



DRAFT PROPOSALS FOR REGULATING ORGANIC BUSINESSES IN THE PRIMARY SECTOR

Approving businesses and checking
compliance with organic standards

DRAFT

Disclaimer

While every effort has been made to ensure the information in this publication is accurate, the Ministry for Primary Industries does not accept any responsibility or liability for error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information.

Overview

The Ministry for Primary Industries is releasing draft proposals designed to establish how organic food, beverages, and plant and animal products are regulated in New Zealand. We are not seeking any feedback on these proposals at this time. This discussion document is for your information only. We intend to formally seek your views on these proposals at a later stage.

We have released these proposals to help inform your response to new legislation for all types of organic products that is currently before Parliament. This new legislation is set out in the Organic Products Bill, currently being consulted on by the Primary Production Select Committee.

Proposals

For being approved to make organic claims

This document sets out a proposed process that all organic businesses, including importers and exporters, must follow in order to be approved by MPI to make organic claims.

Our proposals include requiring businesses to:

- » have an organic management plan that demonstrates how they will comply with the requirements (section 3.2.1);
- » have that plan evaluated and their actual operations verified (section 3.2.2);
- » apply to MPI for approval (section 3.2.3); and
- » have their operations verified on an ongoing basis to ensure they remain compliant (section 3.2.4).

To mitigate costs to businesses

To help mitigate the costs of these requirements where possible, we propose:

- » that either the frequency or the nature of verification could vary depending on the risk and the performance of the business (section 3.3);
- » criteria for assessing the risk and performance of businesses (section 3.3.1);
- » that small organic businesses (with less than \$200,000 annual turnover) who produce organic products could be approved and verified as a group, in order to share the costs and to learn from and support each other (section 3.4); and
- » that very small organic businesses with less than \$10,000 annual turnover would not have to be approved by MPI. However, they would still need to meet the organic standard and let MPI know that they are an organic business (section 5.1).

For being able to evaluate plans and verify businesses

While MPI will approve businesses, evaluation of plans and verification of businesses will be done by agencies and persons recognised to carry out those roles for organics. This document outlines:

- » proposals for competency requirements that agencies and persons must have in order to apply for these roles (section 6);
- » that agencies should be accredited to either ISO 17065 or ISO 17020 (section 6.1);
- » that recognised persons should have knowledge of organic production and the organic legislative requirements, as well as skills relevant to the role they will be performing, i.e. evaluation or verification (section 6.2).

In addition, this document also discusses whether a national logo for organic products should be developed, and who could use that logo.

1 Background, context and purpose

1.1 Background

Consumers in New Zealand and overseas are becoming increasingly interested in the products they purchase and how these have been produced. New Zealand's organic sector has been growing rapidly since the 1990s. By 2017, New Zealand's organics sector was estimated to be worth \$600 million annually, with \$355 million in organic exports and \$245 million in organic products sold domestically.¹

New Zealand currently protects consumers of organic products through the Fair Trading Act, which requires that producers are able to substantiate claims they are making about their products. Some overseas markets require specific organic assurances before organic producers can send their products overseas. MPI runs the Official Organic Assurance Programme (OOAP), which involves certifiers checking that those producers have followed a set of rules. However, there is no mandatory requirement to follow a defined set of rules in order to make organic claims domestically in New Zealand.

In May 2018, we asked New Zealanders whether they thought New Zealand would benefit from new organic regulation. The majority of people who responded to our consultation document supported a change in the way organics are regulated (85%), and stated that organic businesses should meet a mandatory national organic standard (76%).

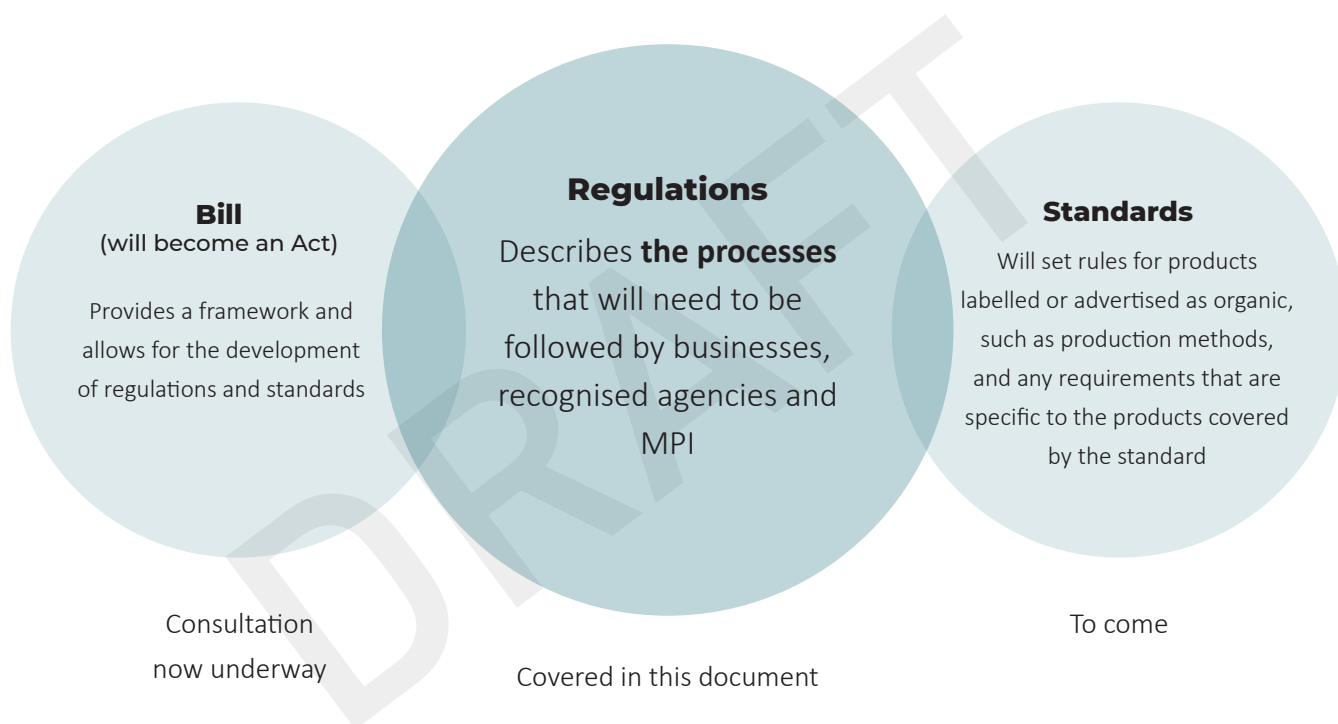
In December 2018, Cabinet agreed to progress an Organic Products Bill, which would allow the development of national organic standards and an associated verification and compliance regime, to:

¹ "2018 New Zealand Organic Sector Market Report." Commissioned by Organics Aotearoa New Zealand, 2018, www.oanz.org.

- » increase consumer confidence in purchasing organic products;
- » increase certainty for businesses making organic claims; and
- » facilitate international trade in organic products.

