

In Confidence

Office of the Minister of Agriculture  
Chair, Cabinet Economic Development Committee

## **PROPOSED ORGANICS REGULATIONS: RELEASE OF DISCUSSION DOCUMENT**

### **Proposal**

1. This paper seeks agreement to release the attached discussion document, *Seeking your views on proposals for regulating organic businesses in the primary sector: Approving businesses and checking compliance with organic standards*, for public consultation.

### **Executive Summary**

2. On 3 December 2018, Cabinet agreed to progress an Organics Bill [CAB-18-MIN-0592 refers] which would allow for the development of mandatory national organic standards and an associated approval and compliance regime to:
  - 2.1. increase consumer confidence in purchasing organic products;
  - 2.2. increase certainty for businesses making organic claims; and
  - 2.3. facilitate international trade in organic products.
3. The Organic Products Bill (the Bill), which is currently being considered by Cabinet for introduction, would provide a framework and allow for the development of standards and regulations for all organic products. The mandatory standards would set the rules for products described as organic, such as the production methods and any specific requirements for the products.
4. The regulations would describe the processes to be followed by organic businesses and businesses that want to supply services to those organic businesses, where there is a relevant standard in place. Organic businesses in this paper means all businesses that describe a product as 'organic' through labelling or advertising. This definition does not include restaurants and cafes, and businesses using products described as an organic product in a service provided to a final consumer (such as hair dressing services), and retailers of pre-packaged organic goods that are excluded from the Bill (Appendix One refers).
5. I seek agreement to release the attached discussion document on proposals for regulations developed under the Bill. The document covers the requirements and processes associated with the approval of organic businesses, and the recognition of third party agencies and persons that would carry out evaluations of organic management plans and verification checks in accordance with regulatory requirements.
6. The products covered by the proposed regulations would be established by an organic standard covering food, beverages, and plant and animal products, which is currently being developed by the Ministry for Primary Industries (MPI).

Other ministries may propose regulations under the Bill in the future in areas of their responsibility.

7. The attached discussion document outlines high-level proposals only. I intend to undertake further consultation on the details of the regulations and the first organic standard later this year.

## **Background**

8. In New Zealand, products labelled as organic must meet the requirements of the Fair Trading Act 1986 (for example, not making misleading or deceptive claims about organic status). Businesses producing organic products can choose to be certified to a range of private standards. This creates confusion and uncertainty for consumers, businesses and trading partners, and is out of step with international practice.
9. Internationally, the trend is towards government regulation of the use of the term 'organic'. On 3 December 2018, Cabinet approved development of a Bill to regulate organic claims [CAB-18-MIN-0592 refers]. The Bill proposes where there is a relevant standard in place, organic businesses would need to be approved in order to describe products as organic. Businesses providing services (such as transport companies) to organic businesses would not have to be approved, but would still indirectly need to meet the requirements of the standard through their contractual arrangements with the approved business, in order to provide these services (Appendix One refers). Where there is no relevant standard in place, businesses may continue to make organic claims so long as they comply with the requirements of the Fair Trading Act 1986.
10. The Bill establishes the regulatory framework for organics. It is designed to be an enabling piece of legislation covering all organic products, with many of the details of the regime in regulations. I consider that consultation on the proposed high level processes to be set in regulations, as outlined in the attached discussion document, should occur at the same time as the Select Committee's consultation on the Bill. This would enable submitters to see how the Bill and regulations would work together and make more informed responses.

## **Content of the discussion document**

11. The proposed regulations cover the following areas:
  - 11.1. the process for approving organic businesses where there is a relevant standard;
  - 11.2. flexibility within the approval process for some organic businesses;
  - 11.3. importer and exporter requirements;
  - 11.4. how third party agencies and persons would be recognised by MPI to carry out evaluations of organic management plans and verification checks of organic businesses; and
  - 11.5. whether a national logo for organic products should be developed.

