

Organic Products Bill

Government Bill

Explanatory note

General policy statement

Demand for organic products has grown markedly in recent years in New Zealand and overseas with the global market now worth over \$116 billion annually. In 2017, New Zealand's organic industry was worth \$600 million. Organic claims are credence claims that consumers cannot independently verify. As a result, production rules 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.

The Organic Products Bill proposes a regime to regulate organic claims and the businesses that make them. The Bill's objectives are to—

- increase consumer confidence in purchasing organic products;
- increase certainty for businesses making claims that their products are organic (**organic claims**);
- facilitate international trade in organic products.

These objectives and how the Bill will achieve them are discussed below.

Increased consumer confidence

Under the current framework, New Zealand businesses that make organic claims can choose whether or not to be certified to one of a range of private standards with different requirements. This can create inconsistency in organic claims and confusion for consumers.

The Bill will create consistency amongst organic claims and decrease consumer confusion by enabling mandatory requirements to be set for—

- any product sold, labelled, or represented as organic whether it is imported, domestically produced and sold, or exported; and

- each step along the supply chain, including the production, preparation, and processing plus all aspects of handling (including storage, packing, labelling, transport, and wholesale).

Increased business certainty

Under the current legislative framework, businesses are required to substantiate organic claims and make sure these are not misleading, which can create uncertainty for businesses who make organic claims. It is unclear what organic practices would be acceptable to consumers, regulators, or trading partners and what evidence they need to demonstrate that they comply with organic production requirements.

The Bill will create certainty for businesses wanting to make organic claims by enabling requirements for organic production to be made in regulations. The Bill also enables administrative regulations to be set as to how to demonstrate compliance. The Bill enables recognised entities (third party agencies recognised by the relevant ministry) to check organic businesses before approval, and on an ongoing basis for compliance.

Facilitating international trade

Countries that regulate organic production are increasingly expecting comparable regimes from their trading partners. Currently, the Ministry for Primary Industries runs a voluntary export programme, the Official Organic Assurance Programme, which enables exporters to access specific organic markets that require assurance.

The Bill will further facilitate New Zealand to negotiate new and more secure access in organic markets by increasing government oversight of the sector regarding what is produced here and exported. *Part 3* of the Bill also contains requirements for exporters. These measures are likely to—

- increase trust with trading partners; and
- improve New Zealand's ability to negotiate better market access; and
- state New Zealand's position on organics and allow us to defend it internationally.

Special features of the Bill

The Bill enables any relevant ministries to become responsible for the regulation of organic products relevant to their mandate, including the development of organic production standards and the administration, monitoring, and enforcement of associated regulatory requirements. The Ministry for Primary Industries will be the administering department for the Bill.

Departmental disclosure statement

The Ministry for Primary Industries is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to infor-

mation about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=221>

Regulatory impact assessment

The Ministry for Primary Industries produced a regulatory impact assessment on 26 November 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

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

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 is the purpose clause.

Clause 4 provides an outline of the Bill.

Clause 5 defines terms used in the Bill.

Clause 6 is the operative provision for *Schedule 1*, which is to contain transitional, savings, and related provisions. There are currently no provisions of this nature.

Clause 7 provides that the Act binds the Crown.

Part 2

Approval and recognition

Subpart 1—Describing product as organic

Clause 8 sets out restrictions on describing a product as an organic product. If there is an organic standard that relates to the product, a person must not describe the product as an organic product unless the product complies with the standard.

Clause 9 sets out what is meant by describing a product as an organic product: if the product's labelling or advertising would suggest to a reasonable person that it is an organic product.

Subpart 2—Approval as operator

Who must be approved

Clause 10 sets out who must be approved as an operator so that they can describe products as organic products. Some exceptions are stated, and provision is made for some persons who are not otherwise obliged to be approved as an operator to apply for approval.

How to apply for approval

Clause 11 requires persons seeking approval as an operator to apply to the relevant chief executive.

Clause 12 requires a relevant chief executive to ascertain matters in relation to the applicant that are prerequisites for approval.

Granting or refusing approval

Clause 13 provides that the relevant chief executive may approve a person as an operator if the person has the prerequisites set out in *clause 12*. The relevant chief executive must refuse the person if the prerequisites are not met. If proposing to refuse approval, the chief executive must act in accordance with *clause 36*.

Approval not transferable

Clause 14 provides that approval cannot be transferred between an operator and another person.

Ongoing or ceasing approval

Clause 15 allows an operator to surrender approval.