1.2 Where are we at in the process?

Introducing a mandatory standard for organics will involve three different legislative instruments: a Bill, regulations and organic standards. This document focuses only on the regulations. The diagram below outlines the difference between them.



1.2.1 The Bill and the standards

The Organic Products Bill is a draft legal framework that will allow for the development of regulations and national organic standards once it has been passed by Parliament and enacted as law (an Act of Parliament). The Bill covers the development of organic standards and requirements for all organic products, and all of the businesses involved in their production through to sale (with the exception of retailers of pre-packaged products).

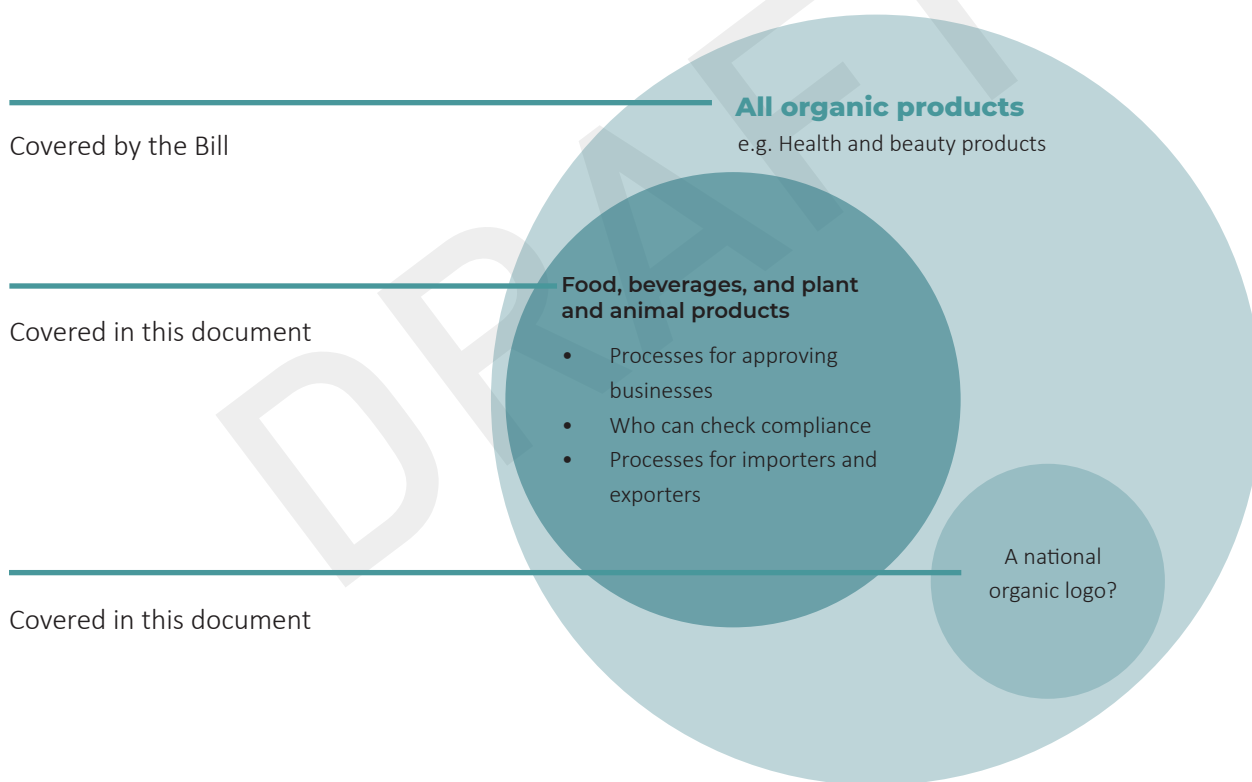
The Bill can apply to any type of organic product, but only once specific regulations and standards for that product are in place.

The regulations will set out in detail how the regime will work, including the processes that businesses, recognised agencies and persons², and MPI will need to follow.

The Bill is currently being consulted on by Parliament’s Primary Production Select Committee. You have the opportunity to make a submission on the draft of the Bill until 28 May 2020. To read and comment on the Bill, please visit:

https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_94967/organic-products-bill

While the Bill applies to all types of organic products, these proposals set out the requirements and detailed processes that will apply to organic food, beverages, and plant and animal products.



We are yet to develop the national organic standard. Throughout this document, ‘organic’ is used to describe products made or grown using production methods that will be specified in the national standard. We expect that it will focus, for example, on matters including the use of organic production methods such as the use of on-farm nutrient recycling (e.g. compost), non-chemical methods for managing pests and diseases, and not using genetically modified organisms.

² In the Bill, recognised agencies and persons and classes of persons are sometimes referred to collectively as ‘recognised entities’.

1.3 What does this document cover?

This document sets out draft proposals for the content of the regulations only. As outlined above, the proposals for regulations will provide the detail of how the regime works, and what businesses will need to do to be able to make organic claims. These processes will apply to all businesses that produce, process, handle, transport, import and export organic products. However, they do not apply to businesses who use the organic product for the final consumer, such as restaurants, or to retailers of pre-packaged products.

When reading the proposals, bear in mind that they sit within the wider context of the Organic Products Bill, which provides other tools, such as the ability for businesses to have decisions reviewed, and for the relevant ministry to carry out enforcement.

The proposals set out in this document reflect how the Bill is currently drafted. It is therefore important to note that the Bill may change following Select Committee's review, and as a result, the proposals in this paper would be revised to reflect the changes to the Bill.

Additional standards, such as for health and beauty products, may be developed over time and once those standards are in place businesses producing these products will fall within the scope of the new regime. While the regulations that sit with those standards will be developed at the time, we anticipate they will largely follow the same process set out in this document.

1.4 What we think the regulations should achieve

Through this document we have evaluated the proposals against what we think the proposed regulations should achieve.

The regulations should support the objectives of the Bill to:

- » increase consumer confidence in purchasing organic products;
- » increase certainty for businesses making organic claims; and
- » facilitate international trade in organic products.

We consider that the regulations should balance meeting the objectives of the Bill with ensuring that:

- » the regulatory regime is simple to understand and administer;
- » the regime has flexibility; and
- » costs to businesses and consumers are proportionate to the overall benefits.

2 Introduction

The Bill currently before Select Committee requires that any business labelling or advertising a product as organic must first be approved by the relevant ministry. This document sets out the process that businesses must go through to get that approval.

In this document, we use the term 'organic businesses' to mean all of the businesses that the Bill requires to be approved by MPI. This means all businesses who are labelling or advertising a product as organic, but does not include retailers only selling the final pre-packaged product who are exempt from the Bill. Organic businesses are responsible for ensuring the regulations and the organic standard are complied with. This does not include businesses who are providing a service, such as transport or storage of organic products, on behalf of another business. However, while those businesses will not be required to be approved, they will still need to meet the organic standard if they are handling organic products on behalf of another business. Businesses providing a service could also opt to be approved if they wish to, for example to market their own business as suitable for organic products. Businesses who opt in would need to follow the same approval process.

