are certified through group certification, and the rest are certified through individual certification. We do not know how many uncertified organic businesses are operating in New Zealand, however the 2018 Market Report estimates that the value of uncertified organic products is at least \$104 million, one sixth of the total market. If total sales is proportional to businesses, this means that there may be an additional 300 businesses that are uncertified. If they wish to trade as organic businesses, these businesses will need to meet the organics standards, have compliance checked against them and be approved by MPI.

Organic businesses that are currently not certified but that wish to continue making organic claims would also need to:

- plan for conversion;
- develop record keeping systems to support their claims;
- create systems in accordance with the new requirements; and
- create contingency plans for when recourse to conventional solutions is not a justifiable option (for example, organic farmers in Southland are expected to have organic feed available to cope with weather events like snow).

Organic businesses which currently have no direct relationship with the administering department would have to establish systems in accordance with the new requirements, gain understanding about navigating government requirements and would not have existing interactions with government that could be used to reduce overall initial costs.

There is a risk that businesses may choose not to check compliance against the national standards and use terms other than 'organic' when marketing their products or services. Given the small size of the organics sector, this will mean that if Government cost recovers its activities, the share of costs to those in the regime may be spread across a smaller number of businesses and may be higher. Any cost recovery arrangements would require full impact assessment and public consultation prior to being put in place.

There is currently a range of private standards for organics that are managed by private organisations. The intent is to allow these standards to continue to be used if businesses choose to meet standards over and above the national organic standards (provided they still meet the requirements of the national organic standards). This would allow private certifiers to continue to use their own standards, and businesses to continue to market points of difference.

Impacts on imports

Adopting mandatory domestic standards would require all imported organic products to meet New Zealand's standards or standards we recognise as being equivalent, giving importers certainty that the products they market are considered organic in New Zealand.

Importers will also know that they are competing in a market with other similar products that must meet the same or similar requirements.

As part of implementing any mandatory domestic standard, New Zealand would notify the World Trade Organization of our intention to adopt such standards, and demonstrate that the standards are in line with international standards and are not more trade restrictive than necessary to fulfil a legitimate objective.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The preferred option is compatible with the Government's *Expectations for the design of regulatory systems*. We consider the preferred option has clear objectives that are consistent with the objectives of relevant international regimes and is aligned with other MPI related regulatory regimes. While the regime may reduce innovation by setting technical standards, it will have scope to evolve in response to changing circumstances or new information and technology for producing organics.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

To introduce our preferred option, mandatory standards, a legislative vehicle is required. An analysis of existing legislation concluded that mandatory organic standards do not easily fit within any one existing law. While existing legislation could be used, with modifications for domestic standards, the key gap remains the ability to use the standards to support the organic export industry by facilitating assurances to trading partners. It is therefore recommended to establish enabling legislation through an Organic Products Bill. A draft of the Bill will be available on the New Zealand Government Legislation website upon introduction.

The Bill is category 3 and we anticipate it will be introduced and enacted in 2020. The associated regulations will be developed and gazetted within a year of the Bill's assent.

The implementation of the legislation will be supported by a communication programme that will ensure:

- our trading partners are aware of the standards and how they align with their requirements;
- Third Party providers are aware of their obligations, MPI's licensing and compliance management arrangements and arrangements for managing the transition;
- regulated parties are aware of their obligations and the arrangements being put in place to facilitate their compliance with them;
- other ministries that may wish to promulgate organic standards are aware of the Act and its requirements on them; and
- consumers are aware of the new standards and the benefits they provide to them.

The Act will create a new power to make organic standards in regulation

To ensure the new legislation is future-proofed and can cover all types of organic products, it is proposed that the primary legislation sets the framework for the regime, and the details of any organic standards are set in regulations. As such, the primary legislation will create broad powers for regulation-making. The power will be exercised by the relevant Minister, who can recommend the making of standards (through regulations) to the Governor-General.

This means that the development of standards will be enabled for any product for which an organic claim can be made. This covers products that are produced in or imported into New Zealand and are intended for sale in New Zealand, or are New Zealand products to be exported overseas, and applies to any process involved in producing those products. Standards will also have to meet the purpose of the Act. While the power to develop organic standards will be broad, standards will need to be set for products within the scope of the Act and cannot be ultra vires.

We do not anticipate that the standards would change frequently. This is because consumers, businesses and overseas markets need the certainty that mandatory organic

standards provide. However, suitable flexibility will be built into the legislative design, for example, the use of Notices for very technical details.