Clause 16 allows a relevant chief executive to suspend an operator's approval in specified circumstances.

Clause 17 allows a relevant chief executive to withdraw approval. If proposing to withdraw approval, the chief executive must act in accordance with *clause 36*.

Operator use of national mark

Clause 18 provides for the use of the national mark on products that meet the relevant organic standard, in accordance with regulations.

Subpart 3—Recognising entities

Who must apply for recognition and how to gain it

Clause 19 provides that a person wishing to be recognised as an agency to carry out functions and duties relating to organic compliance must apply to the relevant chief executive, who may recognise the person if the prerequisites for recognition are met.

Clause 20 provides that a natural person wishing to be recognised as a person carrying out functions and duties relating to organic compliance must apply to the relevant

chief executive, who may recognise the person if the prerequisites for recognition are met.

Clause 21 provides that a class of natural persons wishing to be recognised as an agency to carry out functions and duties relating to organic compliance must apply to the relevant chief executive, who may recognise the class if the prerequisites for recognition are met.

Who does not need to apply for recognition

Clause 22 provides that a relevant chief executive may recognise some entities as responsible for carrying out specified functions and duties without their needing to apply for recognition, such as the relevant Ministry, or an officer or employee of the relevant Ministry.

Natural person may be recognised as different types of recognised entity

Clause 23 provides that a natural person may be recognised in different capacities under more than 1 of the clauses relating to recognition.

Refusing, granting, and varying conditions of recognition

Clause 24 provides that a relevant chief executive may refuse recognition but, if proposing to do so, must act in accordance with *clause 36*.

Clause 25 sets out how a relevant chief executive is to grant recognition.

Clause 26 allows a relevant chief executive to impose or vary conditions of recognition.

Recognition not transferable

Clause 27 provides that recognition cannot be transferred between one recognised entity and another.

Duties of recognised entity

Clause 28 sets out the duties of recognised entities generally, and the further requirements for recognised agencies in particular.

Clause 29 states that recognised entities are accountable to the relevant chief executive.

Clause 30 provides that recognised entities may act in capacities other than as recognised entities, but must not do so, or purport to do so, as a recognised entity.

Ongoing or ceasing recognition

Clause 31 provides for the renewal of a recognised entity's recognition.

Clause 32 allows a recognised entity to surrender its recognition in whole or in part, and sets out the process for doing so.

Clause 33 provides for the suspension of a recognised entity's recognition, and sets out the processes for suspension.

Clause 34 provides for recognition to be withdrawn from a recognised entity, and sets out the circumstances in which a relevant chief executive may do that.

Subpart 4—Provisions applying to both approval and recognition

Requesting information

Clause 35 allows a relevant chief executive to request further information from an applicant for approval or recognition.

Clause 36 requires a relevant chief executive to follow a process if the chief executive proposes to refuse or withdraw approval or recognition.

Imposing and waiving fee

Clause 37 requires applicants for approval or recognition or for renewal of recognition to pay prescribed fees and charges.

Clause 38 requires the chief executive to consider an exemption, a waiver, or a refund of fees and charges referred to in *clause 37* in the circumstances set out in *clause 38*.

Register of operators and recognised entities

Clause 39 provides for a relevant chief executive to keep a public register of approved operators and recognised entities.

Clause 40 sets out the content of the register.

Clause 41 provides for public inspection of the register.

Clause 42 requires a relevant chief executive to remove operators and recognised entities from the register in the circumstances specified in that clause.

Operator and recognised entity information and records

Clause 43 requires operators and recognised entities to provide information to the relevant chief executive.

Clause 44 imposes a duty on operators and recognised entities to keep records about certain matters in specified ways, and to give persons such as organic products officers access to the information.

Part 3

Imports and exports

Clause 45 allows a relevant chief executive to approve a foreign organic products regime for products described as organic products that are imported into New Zealand.

Clause 46 allows a relevant chief executive to specify export requirements or restrictions on products described as organic products. *Clause 46* also restricts a person from exporting from New Zealand a product described as an organic product unless the criteria in that clause are met.

Clause 47 sets out matters relating to official assurances.

Clause 48 sets out the status of official assurances.

Clause 49 sets out matters relating to giving statements of compliance.

Clause 50 provides for exemptions from specific requirements of an organic standard for certain products intended for export from New Zealand.

Part 4

Cost recovery

Clause 51 states that costs of administering the Act that are not funded by the Crown are to be recovered by way of fees, charges, and levies.

Clause 52 sets out the principles that cost recovery must meet.