The majority of respondents to our 2018 consultation stated that they would prefer ongoing compliance checks, with limited exemptions for some businesses. The proposals in this document are based on that response, and include a baseline process for checking compliance that we anticipate most businesses, including importers and exporters, will follow. We are also proposing a number of ways flexibility could be provided for different types of businesses within the organics sector.

2.1 Which bits are most relevant to me?

This document seeks feedback on many different aspects of the proposed organics regime. The table below attempts to highlight which parts we believe are most relevant to you.

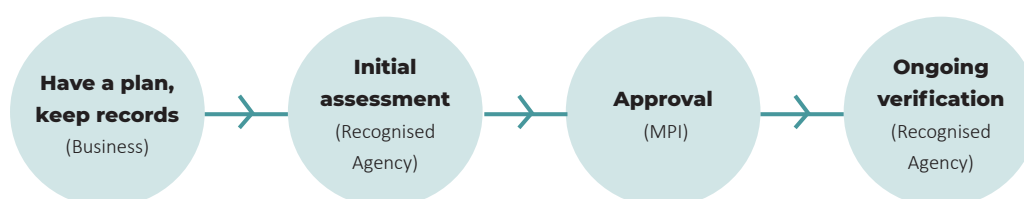
	Assessment of individual businesses	Assessment of groups of businesses	Exemptions	Importing and exporting	Recognising agencies and persons	Do we want a logo for organics?
Consumers	✓	✓	✓			✓
Very small organic businesses		✓	✓			
Small organic businesses	✓	✓	✓			✓
Large organic businesses	✓			✓		✓
Export businesses	✓	✓		✓		✓
Import businesses	✓			✓		✓
Verifiers and agencies	✓	✓		✓	✓	✓

3 Processes for approving businesses to describe products as organic

3.1 Proposed baseline process

The diagram below shows the basic process we are proposing for how organic businesses are approved to label or advertise products as organic, and who does each step. This process is similar to other regimes administered by MPI, such as under the Animal Products Act and the Food Act.

The following sections take you through the detail under these steps.



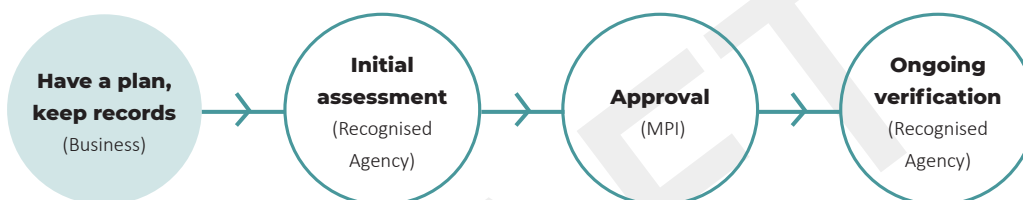
3.2 Approving individual businesses

This section outlines our proposal for how organic businesses would be approved to label or advertise products as organic.

3.2.1 Have a plan

PROPOSAL

Organic businesses should have a documented plan for how they will meet the organic standard, and records to show compliance



The Organic Products Bill states that businesses must not describe a product as organic unless it complies with the relevant organic standard.

We consider that one of the easiest ways to demonstrate compliance with an organic standard is to have a clear, accurate and up-to-date documented management plan and accompanying records. We therefore propose that all organic businesses should have a management plan to show how they intend to meet the organic standard, and keep records to show how they have complied with the standard.

We propose that the regulations won't set down what an organic management plan should look like, only what it must contain. This means that businesses can use whatever format works best for them and their business. For example, those businesses who have management plans for other purposes, such as a risk management programme under the Animal Products Act, can combine the organics and animal products information, rather than doing two separate plans. We may also provide some guidance and template plans that businesses could use.

The complexity of an organic management plan will vary depending on the complexity of the business. However, we think all plans should contain the following types of information:

- a. details of the business, including the person with overall responsibility for the plan;
- b. the type of products to which the plan applies;
- c. a description of the physical boundaries and layout of the production or processing site;
- d. a description of the activities of the business, such as production, processing, storage, trading and transport, including any non-organic activities;
- e. all measures to be undertaken by the business to ensure compliance with the relevant standard, and contingency plans for when something goes wrong;

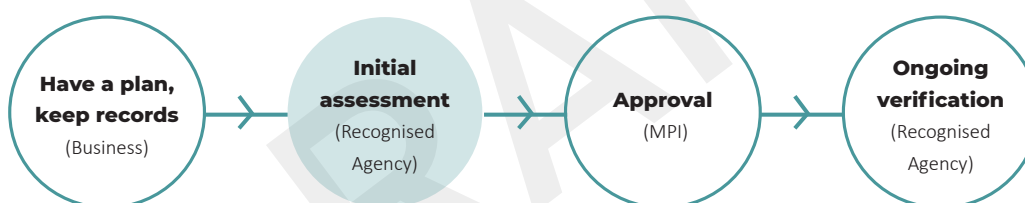
- f. any details relating to conversion to being organic (where relevant);
- g. a description of the activities that are carried out in any neighbouring premises that pose a risk to the organic status of the operation; and
- h. the training provided to staff, contractors and visitors on their roles and responsibilities with respect to the organic management plan.

Plans will also need to cover the activities of any other businesses that may affect the organic status of the product: for example, this could include transport, storage, import and export, where these services are sub-contracted out.

3.2.2 Initial Assessment

PROPOSAL

A business' organic management plan and operation should be assessed



We propose that once a business has developed an organic management plan, they go through an initial assessment. This would consist of an evaluation of the plan, and verification of the business (and any other businesses covered by the plan). This step would apply for new organic businesses applying for approval for the first time, and when a significant change to the business is made. Assessment of a plan and the business is common across other regimes administered by MPI (such as the Animal Products Act, Food Act, Wine Act and Plant Export Standards) and will also be familiar to the organics sector.

We propose that evaluation of plans and verification of businesses will be carried out by agencies and persons that are recognised by MPI to carry out these roles. More detail on the competencies and process for recognition is in section 6. It is important to note that as recognised agencies and persons will be performing a role under the Bill, they will not be able to provide advice to businesses that they are also assessing, to preserve their independence and impartiality.

Evaluation of the plan will require an on-site visit, to ensure the plan reflects activities of the business. We propose that if the recognised person who evaluates the plan is also able to verify that the business is operating in accordance with its plan and the requirements in one visit, then that initial visit would be enough for a decision to be made on whether the business was compliant. However, if the initial visit was not able to confirm this, then a second visit would be

required (for example, if the business was not operating yet, or the recognised person was not able to carry out both of these roles).