What will the proposed Act look like?

As outlined above, the preferred option is the development of a new legislative regime for organics that will set standards that all organic businesses must meet, and require government approval before products can be marketed as organic.

The proposed regime will set technical standards for organic production, and an associated regime for checking compliance with those standards. Key components of the proposed new primary legislation will be:

- purpose and scope of the legislation;
- compliance;
- imports and exports;
- enforcement;
- regulation-making powers;
- cost recovery; and
- transitional arrangements.

Purpose of the legislation

The purpose of the legislation will be to ensure:

- consumers have confidence in their organic product purchase decisions;
- businesses have certainty to invest and innovate in organic products; and
- New Zealand is effective at facilitating trade in organic products.

These reflect submitters' views. Those who supported a change thought that increasing consumer confidence (63%) and supporting trade (43%) were key outcomes of a new regime. Levelling the playing field (22%) and growing the sector were also identified as being key objectives.

Scope

Internationally, standards cover a broad range of organic products, including:

- food, plant and animal products;
- aquaculture;
- products destined for animal consumption;
- fibres wood and paper;
- textile products; and
- body care products and cosmetics.

Consultation generally suggested that the scope of a standard could be wide, with 24% of submissions suggesting additions to a proposed scope of only food, plant and animal

products (the most common suggestions were aquaculture and seaweed, and health and body care products). A few submitters opposed the inclusion of aquaculture products and/or hydroponics on the basis that they are not soil-based products.

The preferred approach is to set the scope of the primary legislation wide to cover all organic products (including products outside MPI's current area of expertise, such as cosmetics, textiles and body care products). The organic standards themselves will be set in regulation. This will future-proof the legislation allowing standards to be developed, which cover different organic products as those standards become feasible to develop.

As the scope of the primary legislation will provide for regulations to set standards for organic products not within MPI's area of expertise, the primary legislation will provide for different administering departments to develop standards for and take on responsibility for different products.

All businesses that label or advertise products as organic, will need to be approved by the administering department if a standard is in place. These businesses are responsible for ensuring that the organic standards and any other requirements are complied with. However, retailers of the final pre-packaged product and businesses who are preparing or using the final product for the consumer (for example restaurants or hair salons) will not be in scope. Retailers who sell goods that are not pre-packaged or which repackage products before sale would have to be approved so that any requirements necessary to provide an adequate level of assurance of the organic integrity of products can be placed on them.

This scope covers a wide range of businesses, from those producing only organic products, to importers and exporters. It is important to note that the primary legislation will not put operational requirements or costs on businesses. This will be done through standards and regulations. While all of these businesses will be in scope of the primary legislation, requirements in the regulations around approval, verification processes, record keeping requirements, and costs will all be tailored to the risks that the business presents of misleading consumers or damaging New Zealand's trade reputation. This includes the ability to exempt businesses where any requirements would be unreasonable.

Businesses who provide a service to organic businesses, such as transportation or storage facilities, would not have to be approved but would still need to meet indirectly the requirements of the standard, through their contractual arrangements with the approved business, in order to provide these services.

Compliance

The primary legislation will require that all businesses making organic claims must meet the requirements of the relevant organic standard and be approved by the administering department.

Checking compliance

A system is proposed in order to check that businesses are meeting the requirements of the standards.

The preferred option for checking compliance is 'ongoing checks with limited exceptions', where all organic businesses would need to comply with the standards but not all (for example small businesses) would not need to be assessed to show that they were complying. While this option would impose costs on most businesses, it would allow the flexibility to ensure compliance costs would be more proportionate to the risk that products

were not produced in an organic way. This option is in line with submitters' views around providing flexibility for smaller businesses, and is similar to international approaches.

The proposal is that all organic businesses must meet the relevant organic standard and be regularly checked against the standard, however, regulations would be able to remove the requirement for checking compliance from some businesses. The proposal is also to allow for flexibility in the compliance checking regime to ensure compliance costs are not overly burdensome depending on the risk. For example, by allowing for group approval or a lower checking frequency where businesses have a good track record. The detail of the compliance checking processes will be set in regulations.