Clause 53 sets out the range of methods of cost recovery.

Clause 54 provides for cost recovery to relate to a particular financial year.

Clause 55 provides for a 3-yearly review of cost recovery.

Failure to pay

Clause 56 provides that unpaid fees, charges, or levies constitute a debt due to, and recoverable by, the relevant chief executive.

Clause 57 provides for the amount of an unpaid debt to increase while it is unpaid.

Clause 58 states that a dispute between a person and a relevant chief executive about the person's liability to pay a debt does not suspend the obligation to pay or the right of the chief executive to recover the debt.

Clause 59 provides for services to a debtor to be withdrawn while the debt remains unpaid.

Part 5

Enforcement

Subpart 1—Organic products officers and chief executives

Clause 60 provides for a relevant chief executive to appoint organic products officers.

Clause 61 provides for the relevant chief executive to suspend or cancel an appointment and sets out the process for doing so.

Organic products officer powers

Clause 62 provides an organic products officer with a power of warrantless entry in the circumstances set out in the clause.

Clause 63 allows an organic products officer to apply for a warrant and applies relevant provisions of the Search and Surveillance Act 2012 to the application for a search warrant.

Clause 64 allows an issuing officer to issue a search warrant in the circumstances set out in the clause and applies provisions of the Search and Surveillance Act 2012 to issuing the warrant.

Clause 65 allows an organic products officer to enter and search a place in accordance with a search warrant and applies provisions of the Search and Surveillance Act 2012 to the search.

Clause 66 provides for samples to be taken and tested and for the person providing the samples to pay testing costs.

Clause 67 gives an organic products officer power to issue an improvement notice to correct an operator's failure to comply with requirements, provides the process for issuing the notice, and allows the organic products officer to withdraw the notice.

Clause 68 allows matters begun by one organic products officer to be continued or otherwise dealt with by another organic products officer.

Powers of relevant chief executive

Clause 69 allows a relevant chief executive to make a statement for the purpose of protecting or informing the public. The topics the statement may cover are set out in the clause.

Clause 70 allows a relevant chief executive to request information from a recognised entity or other person.

Clause 71 allows a relevant chief executive to give general directions relating to functions, duties, or powers to organic products officers or recognised entities.

Clause 72 allows a relevant chief executive to give general directions to certain persons to prevent or correct breaches of requirements.

Clause 73 allows a relevant chief executive to give directions requiring a person to disclose information or publish a statement in circumstances set out in the clause.

Clause 74 allows a relevant chief executive to direct a person to provide information or take specific action in cases of breach or non-compliance.

Enforceable undertakings

Clause 75 allows a relevant chief executive to accept written enforceable undertakings in connection with enforcement, and to apply for particular orders if the undertaking is breached.

Subpart 2—Infringement offences

Clause 76 sets out how proceedings in relation to infringement offences may be taken.

Clause 77 sets out when an infringement notice may be issued.

Clause 78 sets out when an infringement notice may be revoked.

Clause 79 sets out what an infringement notice must contain.

Clause 80 sets out how an infringement notice may be served.

Clause 81 requires infringement fees to be paid into a Crown Bank Account designated by the relevant chief executive.

Subpart 3—Offences

Clause 82 provides an offence for a person who does certain things specified in the clause with intent to deceive and for the purpose of obtaining a material benefit or avoiding a material detriment.

Clause 83 provides an offence for a person who impersonates an organic products officer or other specified person with intent to deceive.

Clause 84 provides an offence for a person who resists, obstructs, or delays an organic products officer or other person specified in the clause.

Strict liability offences

Clause 85 provides an offence for a person who sells or markets a product described as an organic product if there is a relevant organic standard and the product does not meet the standard.

Clause 86 provides an offence for a person who sells or markets a product described as an organic product if the person is not approved as an operator or exempt from requiring that approval.

Clause 87 provides an offence for an exporter of a product described as an organic product and for which an organic standard is prescribed if the exporter is not appropriately approved or the product does not meet the standard.

Clause 88 provides an offence for a recognised entity who breaches duties or fails to carry them out, without reasonable excuse.

Defences for certain offences

Clause 89 provides a defence to the offences set out in *clauses 85 to 88*.

Prosecution administration requirements

Clause 90 provides for documentary evidence of testing and sampling to be produced by way of certificates, etc, as set out in the clause, and for admissibility of evidence if testing and sampling requirements have been complied with reasonably but not strictly.

Clause 91 provides rules for processes affecting admissibility in evidence of certificates and documents.