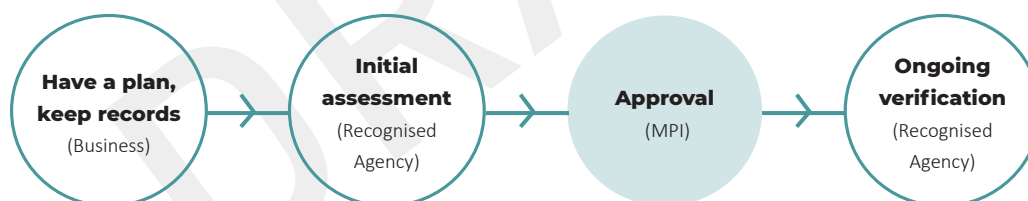
Alternatively, we could require that every business must have a second verification visit after the plan has been evaluated to confirm that they were compliant with their plan. However, we have not proposed this option because it may increase costs for the business where an additional step is not necessary.

If a business is operating under two different regulatory systems (e.g. both the Animal Products Act and Organic Products Act) then it may be possible for a single recognised person to conduct evaluation or verification under both systems at the same time. This could streamline the process for businesses.

3.2.3 MPI approval and the public register

PROPOSAL

MPI will approve organic management plans and approve businesses to describe products as organic



The Bill gives MPI the responsibility for making a decision on whether or not to approve a business to describe a product as organic. Businesses must be approved before they can make organic claims.

After having an initial assessment (evaluation and verification) from a recognised agency, the business will need to apply to MPI for approval. We propose that MPI will approve:

- a. the business' organic management plan; and
- b. the business to make organic claims.

MPI's decision will be based on the recommendation of the recognised agency and their evaluation of the plan, and verification.

The Bill also requires MPI to publish a register of approved organic businesses. This will allow producers, retailers and consumers to check organic claims and help them find suppliers of products that they want to purchase.

We propose that this register should include the following details:

- a. the name and location of the organic business;
- b. the products they are approved to describe as organic;
- c. the processes they are approved to carry out for organic products;
- d. the status of the approval, for example approved, suspended etc.
- e. approval date; and
- f. the recognised agency or person who assessed the business.

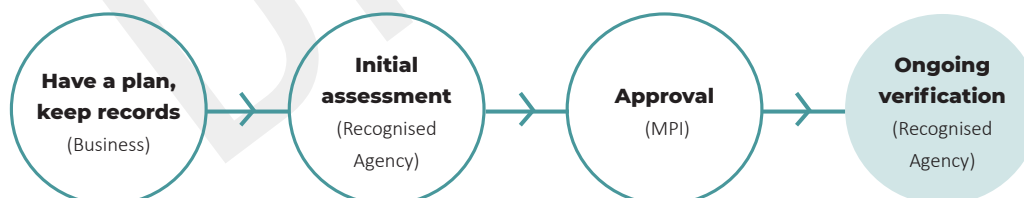
Businesses who are in conversion will not need to apply to MPI until they have successfully reached the end of their conversion period and are ready to label or advertise their products as organic. However, they must still have regular engagement with a recognised agency during the conversion period to ensure they are on track.

It is important to note that where a business is not approved to describe a product as organic (i.e. they are not found to meet the requirements), they will still be able to sell their products – they just won't be able to label or advertise them as 'organic'.

3.2.4 Ongoing verification

PROPOSAL

Businesses will be verified on an ongoing basis



Following approval by MPI, we propose that businesses will need to be verified by a recognised agency on an ongoing basis to check that they remain compliant with the organic standards. Submitters to the consultation in 2018 generally supported the proposal for ongoing verification. The frequency of verification will likely be based on the business' performance and level of risk. This is discussed in more detail in section 3.3.

Ongoing verification would include a review of the operation against the plan and any other requirements of the regime, and checks to ensure the business continues to deliver outputs that can be sold as organic. Verification would also include any follow up from previous verifications: for example, if the businesses had to make any improvements.

We do not propose that the plan itself will need to be evaluated each time the business is verified. However, the business will need to update the plan if there are changes to the business, or the regulatory requirements. Significant amendments to the plan (for example, those that

may affect the organic status of a product or the scope of approval) will need to be evaluated by a recognised agency and approved by MPI.

The results of verification would be provided to MPI. The table below shows the proposed possible outcomes of verification, and what would happen next.

	If	Then
Meets requirements	<p>The business:</p> <ul style="list-style-type: none"> » has been operating in accordance with their approved organic management plan; and » is compliant with the standards and relevant regulatory requirements. <p>This may include instances where there have been minor issues that have been appropriately dealt with by the business (including notifying the recognised agency/ MPI at the time they occurred).</p>	<p>The business is able to continue to describe their products as organic.</p>
Non-compliant	<p>It is not possible to confirm that the business:</p> <ul style="list-style-type: none"> » has been operating in accordance with their approved organic management plan; or » is compliant with the standards and relevant regulatory requirements <p>then the recognised agency may consider the organic status of the products is compromised.</p> <p>In more serious cases, this may affect the credibility of the system or confidence in organic production.</p>	<p>The business will need to address issues.</p> <p>If the issue is serious, approval may be suspended while issues are being addressed, or withdrawn if suspension is likely to be ineffective.</p> <p>If issues have been addressed, the business may continue to describe their products as organic.</p> <p>If issues are considered serious enough, the Bill empowers MPI to carry out an investigation and to direct the business to carry out certain actions (such as to re-label).</p>

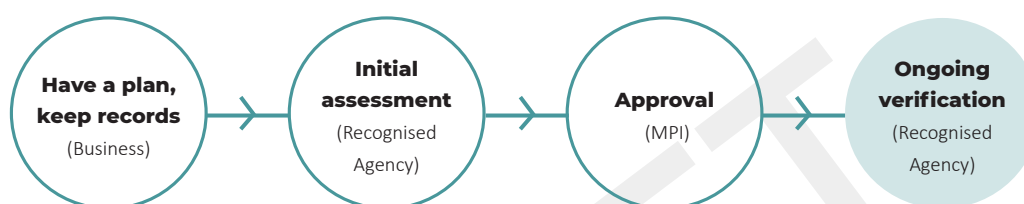
3.2.5 Verification outside of the regular schedule

PROPOSAL

Organic businesses should inform MPI of any significant changes

PROPOSAL

Organic businesses should inform recognised entity of any significant incidents



Generally, verification of businesses will happen at a frequency based on the performance of the business (as outlined in section 3.3). The timeframe of the next verification will be set by the recognised agency after the previous verification process. However, there may be other circumstances where a plan needs to be evaluated and/or the business verified outside of this schedule.

If there are any significant changes to a plan or the business, we propose that the changes must be approved by MPI before they can be implemented. Significant changes may be those that might affect the organic status of a product, such as adding new land, changing processing facilities or introducing new types of products.

However, we propose that minor changes will not need to be approved by MPI before being implemented. An example of a minor change could be where the business needs to use a different input than that named in their plan. Provided the replacement input was approved for use under the organic standard, this change could be implemented without needing approval first.

Alternatively, we could require all changes to plans to be approved by MPI before they are implemented. However, we are not proposing this as an option because we consider this would result in unnecessary costs and delays for businesses.