Table: Stakeholder feedback on compliance checking

| | Consumers | | Businesses | | Retailers | | All submissions | |
|---|-----------|------------|------------|------------|-----------|------------|-----------------|------------|
| How should compliance be checked (preferred option in bold)? | | | | | | | | |
| Ongoing verif. for all | 8 | 20% | 35 | 25% | 0 | 0% | 49 | 24% |
| Spot checks for all | 0 | 0% | 1 | 1% | 0 | 0% | 1 | 0% |
| Ongoing verif. for some | 13 | 33% | 73 | 53% | 5 | 83% | 100 | 48% |
| Other or not stated | 19 | 48% | 30 | 22% | 1 | 17% | 58 | 28% |
| Total | 40 | 100% | 139 | 100% | 6 | 100% | 208 | 100% |

Flexibility in administration processes of the regime

To manage the costs of the proposed regime on businesses, the Act will provide the ability to remove some of the administrative requirements of the regime, such as checking compliance, for some categories of businesses, or individual businesses. These businesses will still be required to meet the organic standards to claim that the product is organic, and be subject to enforcement measures. Any impact on imports and international obligations would be considered when removing these process requirements.

The intention is that this provision may be used to provide flexibility for businesses who pose a low risk of misleading consumers or New Zealand's reputation, for example, for very small businesses such as those selling home grown produce at the farm gate.

If used, removing administrative requirements for categories of businesses would be set in regulations, and removing administrative requirements for individual businesses would be decided on by the Chief Executive of the relevant administering department.

The following criteria would guide when administrative requirements could be removed:

- removing the requirements would be consistent with the purpose the Act;
- removing the requirements is unlikely to impact on New Zealand's reputation or result in consumers being misled;
- complying with some obligations is unreasonably burdensome and disproportionate to the benefit that the businesses might gain from it.

Record keeping and proof of compliance

Records are necessary to assess compliance against the requirements of the national organic standard. As such, primary legislation will require record keeping for the purpose of demonstrating compliance with the standard. What records and for how long they need to be kept for will need to be specified in regulations as this may change over time or differ between types of products.

Businesses will be required to provide the administering department with the results of the compliance checks issued by the third party. The administering department would maintain a register of approved businesses, which members of the public could use to check businesses are compliant, and which businesses could use to find suitable production inputs.

Third parties

The primary legislation will provide for the ability for third parties to check compliance, with Government making the final approval decision based on the recommendation of the third party. This is consistent with other regimes administered by MPI, and other organic regimes internationally. Third parties will have the skills and expertise to check compliance against a standard, although there would be an ongoing process to ensure this continues to be the case.

Regulations will set out processes and criteria to assess the third parties' competency and ability to check compliance. This ensures New Zealand's reputation is protected and businesses receive consistent advice. Processes and criteria will align with compliance requirements under other regimes administered by MPI.

Legislation will enable processes that third parties must follow when businesses are non-compliant with the regime. These will include processes to request corrective actions from the business, report an issue or make recommendation to the administering department, for example, for conditions to be placed on the business, or for approval to be suspended or withdrawn.

Imports and exports

In order to ensure that all organic businesses have the same requirements, imported and exported products, as well as domestic only products, have to meet the New Zealand national organic standard. As well as ensuring equal treatment, this will achieve two of the objectives of the regime: increasing consumer confidence in organic products and facilitating trade. If the standard was to apply only to domestic or only to imports/exports, it is unlikely these objectives would be met and New Zealand may be inconsistent with our international obligations.

The primary legislation will provide for certain imports from particular countries to have equivalency with New Zealand's organic standards and exceptions to be provided where relevant. Equivalency arrangements between countries are international best practice for organic imports and exports.

The primary legislation will also provide for circumstances where imports or exports may not be able to meet the New Zealand standard. For example, exporters may not be required to meet the requirements of the organic standards where it conflicts with a trading

partner's requirements. However products developed in New Zealand that do not meet the organic standards will not be able to be sold in New Zealand as organic.

Legislation will enable the administering department to issue official organic assurances, as there is a general trend that trading partners are requiring government to government assurances for exported products. This will be based on the design of the OOAP, a model that is currently working well for issuing organic export assurances.

All exporters will have to be approved by the administering department to export, and must notify in certain circumstances, such as where a consignment is 'rejected' by an importing country, and why. The administering department would want, from a reputational perspective, to know when a problem occurs.

Imports would be treated no less favourably than like domestically produced organic goods. For example, any cost reduction measures (such as less frequent compliance checks) offered to domestic producers must be extended to imports.

Enforcement

The organic legislation will be a proactive regime that requires businesses to justify their organic claims, and improve protection for domestic and overseas consumers.