Clause 92 allows a relevant chief executive to give a certificate, for proceedings, as to a person's official position under or relevant to the Act.

Clause 93 provides rules for producing a document in evidence in proceedings for an offence against the Act.

Clause 94 allows documents described in the clause, when produced in evidence, to be sufficient evidence of their contents, etc, in the absence of proof to the contrary.

Clause 95 sets out how establishing a body corporate's state of mind may be done in prosecution of a body corporate.

Clause 96 sets out when a director or manager of a body corporate is liable when it commits an offence.

Clause 97 sets out the liability of agents such as directors in relation to acts or omissions on behalf of a body corporate.

Immunities and excluding liability for loss

Clause 98 provides protection from civil and criminal liability for the persons stated in the clause in the circumstances set out in the clause.

Clause 99 excludes the Crown, a relevant chief executive, and a person recognised without application under *clause 22* from liability for loss through the actions or omissions of a recognised entity.

Subpart 4—Amendments to other enactments

Amendment to Search and Surveillance Act 2012

Clause 100 amends the Schedule of the Search and Surveillance Act 2012 by inserting the item set out in *Schedule 2*.

Amendment to Summary Proceedings Act 1957

Clause 101 amends the Summary Proceedings Act 1957 by inserting, in the definition of infringement notice, a paragraph relating to the Bill.

Subpart 5—Jurisdiction

Clause 102 provides jurisdiction to the District Court for specified applications from the relevant Ministry.

Clause 103 provides for appeals to the High Court against certain decisions of the District Court under *clause 102*.

Clause 104 provides for certain appeals from the High Court to the Court of Appeal or the Supreme Court.

Part 6

Regulations and notices

Subpart 1—Regulations

Organic standards

Clause 105 provides a power to make regulations setting organic standards.

Clause 106 sets out prerequisites for the relevant Minister to recommend that regulations are made under *clause 105*.

General regulation-making powers

Clause 107 sets out general regulation-making powers.

Exemptions for classes

Clause 108 provides a power to make regulations exempting classes of person from some requirements under the Act.

Regulations imposing fees and charges

Clause 109 provides a power to make regulations imposing fees and charges.

Regulations imposing levies

Clause 110 provides a power to make regulations imposing levies.

Clause 111 provides a power to make regulations providing for exemptions from, waivers of, and refunds of fees, charges, and levies.

Subpart 2—Notices

Notices: exemptions

Clause 112 allows a relevant chief executive, by notice, to exempt a person from a requirement of the Bill (other than the requirement to meet an organic standard) in the circumstances set out in the clause.

Clause 113 allows a relevant chief executive, by notice, to exempt an operator or a product described as an organic product from a requirement of or an obligation under the Bill (other than the requirement to meet an organic standard) in the circumstances set out in the clause.

Subpart 3—Incorporation by reference

Clause 114 provides for the incorporation of material by reference in regulations or notices.

Part 7 General provisions

Commodity levies

Clause 115 applies the Commodity Levies Act to products to which an organic standard applies.

Right of review

Clause 116 provides a right of review to persons directly affected by a decision to which the clause applies.

Clause 117 sets out requirements for the conduct of a review.

Clause 118 sets out the time allowed for a review.

Time limits

Clause 119 sets out time limits for providing information requested by a relevant chief executive in relation to a suspected breach of the Bill, regulations, or an organic standard.

Clause 120 sets out time limits generally for providing information, other than information covered by *clause 119*.

Automated electronic systems

Clause 121 allows a relevant chief executive to use an automated electronic system to do actions described in the clause in relation to the Bill, in circumstances set out in the clause.

Clause 122 provides for the effects of an action using the automated electronic system.

Schedule 1 is a schedule that can contain transitional, savings, and related provisions if they are enacted in the future.

Schedule 2 contains the amendment to the Search and Surveillance Act 2012 (*see clause 100*).

Hon Damien O'Connor

Organic Products Bill

Government Bill

Contents

		Page
1	Title	6
2	Commencement	6
Part 1		
Preliminary provisions		
3	Purpose	6
4	Outline of Act	7
5	Interpretation	7
6	Transitional, savings, and related provisions	9
7	Act binds the Crown	9
Part 2		
Approval and recognition		
Subpart 1—Describing product as organic		
8	Restriction on describing product as organic product	10
9	Describing product as organic product	10
Subpart 2—Approval as operator		
<i>Who must be approved</i>		
10	Who must or may be approved as operator	10
<i>How to apply for approval</i>		
11	Applying for approval	10
12	Considering whether to approve as operator	11
<i>Granting or refusing approval</i>		
13	Granting or refusing approval	11