Incidents that might affect the organic status of products can happen even in a high-performing business. We propose that businesses be required to report to the recognised agency any significant incidents, such as:

- » accidents or external events that might affect the organic status of products: for example, spray drift from a neighbouring farm that might compromise a field; and

- » situations where a technical error or administrative oversight means that a business deviates from its plan: for example, a failure to follow cleaning procedures between organic and non-organic production cycles.

When incidents are reported, the recognised agency will inform MPI. MPI will consider the situation, and decide whether additional verification is required at the time, or whether it is being handled adequately and follow up can instead take place at the next scheduled verification.

In most cases the business will retain their MPI approval if they manage the situation well: for example, by isolating affected products and not describing them as ‘organic’ and ensuring that all staff are well trained.

3.2.6 Costs

Introducing a mandatory approval by MPI and an ongoing verification process will create new costs to businesses, and which could potentially be passed on to consumers. MPI is likely to charge fees for its services as it does with other regimes.

Recognised agencies and persons will charge their own fees for the services they provide.

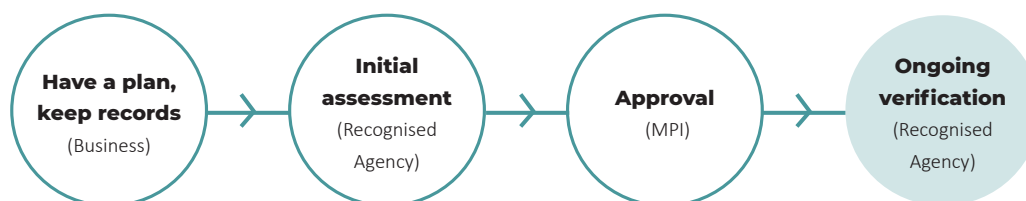
The next two sections look at options to manage these costs for businesses:

- » options for flexibility around verification; and
- » options to allow small businesses to be approved as a group.

3.3 Options within individual business verification

PROPOSAL

The frequency or scope of verification should be flexible to suit the nature and risks of the organic business



We propose to provide flexibility within verification for different types of organic businesses. This flexible approach was supported by the majority of submitters in our 2018 consultation. For many businesses, the cost of an on-site visit for verification will be the most expensive

part of organic approval. This section proposes options that will provide flexibility in how often businesses will need to be verified, and what that verification might need to include.

It is important to bear in mind that these options may not be able to apply to exporters where the market they are exporting to has specific requirements. Requirements for exporters are discussed in section 4.2. In addition, while these options are aimed at reducing verification where there is a lower risk, in all options poor performance or issues are likely to result in more frequent verification.

Option 1A: Flexibility in the nature of verification

Under this option, for the majority of organic businesses the minimum frequency of verification would be fixed at annual. However, what verification consists of would be decided using the risk-based criteria outlined in section 3.3.1.

This option would mean that businesses would be required to be verified every year – but in some years verification may only involve verifying paper-work (such as the plan and records relating to purchases of inputs, sales and staff training), and involve phone calls or the use of video equipment, rather than an on-site visit. The first verification before the business is approved would require an on-site visit.

This option would reduce the costs of verification for lower risk businesses, while providing some form of check and assurance on an annual basis and increasing oversight of the system. However, this option would increase the burden on recognised agencies who will need to carry out verification annually for each business.

Option 1B: Flexibility in frequency of verification

Under this option, the frequency of verification would be based on the risk-based criteria outlined in section 3.3.1. This would mean that a business could go up to a maximum of three years between verifications, and each verification would require an on-site visit. This would mean that businesses who are identified as high risk or have poor performance would be verified more frequently (annually or more frequently than annually), and lower risk businesses with a good record of compliance could be verified less frequently (up to once every three years).

This option would reduce the costs of verification for lower risk businesses, and may incentivise businesses to perform well in order to be verified less frequently. However, it creates a risk that non-compliance may go undetected for up to three years.

Option 1C: No flexibility in verification requirements

Under this option, for the majority of organic businesses the frequency of verification would be fixed at annual, and each verification would require an on-site visit.

This option would create a more consistent regime between all businesses (including exporters) and be easy to understand and implement. This option is also consistent with international regimes for organics. However, this option would result in higher costs for businesses, and place higher demand on resources in recognised agencies.

3.3.1 Risk-based criteria

PROPOSAL

Risk-based criteria would be used to determine the frequency or nature of verification

Options 1A and 1B above refer to risk-based criteria that would be used to determine either the frequency of verification visits (on-site) or the nature of verification (allowing for alternative verification methods to the traditional on-site visit). We propose the following criteria are used to determine verification frequency or verification nature:

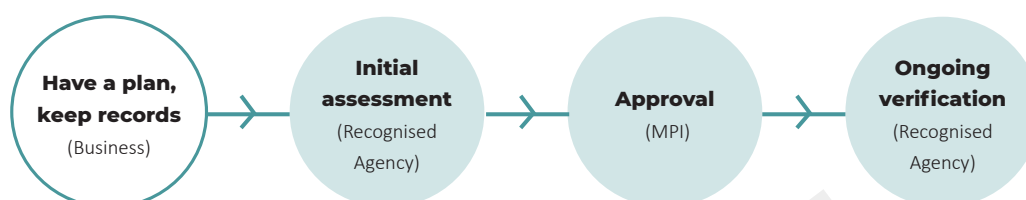
- a. the intended market of the products (i.e. domestic or export);
- b. the value and volume of the products being produced;
- c. the competence and performance history of the business, including how long it has been organic; and
- d. the complexity of the business and its plan, including whether non-organic products are also produced on the same premises and how many sub-contractors are covered.

At the moment, these criteria are broad to give you an idea of the types of things that could be taken into account when thinking about the risks associated with a business. However, we could add further detail to the criteria at a later date, if they are considered appropriate. For example, there could be further guidance around the thresholds on value of products, or how long a business must have been performing well to be considered a lower risk.

3.4 Approval of groups of businesses

PROPOSAL

Small organic businesses would be able to be approved as a group



In our 2018 consultation, we heard from submitters that group schemes are an important part of being certified organic. Group approval schemes allow members of a group to assess each other's businesses against their organic management plan, with oversight and verification by a recognised agency. Within the range of voluntary organic certification schemes currently available in New Zealand, both BioGro NZ³ and Organic Farm New Zealand⁴ allow for a group of businesses to be verified collectively. Such schemes are also recognised within international regulatory systems such as in the European Union, India and Tunisia.

Approval of groups of businesses reduces the cost of verification, which can be onerous for new and small organic businesses. It also encourages businesses to work co-operatively and to share knowledge and expertise, and helps grow the organic sector. Internationally, it is considered that group verification represents an important opportunity for small-scale producers to participate in national and international organic markets.

We propose that the regulations allow verification as a group to continue. However, it is important to ensure that the process is robust and provides a high level of assurance to consumers that organic standards are met. The proposed process for group schemes outlined below includes requirements that aim to provide this assurance, such as training and regular verification by the recognised agency.