Participation is voluntary in the sense that only those choosing to make organic claims must comply. Therefore, principles applied in designing enforcement tools were to:

- disincentivise non-compliance with the standards and misleading behaviour from businesses; and
- encourage effective participation in the system.

Sanctions recognise and reflect that the regime is primarily concerned with consumer information rather than health or safety. Where appropriate, the enforcement regime has been modelled on the Wine Act and Fair Trading Act. This includes criminal liability for fraud and misleading behaviour but not imprisonment.

Review and appeal provisions relating to the administering department's administrative and enforcement actions will be enabled as per standard principles.

Cost recovery

Services in any new organics regime should be funded appropriately. Generally, those who receive direct benefits from the services or create risks the services are designed to manage, should pay for them, with the exception of prosecution, while the Crown should fund services provided for the public good. A mandatory organics regime would benefit organic businesses and consumers, while the risks would be created by the organic businesses. On balance, the majority of costs should fall upon organic businesses.

A number of the types of government services in a mandatory organics regime are appropriate to fund through cost recovery. For example, gaining approval to claim organic status for a product directly benefits the business (private good) and should be recovered as a fee; ongoing monitoring of approved third parties helps to protect the reputation of all organic businesses (club good) and would generally be recovered as a levy.

If required, any Crown funding for the new regime would need to be provided through the annual budget process.

Proposed approach: a framework to authorise cost recovery

Costs can only be recovered where there is legislative authority. The proposed organics regime includes a regulatory framework to provide for cost recovery when appropriate. Key elements of a framework would include:

Scope

To ensure fairness, a framework would enable costs to be recovered from all those who create risks or derive benefits from an organic regime. Any subsequent regulations may prescribe a narrower group who should pay particular charges.

A requirement to contribute to the costs of the regime can also incentivise efficiency from service users. For example, charging an hourly rate to process approvals encourages businesses to submit good quality applications.

A principles-based approach

Activities that are cost recovered would be decided on a case-by-case basis, and depend on the nature of the activity, the intended policy outcomes, who can or should be charged, and the effectiveness and efficiency of cost recovery.

The organic sector is diverse. A principles-based approach would allow flexibility for a range of different and sometimes complex factors to be considered when deciding whether and how to recover costs, while also encouraging a consistent approach.

Consistent with a range of current legislation, the four principles proposed are: equity, efficiency, transparency and justifiability.

Methods

A framework should provide flexibility to choose between different cost recovery methods (e.g. fixed and variable fees, levies, use of a formula). This recognises the diverse nature of the organic sector and the government services that could be provided.

Cost recovery should be set through regulation

To achieve a robust process to put cost recovery arrangements in place, cost recovery for an organics regime would be set out in regulations.

Implementation in regulation means that any proposed charges for government services would be subject to Cabinet scrutiny, and fall within the remit of the Regulations Review Committee. Any proposals would need to provide a Stage 1 Cost Recovery Impact Statement (CRIS) during consultation and a Stage 2 CRIS for final Cabinet decisions.

Understanding the impacts of any cost recovery proposals requires a transparent approach, helping to ensure the costs (direct and indirect) are justified. In line with the standard regulation making process, a framework should include a requirement to consult with stakeholders. This will help ensure potential impacts are well understood.

Other management processes

To ensure that any cost recovery arrangements remain fair and justifiable, a three year cost recovery review period is recommended. Related to this, it is proposed that cost

recovery would be able to take account of any over or under recovery in the preceding four financial years.

A framework would include the ability to make regulations providing for exemptions, waivers and refunds. This would allow flexibility for the chief executive to relieve costs when appropriate, subject to the scrutiny of the regulation-making process.

Transitional arrangements

The proposed new regime would be implemented in stages. While the primary legislation will provide for standards to be developed for all types of organic products, standards will only be developed when they are feasible. The first standard proposed to be developed is likely to be for food, plant and animal products, including aquaculture, as the sector is already experienced in these areas, existing voluntary systems are in place and MPI has expertise to administer it.

All organic standards will be developed in consultation with the relevant stakeholders.

Implementation will allow for the transition from a voluntary to a regulatory regime to ensure minimal disruption. We anticipate that the regime will come into effect within five years for food, plant and animal products.

Transitional arrangements will allow for:

- the regime to be developed in full (including regulations) before being implemented;
- third parties to be approved in order to be able to carry out their roles under the primary legislation;
- businesses to come up to speed with the new standard; and
- the ability to set overseas market access requirements.