Organic Products Bill

	<i>Approval not transferable</i>	
14	Operator's approval not transferable	11
	<i>Ongoing or ceasing approval</i>	
15	Surrendering approval	12
16	Suspending approval	12
17	Withdrawing approval	12
	<i>Operator use of national mark</i>	
18	Use of national mark	13
	Subpart 3—Recognising entities	
	<i>Who must apply for recognition and how to gain it</i>	
19	Recognising agencies	13
20	Recognising natural persons	13
21	Recognising classes of natural persons	14
	<i>Who does not need to apply for recognition</i>	
22	Relevant chief executive may recognise certain entities without application	15
	<i>Natural person may be recognised as different types of recognised entity</i>	
23	Interrelationship between sections 19 to 22	15
	<i>Refusing, granting, and varying conditions of recognition</i>	
24	Refusing application for recognition	15
25	Granting recognition	16
26	Varying conditions of recognition	16
	<i>Recognition not transferable</i>	
27	Recognition not transferable	16
	<i>Duties of recognised entity</i>	
28	Duties of recognised entity	16
29	Recognised entity accountable to chief executive	17
30	Recognised entity may act in other capacities	17
	<i>Ongoing or ceasing recognition</i>	
31	Renewal of recognition	17
32	Surrendering recognition	17
33	Suspending recognition of recognised entity	18
34	Withdrawing recognition	18
	Subpart 4—Provisions applying to both approval and recognition	
	<i>Requesting information</i>	
35	Requesting further information from applicant	19
36	Proposing to refuse or withdraw approval or recognition	19

Organic Products Bill

Imposing and waiving fee

37	Fees and charges payable	19
38	Relevant chief executive must consider exemption, waiver, or refund of fees	20

Register of operators and recognised entities

39	Public register of operators and recognised entities	20
40	Content of register	20
41	Access to register	20
42	Removal from register	21

Operator and recognised entity information and records

43	Operator and recognised entity to provide information	21
44	Duty to keep records	21

Part 3

Imports and exports

45	Chief executive approval of foreign organic products regimes for importation into New Zealand	22
46	Restriction on exports	22
47	Official assurances	23
48	Status of official assurances	23
49	Providing statement of compliance	24
50	Exemption from organic standard for exported product	24

Part 4

Cost recovery

51	Costs to be recovered	25
52	Principles of cost recovery	25
53	Methods of cost recovery	26
54	Cost recovery to relate to financial year	26
55	Three-yearly review of cost recovery	27

Failure to pay

56	Fees, charges, and levies to constitute debt	27
57	Penalty on unpaid debt	28
58	Dispute does not suspend obligation to pay fee, charge, levy, or penalty	28
59	Services to debtor may be withdrawn	28

Part 5

Enforcement

Subpart 1—Organic products officers and chief executives

60	Relevant chief executive to appoint organic products officer	28
61	Suspending or cancelling organic products officer appointment	29

Organic Products Bill

<i>Organic products officer powers</i>		
62	Power of warrantless entry	29
63	Applying for search warrant	30
64	Issuing search warrant	30
65	Entry under search warrant	30
66	Power to test samples	30
67	Power to issue an improvement notice	31
68	Matters may be continued by different organic products officer	31
<i>Powers of relevant chief executive</i>		
69	Statements by relevant chief executive	31
70	Relevant chief executive may request information	32
71	Giving general directions on functions, duties, or powers	32
72	Giving general directions to operators, etc	32
73	Giving directions to complete declaration or publish statement	33
74	Power to direct in certain circumstances	33
<i>Enforceable undertakings</i>		
75	Enforceable undertakings	33
Subpart 2—Infringement offences		
76	Proceedings for infringement offences	34
77	When infringement notice may be issued	34
78	Infringement notice may be revoked	34
79	What infringement notice must contain	35
80	How infringement notice may be served	35
81	Payment of infringement fees	36
Subpart 3—Offences		
82	Offences involving deception for benefit, etc	36
83	Personating organic products officer, etc	37
84	Obstruction of officers	37
<i>Strict liability offences</i>		
85	Sale of non-compliant product that is described as organic	37
86	Sale of product described as organic by person not approved as operator	37
87	Export of products described as organic when not approved, etc	38
88	Offence of breach of duty	38
<i>Defences for certain offences</i>		
89	Defences for certain offences	38
<i>Prosecution administration requirements</i>		
90	Evidence of testing, sampling, etc	39
91	Evidence in proceedings	39
92	Evidence of officer or delegated power	40