The model we have proposed places more controls around the group scheme than the internationally recognised alternative provided for within the International Federation of Organic Agriculture Movements (IFOAM) – Organics International Participatory Guarantee Systems (PGS) model. The PGS model allows groups to develop their own systems for ensuring compliance and therefore provides an even higher degree of flexibility. However, we consider that such a system would also result in a high level of variation in practice and would not provide a sufficient level of assurance that businesses are meeting the standard.

³ Information about this scheme can be found within the BioGro Organic Standard, Module 3, Certification System (2009).

⁴ The OFNZ scheme builds on the Participatory Guarantee System (PGS) developed by IFOAM – Organics International. Further information is provided in the OFNZ Operational Guidelines and the IFOAM PGS Guidelines 2005.

3.4.1 Approval of groups

As with individual businesses, groups will have organic management plans to show how they will meet the standard. They will also have a plan for how the group will work, including how they will assess each other's businesses, and how they will ensure they are competent to do this. The plan will outline how they will deal with non-compliance, make responsibilities around reporting and corrective action clear, and require timely notification to the recognised agency and MPI. MPI will approve both the individual plans and the group scheme as a whole.

We propose that groups will be approved collectively. This means that all members of the group will be approved or not. This is because the recognised agency is assessing that the group scheme is successful in ensuring members are compliant, as well as ensuring individual compliance. This also ensures that all group members are responsible for being compliant and helping each other. Alternatively, group members could be approved individually. However, we consider this could result in businesses taking advantage of the lower cost of verification, but not taking on collective responsibility for ensuring the group scheme is compliant.

Approval as a group does not mean that groups will have to market their products collectively. This is required by some group schemes such as the European Union and the IFOAMPGS schemes. However, this approach is more suited to groups who produce the same exact products and may be restrictive for some groups whose members produce different products.

Group members will be individually listed on MPI's public register of approved businesses.

3.4.2 Verification of groups

All group members would be assessed annually, with an on-site visit, by other members of the group assigned by the recognised agency. Group members will be required to be trained to carry out this role. Recognised agencies would also assess the functioning of the group scheme each year to ensure that the group is delivering objectives, managing risk, working well together, and the members have good systems in place. As part of their annual assessment, recognised agencies would also carry out on-site verification of at least 20% of the members within a group each year (with at least one group member per year), and ensure that each member is verified by the recognised agency at least once every five years.

3.4.3 Membership of groups

Membership of a group would be approved by MPI in part based on the recommendation from a recognised agency. The decision would take into account the following:

- » similarity of members' production systems, and organic management plans;
- » complexity of members' production systems, and organic management plans;
- » complexity of supply chains;

- » geographic proximity to one another;
- » the performance history and competence of individual members; and
- » whether they collectively have the resources to support a viable internal control system that assures compliance of individual members with the relevant standard.

If members' businesses are reasonably similar, groups may develop one organic management plan for the group. However if businesses differ, group members may be required to develop their own organic management plans.

4 Importing and exporting organic products

The Bill applies to all types of organic businesses, including importers and exporters. We anticipate that importers and exporters would need to be approved in the same way that other organic businesses are, but with some differences taking into account the nature of the business.

4.1 Importing organic products

The Bill requires that imported organic products must meet New Zealand requirements or the requirements of an overseas regime recognised by the New Zealand government (such as through an agreement between the New Zealand government and other governments, or by recognition by the New Zealand government).

4.1.1 Organic claims on imported products will need to be confirmed

In the same way that domestically produced organic products will need to be approved, organic claims on imported products will also need to be confirmed. Importers will have to obtain the relevant information from the manufacturer or supplier to be able to substantiate the organic claims on imported products. For example, this could be an official assurance from the competent authority of the country, or a certificate from an overseas certification body to a regime approved by MPI.

Organic products could be imported for one of two purposes:

- a. they could be sold, or used in product to be sold, on the domestic New Zealand market to the final consumer; or
- b. they could be re-exported or used in the production of another organic product that is then exported to an international market.

In the case of (b), it will also be necessary to demonstrate that any imported products meet any requirements of the market they might be exported to.

4.1.2 Approval process for importers needing to be approved

PROPOSAL

Importers that need to be approved will follow the same verification process as other businesses

There are different types of importers for organic products. Some importers may simply be providing logistical support to facilitate the imports of organic products for businesses within New Zealand, and some importers may be importing products themselves to then process, or on-sell them.

Where importers are providing logistical support to another business, they will be captured by the plan and approval of the business who is responsible for the product. However, those who import products themselves, or those who opt to be approved as an organic business, will need to follow the same approval process as other organic businesses. This means that they will need to develop an organic management plan, have it evaluated and have their business verified. Requirements are likely to include checking that the importer has traceability requirements for the products and that they have a robust recall procedure.

In order to ensure that the costs and requirements for verification are proportionate to the activities of the importer, we propose that the same flexibility applied to individual businesses could be applied to importers. This means that the options around the frequency and nature of verification described in section 5.3 could also apply to importers, and verification would be determined by risk.

4.1.3 Australian organic products would continue to be subject to Australian law

Under the Trans-Tasman Mutual Recognition Arrangement, Australian organic products for retail sale could continue to be imported and sold on the New Zealand domestic market without needing to meet the requirements of a New Zealand organic standard. Australian organic products would continue to need to meet domestic Australian laws, including the Competition and Consumer Act that regulates misleading, false or deceptive claims. However, if Australian products were imported to be used in a product that was then exported from New Zealand, we may still require proof that the products met the requirements of the intended overseas market (such as an assurance from the Australian government).

4.2 Exporting organic products

4.2.1 Approval process for exporters needing to be approved

PROPOSAL

Exporters that need to be approved will follow the same verification process as other businesses

As with importers, there are different types of exporters for organic products. Some exporters may simply be providing logistical support to facilitate the export of organic products for businesses within New Zealand, and some exporters may be producing, or purchasing products themselves before exporting them.

As with importers, where exporters are providing logistical support to another business, they will be captured by the plan and approval of the business who is responsible for the product. However, those who produce or purchase products themselves to export, or those who opt to be approved as an organic business will need to follow the same approval process as other organic businesses. This means that they will need to develop an organic management plan, have it evaluated and have their business verified.

Requirements for exporters are likely to include checking that the exporter has traceability requirements for the products and has a robust recall procedure. Verification of all exporters will be wider than for other organic businesses, as the verifier will need to ensure that products meet any requirements of the relevant overseas market (as described below) as well as New Zealand requirements.

We propose that verification of all types of exporters should be determined by risk, as with other businesses. The options for flexibility around the frequency and nature of verification described in section 3.3 would apply to exporters. It is important to note that flexibility for exporters could only be applied where it is accepted by the overseas market, as outlined below. Under MPI's OOAP, exporters are currently required to be verified at least once per year. This requirement will remain for exporters to those markets unless any agreements with those markets are re-negotiated.

We also propose that products that are produced as parts of a group approval scheme can be exported where the overseas market allows this.