12. The products covered by the proposed regulations would be established by an organic standard covering food, beverages, and plant and animal products. This is currently being developed by MPI. The discussion document does not describe the proposed content of the standard. I intend to seek agreement to consult on the draft organic standard later in 2020.
13. The following sections outline the high-level proposals and options for regulations under the Bill.
14. The options proposed in the discussion document are consistent with the feedback and preferred options identified during public consultation in 2018 on whether a national organic standard should be developed. I consider that these options would achieve the purpose of the Bill, while ensuring the regime is flexible and the costs proportionate to the overall benefits.
15. Standards for other organic products could be developed by other ministries when the prerequisites for prescribing standards, as provided for in the Bill, have been met. At that time, businesses involved in the production, labelling or advertising of those products would be consulted and would then need to meet the requirements of any approved standards.

*The discussion document proposes an approval process*

16. Under the Bill, organic businesses would need to be approved by a relevant chief executive (i.e. of the relevant ministry) before they could describe a product as 'organic' either through labelling or advertising. This differs from the current voluntary regime where third party agencies make this decision.
17. The discussion document proposes that all organic businesses should have an organic management plan, which shows how they meet the standard, and records to demonstrate compliance with the standard. The proposed regulations would identify the information that must be contained within a plan, but not the form it must take, to allow these businesses to use a format that works best for them.
18. Organic management plans would need to be evaluated by a recognised agency or person to ensure that the plan reflects the business, and that the business is complying with the plan and any other requirements (paragraphs 36-39 refer). This would usually include at least one onsite visit by the recognised agency or person. MPI's decision on whether the plan and the business should be approved would be based on the recommendation of a recognised agency or person. An organic business would be able to describe a product as organic once it has been approved.
19. Businesses, such as transporters or storage facilities, that want to provide a service to an organic business but do not themselves describe a product as organic, would not have to be approved unless they want to market their business as suitable for organic products for commercial reasons, for example.

20. These businesses that choose to be approved would have to follow the same approval process and ongoing requirements as organic businesses.

*The verification process to maintain approval could be flexible, to help manage costs to organic businesses*

21. To maintain approval, organic businesses would be verified by recognised agencies or persons to ensure they continue to meet the standard and any other requirements. The discussion document proposes three options for building flexibility into the verification process to help the costs for businesses:
  - 21.1. **option one:** all approved businesses would be verified annually, but the frequency of onsite visits may be reduced using proposed risk-based criteria (preferred option);
  - 21.2. **option two:** frequency of verification could vary (up to a maximum of once every three years) using proposed risk-based criteria, but would always require an onsite visit; and
  - 21.3. **option three:** no flexibility – all approved businesses would be verified annually with an onsite visit each time.

The first two options would help to manage costs to businesses.

22. My preferred option provides the best balance between providing assurances that approved businesses are compliant with relevant organic regulatory requirements, and minimising compliance costs.
23. The discussion document also seeks feedback on the proposed risk-based criteria, which would be used to identify the appropriate level of flexibility for how an approved business should be verified by a recognised agency or person, and how frequently it should be verified.

#### *Group approvals*

24. The cost of getting their business individually approved may be seen as disproportionate by some organic businesses. Some current voluntary schemes and overseas regulators allow businesses, which want to describe or advertise a product as organic, to be approved as part of a group and share the costs between members. The discussion document proposes to retain this option for some organic businesses, limited to producers of organic products with an annual turnover of \$200,000 or less.
25. Members of a group would assess each other's businesses against their management plans annually and provide reports to the recognised agency or person responsible for the group.
26. To ensure these schemes provide a high level of assurance that products meet the relevant organic standard, I propose a number of controls. This would include a requirement that recognised agencies or persons would conduct an onsite verification of at least 20 percent of members each year, and that they verify each member at least once every five years. MPI would approve the

group scheme and the organic plans of group members. Groups would be approved collectively, which means members would only be approved if all members of the group have acceptable outcomes.

27. The discussion document seeks feedback on whether some organic businesses should be able to be approved as a group, and whether consumers would have confidence in these organic products from businesses in a group scheme.