Organic Products Bill

93	Evidence of person's documents	40
94	Evidence of requirement of this Act	40
95	Liability of body corporate	40
96	Liability of director or manager of body corporate	41
97	Liability of companies and persons for actions of agent or employee	41
	<i>Immunities and excluding liability for loss</i>	
98	Protection of persons acting under authority of Act	41
99	Exclusion of loss	42
	Subpart 4—Amendments to other enactments	
	<i>Amendment to Search and Surveillance Act 2012</i>	
100	Amendment to Search and Surveillance Act 2012	42
	<i>Amendment to Summary Proceedings Act 1957</i>	
101	Amendment to Summary Proceedings Act 1957	42
	Subpart 5—Jurisdiction	
102	District Court	42
103	High Court	43
104	Appeals to Court of Appeal or Supreme Court	43
	Part 6	
	Regulations and notices	
	Subpart 1—Regulations	
	<i>Organic standards</i>	
105	Organic standards	43
106	Prerequisites for prescribing organic standards	44
	<i>General regulation-making powers</i>	
107	General regulation-making power	44
	<i>Exemptions for classes</i>	
108	Exemptions for class of persons	45
	<i>Regulations imposing fees and charges</i>	
109	Regulations may impose fees and charges	46
	<i>Regulations imposing levies</i>	
110	Regulations may impose levies	47
111	Regulations may provide for exemptions, waivers, and refunds	48
	Subpart 2—Notices	
	<i>Notices: exemptions</i>	
112	Exemption for individual cases	48
113	Exemption for certain operators or products	49

	Subpart 3—Incorporation by reference	
114	Incorporation of material by reference	49
	Part 7	
	General provisions	
	<i>Commodity levies</i>	
115	Application of Commodity Levies Act 1990 to organic products	50
	<i>Right of review</i>	
116	Right of review of certain decisions made under Act	50
117	Conduct of review	51
118	Time allowed for review	51
	<i>Time limits</i>	
119	Time limits for providing information related to investigation, monitoring, and enforcement	52
120	Time limit generally for providing information under this Act	52
	<i>Automated electronic systems</i>	
121	Arrangement for system	52
122	Effect of use of system	53
	Schedule 1	54
	Transitional, savings, and related provisions	
	Schedule 2	55
	Amendment to Search and Surveillance Act 2012	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Organic Products Act **2019**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is to—

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- (a) increase consumer confidence in purchasing organic products; and
- (b) increase certainty for businesses making organic claims; and
- (c) facilitate international trade in organic products.

4 Outline of Act

- (1) **Part 1** provides for preliminary matters, including—
- (a) the purpose of the Act; and
 - (b) the interpretation of terms used; and
 - (c) that the Act binds the Crown. 5
- (2) **Part 2** relates to approval and recognition, and empowers the relevant chief executive—
- (a) to approve operators so that they can describe products as organic products; and
 - (b) to recognise a range of entities that have oversight of operators' activities. 10
- (3) **Part 3** sets out provisions relating to imports and exports.
- (4) **Part 4** relates to cost recovery.
- (5) **Part 5** deals with enforcement, including—
- (a) the appointment of organic products officers and the other powers of the relevant chief executive; and 15
 - (b) infringement offences; and
 - (c) other offences.
- (6) **Part 6** provides for powers for making regulations and giving notices.
- (7) **Part 7** sets out general provisions, including review rights in relation to certain decisions under this Act, and the use of automated electronic systems. 20
- (8) This section is only a guide to the general scheme of this Act.

5 Interpretation

In this Act, unless the context otherwise requires,—

advertising means any form of communication to the public or a section of the public for the purpose of representing products or promoting the supply of products 25

chief executive means the chief executive of the Ministry or the relevant chief executive, as the case may be

described, in relation to a product, has the meaning given in **section 9** 30

exporter means an operator who exports a product described as an organic product from New Zealand for reward or for purposes of trade, and **export** has a corresponding meaning

final consumer service means—

- (a) the preparation and delivery of a product described as an organic product in a restaurant, canteen, or similar food business; or 35