4.2.2 Market access requirements for exports

PROPOSAL

Regulations should allow exporters to meet an overseas standard for a country they are exporting to where it conflicts with the New Zealand standard

There are currently some specific requirements for different international markets that products exported to those markets must meet. These market access requirements may impose additional requirements over and above those imposed under our own regime, such as additional production requirements or specific verification requirements for exporters. For example, organic animal products currently exported to Taiwan must not have come from animals that have been treated with any antibiotics.

Market access requirements will continue to apply as they do now, and will be transferred into the new organics regulatory regime to ensure they are part of the same system. These requirements will remain for exporters to those markets unless any agreements with those markets are re-negotiated.

In some cases, international markets require products to meet their own organic standards that may differ from the New Zealand organic standard. In these situations, we propose to allow businesses who are producing products for export to these countries to meet the overseas standard instead of the New Zealand standard. This will need to be included in the business' organic management plan.

It is important to note that products that do not meet the New Zealand standard will not be able to be sold in New Zealand as organic.

4.2.3 Official assurances for exported products

MPI currently runs the OOAP to provide New Zealand government assurances that organic consignments meet the negotiated requirements of the market they are being exported to. Providing government-to-government assurances is common across other regimes that MPI administers.

The Bill, as it is currently drafted, allows MPI to continue to offer official assurances where they are required by an overseas government. We propose that the process to obtain official assurances be similar to the current OOAP process, but will be amended to align with the requirements of the new regime. The "Technical Rules for Organic Production" will be replaced by the national organic standard and specific market requirements. Until such time, the current approach under the OOAP will remain in place.

5 Exemptions

The Organic Products Bill provides for exemptions from some of the legislative requirements. In its current form, the Bill provides for two types of exemption:

- » an exemption for a class, or group, of similar businesses; and
- » an exemption for an individual business.

The Bill states that any exemptions must meet the following criteria:

- » granting the exemption is consistent with the purposes of the Act (currently the Organics Products Bill);
- » granting the exemption will not—
 - » have an adverse impact on New Zealand’s reputation; or
 - » result in consumers being misled; and
- » complying with the obligations is unreasonably burdensome and disproportionate to the benefit of compliance for the business.

Exemptions could reduce some of the processes or costs for certain businesses. However, those businesses would still have to comply with the organic standard and would be subject to monitoring and enforcement action, if necessary.

This section outlines our proposals for regulations that would allow for class exemptions.

For individual exemptions, businesses would need to apply to MPI outlining how the exemption would meet the criteria above.

It is important to note that the exemptions discussed in this paper relate to the verification and approval processes only. The Bill does not allow exemptions from any part of the organic standard (except in some export circumstances).

5.1 Exemptions for very small organic businesses selling direct to consumers

PROPOSAL

Very small organic businesses selling direct to consumers should not need to be approved by MPI

We are proposing that class exemptions be used to manage compliance costs for very small businesses, such as those selling homegrown produce at their farm gate and who want to describe their product as organic. To manage costs, we propose that these very small businesses should be exempt from needing approval by MPI, which means they would not need to have a plan evaluated or be verified. However, these businesses would still need to:

- » meet the relevant organic standard;

- » have an organic management plan or keep records which demonstrate how their production and processing methods comply with the organic standard;
- » provide MPI with their contact details, and information about the nature of their business; and
- » hold information that would demonstrate why the class exemption applies to their business.

We are proposing that businesses that meet all of the following criteria may be exempt from approval by MPI:

- » businesses that only sell the products that they produce or process;
- » businesses that only sell such products directly to the final consumer from a physical location (i.e. not through internet sales or other electronic methods);
- » businesses that only use ingredients from businesses that are approved (if applicable)⁵; and
- » businesses that have an annual turnover (averaged over the previous three years of production) relating to organic production or processing that does not exceed \$10,000.

These criteria are in line with the suggestions we received from submitters in our 2018 consultation. We consider that businesses who meet these criteria present a low risk of misleading consumers, as consumers will be able to talk directly to the grower or producer about their organic systems when they are buying any products. These businesses also present a low risk of impacting New Zealand's trade reputation as they are not able to wholesale or export their products.

If a business covered by a class exemption changes and no longer meets all the criteria above (for example, because the business has grown), the exemption would no longer apply and the business would need to obtain approval from MPI.

Being covered by the class exemption would not mean that businesses cannot be approved if they wish. For example, some of these businesses may wish to be approved as a marketing point for their products, as exempted businesses are unlikely to be able to use any national organic logo, or wholesale or export their products.

⁵ This would mean that a business could not use inputs from another business covered by a class exemption.

5.2 Exemptions for retailers

PROPOSAL

Retailers selling organic products should not need to be approved by MPI

Retailers who only sell pre-packaged final products are excluded from the Bill, and therefore do not have any requirements such as needing to be approved. However, retailers who sell products that are not pre-packed, such as bulk products, or who repackage products themselves before selling them are included in the Bill and are required to be approved.

We consider that retailers who sell bulk organic products or who repackage organic products should need to meet the requirements of the organic standard (such as ensuring organic products are not compromised), but should not be required to be approved by MPI. The risk of misleading consumers is low, and the cost of approval would be disproportionate.

This would mean these retailers would not need to have a plan evaluated, or be verified against the requirements. They will still need to:

- » meet the relevant organic standard; and
- » have an organic management plan and keep records that demonstrate how their retailing methods comply with the organic standard.

However, if retailers process organic products in some way, such as producing their own organic baked products, they would not be exempt from the requirement to be approved.

6 Recognising agencies and persons

The Organic Products Bill allows MPI to recognise agencies and persons to carry out functions and duties relating to organic businesses. We propose that agencies and persons would be recognised for evaluating plans and verifying businesses, as described in the previous sections. We intend that the regulations would enable the involvement of existing and new agencies in the provision of evaluation and verification services.

The Bill also provides for MPI itself to be able to provide evaluation and verification services to organic businesses (for example, where a recognised agency is unavailable, or otherwise as required).

The roles of recognised agencies in the approval process are described in the previous sections of this discussion document (sections 3.2, 3.3, and 3.4). This section focuses on the process agencies and persons will need to follow to be recognised by MPI.

It is important to note that there will be charges associated with applying for recognition and processing an application for recognition or renewal.

6.1 Competency requirements for recognised agencies

PROPOSAL

Recognised agencies must be accredited to either ISO:17020 or ISO:17065

The Bill requires agencies to apply to MPI to be recognised for carrying out a role under the Organic Products Bill. Agencies could be recognised to manage the systems for either or both evaluation of plans and verification of businesses under the organics regime. As part of this, agencies will be responsible for ensuring that the recognised persons that they employ remain competent and that processes for assessing businesses are in place. Agencies will also manage confidentiality and conflict of interest issues.

An agency's application for recognition would need to demonstrate that they are capable, and meet the required competencies. Different standards are used overseas and domestically to set requirements that agencies should meet in order to carry out these types of roles, and agencies are assessed in order to be accredited to these standards.