*Very small organic businesses and some retailers could be exempt from mandatory approval*

28. To ensure the regime is not overly burdensome on very small organic businesses, I propose to exempt these businesses from mandatory approval by MPI. The discussion document seeks feedback on this proposal and the criteria used to define very small organic businesses: for example, a very small organic business with an annual turnover of no more than \$10,000 per year might sell only home-grown produce at its gate. This approach is consistent with international regimes.
29. These businesses would still be required to meet the organic standard and have records to show how they comply. They would also be subject to random monitoring to ensure compliance. The discussion document proposes that these exempt businesses would provide MPI with their contact details and the nature of their business to facilitate monitoring and enforcement. MPI would charge these businesses for recording their details.
30. I also propose that retailers that sell bulk organic products or repackage organic products, and are not involved in processing or producing their own organic products, should be exempt from the need to be approved by MPI. As with the proposed exemption for very small businesses, exempt retailers would need to comply with the organic standard and other requirements. Retailers selling pre-packaged organic products only are excluded from the Bill (Appendix One refers), as these businesses are considered to be low risk as they are simply selling products that have been packaged and labelled by an approved organic business.

*Importers and exporters would be subject to the same approval processes as domestic organic businesses*

31. The Bill applies to importers and exporters as well as solely domestic organic businesses.
32. I propose that importers and exporters would follow the same high-level approval and oversight processes as other organic businesses, to boost consumer confidence in the regime and ensure compatibility with overseas regimes. The frequency of verification would be determined by the risk posed to consumer confidence and New Zealand's trade reputation, as is proposed for businesses supplying the domestic market only. Importers and exporters that only want to provide logistical support to an organic business would not be required to be approved but may choose to do so.

33. Although exporters would follow the same approval and oversight processes as organic businesses supplying the domestic market only, they would need to ensure that the products meet any requirements of the relevant overseas market as well as the New Zealand requirements. Recognised agencies and persons would verify exporters against all relevant market requirements (including the New Zealand requirements). Producers of export product could be part of a group scheme if these processes are accepted by the overseas market.
34. The Bill allows exporters that want to be able to supply particular markets where the requirements are different from the New Zealand standard to meet the requirements of the export market. They would not be able to sell such product within New Zealand as organic unless they also meet the New Zealand standard. This would protect consumer confidence in the domestic regime. The discussion document proposes that these exporters would not need to apply individually for an exemption from the standard. They would, however, need to identify in their organic management plan that they want to supply an export market where the requirements differ from New Zealand's.
35. The discussion document also consults on high-level processes for official assurances, which are required for some export markets. It is proposed that the process to obtain official assurances would be similar to MPI's current Official Organic Assurance Programme (OOAP), but the OOAP would be amended to align with requirements of the new regime. The OOAP provides government-to-government assurances that organic consignments meet the negotiated requirements of export markets.

*Agencies and persons would be able to apply to be recognised*

36. The Bill allows MPI to recognise agencies and persons to evaluate organic management plans and verify organic businesses. This establishes the important role of recognised agencies and persons in the proposed regime, to help ensure that organic businesses are meeting the standard.
37. Recognised agencies would manage and document the systems needed to evaluate plans and/or businesses. They would be responsible for ensuring that the recognised persons they employ remain competent and would manage confidentiality and conflict of interest issues.
38. The discussion document identifies two international standards relevant to the organics regime (ISO 17020 and ISO 17065) and proposes that agencies must be accredited to either one of these standards before they could be recognised. These standards are used both internationally for organisations assessing compliance with organic standards, and domestically for organisations carrying out assessments under other regimes, for example the Animal Products Act 1999.
39. The discussion document also identifies the competency requirements needed before a person could be recognised. These include knowledge and

understanding of the organic legislation, relevant organic production and processing methods, and knowledge of the specific requirements of group approval schemes.