- (b) the use of a product described as an organic product in a service provided to a final consumer, for example, the use by a hairdresser in providing hairdressing services of a hair product labelled as an organic product by a person other than the hairdresser
- financial year** means a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year 5
- importer** means an operator who imports a product described as an organic product into New Zealand for reward or for purposes of trade, and **import** has a corresponding meaning
- infringement fee**, in relation to an infringement offence, means the infringement fee for the offence prescribed in regulations 10
- infringement offence** means an offence identified in regulations as being an infringement offence
- issuing officer** has the meaning given in section 3(1) of the Search and Surveillance Act 2012 15
- Minister**,—
- (a) in relation to this Act, means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for its administration:
- (b) in relation to an organic standard, means the relevant Minister 20
- Ministry**,—
- (a) in relation to this Act, means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act:
- (b) in relation to an organic standard, means the relevant Ministry 25
- official assurance**, in relation to exporting from New Zealand, has the meaning given in **section 47**
- operator** means a person approved by the relevant chief executive under **section 13**
- organic products officer** means an officer appointed under **section 60** 30
- organic standard**, in relation to a product, means a standard made under this Act
- prescribed** means prescribed in regulations
- recognised agency** means—
- (a) a person who is recognised by a relevant chief executive under **section 19**; and 35
- (b) a group of persons who are recognised by the chief executive under **section 22(1)**

	recognised class means a class of natural persons that is recognised by a relevant chief executive under section 21 , and member of a recognised class has a corresponding meaning	
	recognised entity means a recognised agency, recognised person, recognised class, or member of a recognised class	5
	recognised person means a person recognised by a relevant chief executive under section 20	
	regulations means regulations made under this Act	
	related Act means an Act administered by the relevant Ministry	
	relevant chief executive means the chief executive of the relevant Ministry	10
	relevant Minister , in relation to an organic standard, means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the organic standard, including matters required under this Act to be done by a Minister in relation to making the organic standard	15
	relevant Ministry , in relation to an organic standard, means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the organic standard	
	specified functions and duties , in relation to a recognised entity, means the functions and duties in relation to activities under the Act or organic standards for which the entity is recognised by the relevant chief executive	20
	standard work of reference means a work of reference that the relevant chief executive considers is accepted as a standard work of reference to refer to on its subject matter—	
	(a) internationally; or	25
	(b) by a sector.	
6	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.	
7	Act binds the Crown	30
	This Act binds the Crown.	

Part 2 Approval and recognition

Subpart 1—Describing product as organic

8 **Restriction on describing product as organic product**

A person must not describe a product to which an organic standard relates as an organic product unless the product complies with the standard. 5

9 **Describing product as organic product**

A product is **described** as an organic product if its labelling or advertising uses words such as “organic”, “organically grown”, “organically produced”, or “organic standards” that would suggest to a reasonable person that it is an organic product. 10

Subpart 2—Approval as operator

Who must be approved

10 **Who must or may be approved as operator**

(1) A person who describes a product to which an organic standard relates as an organic product must be approved as an operator. 15

(2) **Subsection (1)** does not apply to a person to the extent that the person is 1 or more of the following:

- (a) the final consumer of the product:
- (b) providing a final consumer service: 20
- (c) a retailer selling products described as organic products, if—
 - (i) the only products described as organic products that the retailer is selling are already prepackaged by a person other than the retailer when the retailer acquires them; and
 - (ii) the retailer sells the products with the prepackaging intact. 25

(3) A person may apply to be approved as an operator if the person—

- (a) provides a service that can affect whether a product meets an organic standard; and
- (b) does not describe the product as an organic product in providing the service. 30

How to apply for approval

11 **Applying for approval**

A person seeking the relevant chief executive’s approval as an operator must—

- (a) apply in the prescribed form; and

- (b) provide any prescribed information.

12 Considering whether to approve as operator

- (1) The relevant chief executive receiving the application must ascertain whether the person is—
- (a) complying with— 5
- (i) the relevant organic standard; and
- (ii) any other prescribed requirements; and
- (b) a fit and proper person and competent to be an operator.
- (2) When ascertaining the matters in **subsection (1)(a)**, the chief executive must— 10
- (a) consider the assessments and other prescribed information the recognised entity provides in regard to the person; and
- (b) follow any prescribed process.
- (3) When ascertaining the matters in **subsection (1)(b)**, the chief executive must take into account any prescribed matters. 15

Granting or refusing approval

13 Granting or refusing approval

- (1) A relevant chief executive who determines that the person meets the criteria referred to in **section 12(1)** must—
- (a) approve the person as an operator; and 20
- (b) notify the person of the approval in accordance with any prescribed requirements.
- (2) A relevant chief executive who proposes to refuse approval must act in accordance with **section 36**.
- (3) The chief executive must refuse approval if the chief executive determines that the person does not meet the criteria referred to in **section 12(1)**— 25
- (a) after any review as part of the procedure under **section 36**; or
- (b) if the person does not respond to notice of the proposed refusal, after the time has expired for applying to review the proposed refusal.
- (4) The chief executive must notify the person of the refusal— 30
- (a) in accordance with any prescribed requirements; and
- (b) giving the reasons for the refusal.