There are two different standards that could be relevant to agencies under the organics regime, and we propose that agencies could be accredited to either of these standards⁶ to apply to be recognised:

- » ISO:17020 (Conformity assessment – Requirements for the operation of various types of bodies performing inspection); or
- » ISO:17065 (Conformity assessment – Requirements for bodies certifying products, processes and services).

If an application for recognition is approved, the approval would identify which services the agency is recognised to provide, and when the agency would need to reapply for recognition. The approval would also outline additional duties of the agency such as reporting requirements to MPI.

If a recognised agency is not compliant with their recognition conditions, MPI may suspend or withdraw all or part of their recognition.

6.1.1 Key technical persons approach

We propose that agencies would also be able to use the Key Technical Persons (KTP) approach that is used in other regimes administered by MPI. Under the KTP approach, agencies would not be required to have each of their recognised persons individually assessed.

⁶ These two standards are available for purchase at: <https://www.iso.org/standards.html>, or can be viewed at the Ministry for Primary Industries Head Office at Charles Fergusson Building, 34-38 Bowen Street, Wellington, New Zealand.

Using a KTP approach would reduce costs for agencies, as it would mean that they would not have to get each recognised person individually assessed. However, there are also increased risks for agencies using the KTP model as their recognition could be suspended or withdrawn if an individual recognised person is found not to be performing well.

Regulations would outline the requirements for agencies wanting to use the KTP model⁷. This model has been used successfully under other regimes administered by MPI including the Food Act and Animal Products Act.

Instead of using a KTP approach, we could require all recognised persons within a recognised agency to be individually assessed. However, our view is that this would significantly increase the costs of recognition for agencies, which ultimately would be passed on to businesses and consumers.

6.2 Competency requirements for recognised persons

PROPOSAL

Recognised persons must meet the relevant competency requirements for the role they will be carrying out

As well as recognising agencies, the Organic Products Bill allows MPI to recognise individual persons or a class of persons. As with agencies, individuals and classes of persons would be recognised for either or both evaluating plans and verifying businesses.

Where a person is recognised for both evaluating plans and verifying businesses, the same person would be able to carry out evaluation and the initial on-site verification for a business, as described in section 3.2.2. However, the same person would not be able to verify a business on a continuous basis to ensure impartiality and prevent any conflicts of interest.

6.2.1 Applying for recognition

People must apply to MPI to be recognised for carrying out any activities under the Organic Products Bill. They would need to demonstrate that they are capable and meet the required competencies for the role. We propose that people applying to be a recognised must be able to demonstrate:

- a. knowledge and understanding of applicable requirements of the organic legislation and any other relevant legislation;
- b. knowledge and understanding of organic production and processing methods;
- c. the relevant skills for the role they are applying for (i.e. evaluations or verification);
- d. how to operate in accordance with the standard operating practices (SOPs) of their agency (if they are working for a recognised agency);
- e. impartiality, and management of conflicts of interest; and
- f. when specialist technical expertise is needed and how it could be obtained.

In addition to the above, persons applying to be recognised to evaluate and verify group schemes would need to have knowledge of the specific requirements of group schemes.

If an organisation applies for recognition of a class of persons, on their behalf, before MPI recognises that class of persons, we propose that they must be reasonably satisfied that it is appropriate for the applicant to make the application, and also consult with the persons identified in the application.

6.2.2 Conditions on recognition

If an application for recognition is approved, the approval would identify which services and sectors the person, or class, is recognised to provide, and when they would need to reapply for recognition. Depending on the individual's knowledge and training, MPI may limit recognition to certain sectors, for example horticulture, wine, or dairy, or certain processes (for example, importing).

A person recognised for evaluation and/or verification would not necessarily need to be employed by an agency recognised under the organics regime. However, this will be decided by MPI when considering whether to recognise a person.

If a recognised person, or class, is not compliant with their obligations then MPI may suspend or withdraw all or part of their recognition. MPI must notify a person when they are proposing to withdraw their recognition and give them a chance to respond to the proposal. A person can request a review of the decision to suspend or withdraw their recognition.

7 Do we want a national logo for organic products?

The Bill enables a national organic mark, such as a logo, to be developed so that organic businesses can use it in their labelling and marketing. During our 2018 consultation, we received mixed feedback from submitters on whether a national logo for organics should be developed or not.

7.1 Background

Currently logos are used to indicate that a product is organic or of a certain quality by private companies in New Zealand, and by our key trading partners.

Logos can be used in labelling and representation of organic products to assist consumers in finding organic products, as well as for information and educational purposes. For example, the European Union, the United States, China and Canada each use a national logo to indicate products meet their requirements to be organic. In the United States and Canada, use of the logo is voluntary, but it is compulsory in the European Union. Logos can also be used as a marketing tool for businesses to easily show that they meet a certain standard.

Private certification bodies within New Zealand use private logos to indicate that products are organic and which standard (i.e. which certification body) they use. The government also uses logos on products. For example, the Ministry for the Environment uses the Environmental Choice logo for environmental performance certification and MPI uses the Halal logo under the Animal Products Act to indicate that products meet Halal requirements.

7.2 Who could use the logo?

If we were to develop a national logo for organics, there are a number of options around who would be able to use that logo. The Bill does not make use of a logo mandatory, so it would be a business' decision to use it if we developed one. We consider that all businesses who are approved against the New Zealand organic standard should be able to use the logo if one is developed. This means that businesses who are exempt from approval (and do not get approval) would not be able to use a logo.

7.2.1 Businesses who are approved individually versus a group

As outlined in this document, we have proposed that small organic businesses could be approved as part of a group. There is some question of whether businesses that are approved as part of a group should be able to use the logo.

On one hand, some people may perceive that group verification provides a lower level of assurance than individual verification, and therefore such businesses should not be able to use the logo. Not allowing groups to use the logo may also provide an incentive for group members to be verified individually when they are large enough to be.

On the other hand, these businesses are still approved as organic businesses, and have a system in place to ensure that they are meeting the requirements. Therefore, they should also have the benefit of using the New Zealand logo.

7.2.2 Imported products

We also propose that all imported products from businesses that are approved as meeting the New Zealand organic standard will be able to be represented as organic and use the New Zealand national logo. This is because they are meeting the requirements to be considered organic in New Zealand.

However, there is some question about imported products that don't meet the New Zealand standard – but instead meet an overseas standard that we have recognised as being suitable for import into New Zealand. We propose that such imported products would not be able to use the New Zealand logo, unless this was agreed as part of a trade arrangement. However, they could continue to use their own national or private organics logo. This would help consumers to recognise which products meet the New Zealand organic standard and would help manage risks of the logo being misused overseas.

7.2.3 Marketing not on individual products

Logos are often used directly on a product to show that it meets certain requirements. However, logos could also be used more generally in marketing. For example, a retail store that sells unpackaged organic products may wish to use a national logo in its front sign, or a transport business that meets requirements to transport organic products may wish to use a national logo in its marketing to attract customers.

As mentioned, we propose that any business wanting to use the logo would need to be approved by MPI, so in the above examples the retail store and the transport company would need to be approved as organic businesses.

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