*Whether a national logo for organics is desired by the sector and consumers*

40. The Bill enables a national logo for organic products to be developed. The discussion document seeks feedback on whether a national logo should be developed, and who should be able to use it. The intended purpose of a logo would be for organic businesses to use it in their marketing to indicate their product meets the New Zealand standard. Mixed feedback was received on the development of a national logo during public consultation in 2018.

*Transitioning to the new regime*

41. The discussion document seeks feedback on any transition concerns associated with the proposals. Further feedback on transitioning to the new regime would be sought as part of consultation on the details of the regulations and the first organic standard later this year.

*Some elements of the proposed regime are not covered in the discussion document*

42. The discussion document does not set out how enforcement of a national standard would work, or how costs to the regulator could be covered. Enforcement is broadly covered in the Bill. Whether infringement offences would be included in the regulations would be the subject of separate consultation later this year, along with other matters such as details of cost-recovery.
43. The discussion document does not consult on the production methods organic businesses must follow, or information they must hold to establish whether a food or beverage, or a plant or animal product is organic. MPI is developing an organic standard that would set out these processes and information, and will consult on these this year.

**Consultation**

44. The Ministry of Foreign Affairs and Trade, the Ministry of Business, Innovation and Employment, the Ministry of Health, Te Puni Kōkiri, and the Treasury have been consulted on this paper and the attached discussion document and their feedback has been included. The Department of the Prime Minister and Cabinet has been informed.

**Financial Implications**

45. The financial implications arising from the proposal to release the discussion document would be met by MPI from baseline appropriations.
46. The discussion document sets out options including mandatory compliance or approval requirements for some or all organic businesses. These options would

impose new costs, especially for organic businesses that are not currently certified to any private organic standard.

47. The discussion document indicates costs to MPI incurred through the provision of services directly to individual organic businesses would generally be charged as a fee directly to that business. Most of the fees would likely be based on an hourly rate, which is currently set at \$135 per hour for similar services in existing MPI systems. In the proposed organics regime this could include assessing applications for approval and recognition, and assessing individual requests for exemption. Other activities benefiting the whole organic sector, such as monitoring and standards development, are proposed to be recovered through a sector levy. Specific cost-recovery proposals would be consulted on later this year.

### **Human Rights**

48. I consider the proposal to release the discussion document is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Legislative Implications**

49. Cabinet is currently considering the draft Organic Products Bill for introduction.

### **Regulatory Impact Analysis**

50. The discussion document substitutes for a Regulatory Impact Assessment (RIA). The Ministry for Primary Industries' RIA Panel has reviewed the discussion document and has confirmed that it is likely to lead to effective consultation and support the delivery of a RIA to support subsequent decisions.
51. The subsequent RIA should respond to and incorporate feedback provided during consultation and more fully outline monitoring and implementation.

### **Publicity**

52. I propose that consultation on the attached discussion document should commence after the Select Committee begins its consultation process on the draft Bill, should Cabinet agree to introduce the Bill and to the release the discussion document. To provide stakeholders sufficient time to consider both the Bill and the discussion document, I propose that the consultation period for the document should extend for longer than the Select Committee's process and should be for a minimum of twelve weeks.
53. Stakeholders would be notified of the opportunity to submit on the issues raised in the discussion document through the MPI website, social media and press releases.
54. The discussion document would also be notified to the World Trade Organization (WTO) to inform the members when the consultation commences.



New Zealand could be asked questions about the proposed mandatory organics standards at the WTO Technical Barriers to Trade Committee.

55. Businesses that are most likely to be impacted by the proposals are: third party agencies and persons currently providing services similar to the recognised agency and persons roles; organic businesses that are not currently privately certified; and small organic businesses. MPI officials intend to conduct public meetings in locations where there are strong organic communities, or where there is a large base of consumers and retailers. MPI would also develop collateral to help generate engagement. One-on-one meetings with key groups would also be organised to facilitate constructive feedback.