Relationship with other legislation

Any new regime for organic products would work alongside other regimes that those products are subject to, such as the Food Act, the Animal Products Act, the Fair Trading Act and the Biosecurity Act. Products would still need to meet any relevant requirements of those regimes.

An understanding of existing trade agreements and trade facilitating arrangements is also important to ensure that any new legislation is cognisant of any implications for trade – in particular:

- the implementation of the new NZ/China agreement for trade of organic products;
- negotiations with trading partners, such as Free Trade Agreement negotiations with the European Union, or negotiation with the United States on a bilateral equivalency agreement;
- Trans-Tasman Mutual Recognition Arrangement (TTMRA) requirements, which allow goods that can legally be sold in Australia to also be legally sold in New Zealand. As Australia also does not have national standards for organics this could undermine a new regime in New Zealand where imports are concerned;

- World Trade Organization (WTO) commitments.

MPI is currently reviewing the requirements for organic production under the OOAP, which currently covers requirements for exports of organic products to the European Union, Japan, Switzerland, Taiwan and the United States. MPI is updating and replacing the current standards with a single document called Organic Export Requirement: Organic Production Rules. The review of these export requirements ensures requirements are fit for purpose, relevant and up to date. Ensuring the export requirements are up to date may also assist in the development of a national organic standard in any future organic regulatory framework.

6.2 What are the implementation risks?

There is a risk that businesses that are currently making organic claims but are not certified to a standard will decide not to come under the proposed regime by either no longer making organic claims or using different terms. This could ultimately reduce the choice in organic products to consumers. In addition, this could increase the costs to businesses approved under the regime as the levy amount will need to be divided between fewer businesses. These risks will be mitigated partly by the additional benefits that will accrue from a Government mandated standard, as these are expected to outweigh the costs and encourage businesses to continue making claims, and partly through a proportional approach to allocation of costs and exemptions for low risk businesses.

There is a risk that by creating standards for some types of organic products but not all initially, it will not increase clarity for consumers. This risk is mitigated by proposing a wide scope for the primary legislation so that further standards could be developed if considered appropriate.

There is a risk that decisions on developing organic standards could be influenced by international processes, market requests, or by parts of the organic sector within New Zealand, and in this case, may be abused for financial gain. However, these risks are mitigated by the process for developing standards. The Minister must have consulted with stakeholders they consider will be affected. Standards will also be subject to the Parliamentary checks and balances for regulations including Cabinet decision making, and the Regulations Review Committee.

Businesses may continue to seek certification to a private standard additional to the government-mandated standard so they can continue to market points of difference. Consumer perception of a two-tier regime could create confusion for consumers and undermine the objectives of the regime. It would also likely increase costs to businesses which would be passed onto the consumer.

There is a small risk that trading partners with third party certification regimes could see the New Zealand regime as not equivalent to their own regimes, and restrict New Zealand exports. However, we consider this risk to be low as approval government will provide a higher level of oversight and protection for consumers and New Zealand's reputation.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

MPI will have oversight over the organics regime and will provide ongoing maintenance to ensure the legislation remains fit for purpose. This will include keeping the organic standard and any regulations up to date and in line with best practice. Individual organic standards will be developed and maintained by the relevant administering agency.

MPI will develop performance measures for recognised agencies to ensure the regime is effective. These may include:

- The nature and frequency of breaches by organic businesses under the oversight of the recognised agency; and
- The quality of recommendations to MPI.

Ongoing maintenance would also take into account information gathered while the regime has been in place, for example:

- the number and makeup of approved businesses on any register MPI may maintain
- the number and conduct of any third party agencies recognised by MPI
- 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 review decisions;
- information from working closely with sector representative bodies; and
- surveys of key stakeholders such as consumers, businesses and approved third parties.

7.2 When and how will the new arrangements be reviewed?

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. Any serious issues that jeopardise the purposes of the regime will prompt an earlier review.

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: Consumers have confidence in their organic product purchase decisions

- Total value of the organic domestic market
- Consumer surveys to determine changes in confidence in organic products.

Objective: Businesses have certainty to invest and innovate in organic products

- Land area farmed organically

7.2 When and how will the new arrangements be reviewed?

- Number or value of imported and exported consignments of organic products
- Business surveys to understand businesses' views, opportunities and barriers.

Objective: New Zealand is effective at facilitating 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
- Number of registered exporters of organic products.

In addition, any the experience and information gathered by any other ministry which has promulgated organic standards will be considered as part of any review.