#### **Proactive Release**

56. I intend to proactively release this paper in full.

## Recommendations

The Minister of Agriculture recommends that the Committee:

1. note the Organic Products Bill is currently before Cabinet for introduction to Parliament;
2. note the attached discussion document, *Seeking your views on proposals for regulating organic businesses in the primary sector: Approving businesses and checking compliance with organic standards*, outlines options relating to proposed regulations for an organic regulatory regime for food, beverages, plant and animal products, as enabled in the proposed Organics Products Bill;
3. note the regulatory proposals outlined in the discussion document may require amendment in line with amendments made to the Organics Products Bill during Parliamentary consideration;
4. agree the discussion document, *Seeking your views on proposals for regulating organic businesses in the primary sector: Approving businesses and checking compliance with organic standards*, be released for a minimum of twelve weeks public consultation at approximately the same time as the Select Committee's consideration of the Organic Products Bill, if the Bill is approved for introduction;
5. agree that the Minister of Agriculture has delegated authority to approve minor amendments and refinements to the discussion document before it is released;
6. invite the Minister of Agriculture to report back to Cabinet on the outcome of the consultation and any appropriate next steps.

Authorised for lodgement

Hon Damien O'Connor  
Minister of Agriculture

## Appendix One: Summary table of coverage of the proposed Organic Products Bill and associated regulations

The table below is intended as a simplified overview only of businesses potentially impacted by the proposed organic products regime. It should not be used as the sole basis for decision making or assessment purposes. For more information about the requirements and impact on different categories of businesses, please refer to the main body of this paper.

Type of business	Describing a product as organic (by advertising or labelling)?	Baseline requirements to meet (in Bill or regulations)	Flexibility provided (in Bill or regulations)
Very small producers and processors (less than \$10,000 annual turnover)	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Keep records to demonstrate how they are meeting the standard (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Do not have to be approved to operate (regulations).</li> </ul>
Producers and processors (less than \$200,000)	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Be approved (Bill).</li> <li>Maintain an organic plan and keep records (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Can be part of group approval (regulations).</li> <li>Onsite visit by recognised agency not required at every verification (regulations).</li> </ul>
Large producers and processors	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Be approved (Bill).</li> <li>Maintain an organic plan and keep records (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Verification requirements vary based on risk, complexity and compliance (regulations).</li> </ul>
Retailers selling only pre-packaged organic products	Yes	<ul style="list-style-type: none"> <li>N/a – the Bill does not apply.</li> </ul>	<ul style="list-style-type: none"> <li>N/a.</li> </ul>
Retailers selling other than pre-packaged organic products (e.g. bulk or re-packaged products)	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Maintain an organic plan and keep records (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Do not have to be approved to operate (regulations).</li> </ul>
Importers and exporters who on-sell organic products	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Be approved (Bill).</li> <li>Maintain an organic plan and keep records (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Verification requirements vary based on risk, complexity and compliance (regulations).</li> </ul>
Importers and exporters who only provide logistical services	No	<ul style="list-style-type: none"> <li>Meet the standard via contract with organic businesses (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Can choose to opt-in to become an organic business (Bill).</li> </ul>

Type of business	Describing a product as organic (by advertising or labelling)?	Baseline requirements to meet (in Bill or regulations)	Flexibility provided (in Bill or regulations)
Transporters, storage providers and other similar service providers	No	<ul style="list-style-type: none"> <li>• Meet the standard via contract with organic businesses (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>• Can choose to opt-in to become an approved organic business (Bill).</li> </ul>
Businesses preparing or using the final product for the consumer (e.g. restaurants, hairdressers)	No	<ul style="list-style-type: none"> <li>• N/a – the Bill does not apply.</li> </ul>	<ul style="list-style-type: none"> <li>• N/a.</li> </ul>
Recognised agencies and persons	No	<ul style="list-style-type: none"> <li>• Must be recognised to carry out functions and duties relating to organic compliance (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>• Can choose one of two ISO standards to be accredited to (regulations).</li> <li>• Flexibility for recognising persons within agencies (regulations).</li> </ul>