Approval not transferable

14 Operator's approval not transferable

- Approval cannot be transferred from one operator to another person. 35

*Ongoing or ceasing approval***15 Surrendering approval**

- (1) An operator may surrender their approval in whole or in part.
- (2) If an operator surrenders approval,—
 - (a) the operator must notify the relevant chief executive in writing; and 5
 - (b) the chief executive must acknowledge that in writing.

16 Suspending approval

- (1) The relevant chief executive may suspend an operator's approval, in whole or in part, if the chief executive determines that the operator has failed—
 - (a) to provide the access to the operator's property, things, or information that is necessary for the chief executive, an organic products officer, or a recognised entity to carry out their specified functions and duties; or 10
 - (b) to meet the relevant organic standard; or
 - (c) to provide the prescribed evidence that demonstrates compliance with the standard; or 15
 - (d) to meet any other obligations under this Act or regulations.
- (2) Suspension continues until the earliest of the following:
 - (a) the chief executive considers that the relevant failure has been rectified:
 - (b) the operator surrenders their approval:
 - (c) the operator's approval is withdrawn. 20
- (3) The chief executive must notify the operator in writing of the suspension and—
 - (a) the reasons for it; and
 - (b) its duration; and
 - (c) any other prescribed information.
- (4) The duration of the suspension referred to in **subsection (3)(b)** must not exceed— 25
 - (a) 3 months; or
 - (b) any further time that the chief executive allows by notice in writing.

17 Withdrawing approval

- (1) A relevant chief executive may withdraw an operator's approval, in whole or in part, if the chief executive has reasonable grounds to believe that— 30
 - (a) the suspension period allowed for rectifying a failure has expired and the failure has not been rectified; or
 - (b) suspension might be used but has not proven effective in the past; or
 - (c) the person has ceased to act as an operator; or 35

- (d) the operator has failed to pay any fees, charges, or levies imposed by this Act or regulations.
- (2) A chief executive who proposes to withdraw approval must act in accordance with **section 36**.
- (3) The chief executive must notify the operator of the withdrawal of approval— 5
 - (a) in accordance with any prescribed requirements; and
 - (b) giving the reasons for the withdrawal.

Operator use of national mark

18 Use of national mark

A prescribed class of operator may use a national mark on products that meet the relevant organic standard, if the use by the operator is in accordance with any prescribed requirements. 10

Subpart 3—Recognising entities

Who must apply for recognition and how to gain it

19 Recognising agencies 15

- (1) A person who wants to be recognised as an agency responsible for the management and carrying out of specified functions and duties relating to organic compliance must apply to the relevant chief executive for recognition—
 - (a) in the prescribed form; and
 - (b) providing any prescribed information. 20
- (2) The relevant chief executive may recognise the applicant if the chief executive—
 - (a) has considered whether to impose a condition on recognition, and imposes it if the chief executive considers it appropriate; and
 - (b) is satisfied that the person is a fit and proper person and competent to carry out the specified functions and duties and activities for which recognition is sought. 25
- (3) When ascertaining the matters in **subsection (2)(b)**, the chief executive must take into account any prescribed matters.

20 Recognising natural persons 30

- (1) A natural person who wants to be recognised to carry out specified functions and duties relating to organic compliance must apply to the relevant chief executive for recognition.
- (2) The relevant chief executive may recognise the applicant if the chief executive— 35

- (a) has considered whether to impose a condition on recognition, and imposes it if the chief executive considers it appropriate; and
- (b) is satisfied that the applicant is a fit and proper person and competent to carry out the specified functions and duties for which recognition is sought. 5
- (3) Without limiting **subsection (2)(a)**, the chief executive must consider whether to impose a condition requiring the applicant to be managed, employed, or engaged by a recognised agency when carrying out some or all of the functions and duties for which recognition is sought.
- (4) When ascertaining the matters in **subsection (2)(b)**, the chief executive must take into account any prescribed matters. 10
- 21 Recognising classes of natural persons**
- (1) A person who wants a class of natural persons to be recognised to carry out specified functions and duties relating to organic compliance must apply to the relevant chief executive for recognition. 15
- (2) The relevant chief executive may recognise the class of natural persons to carry out specified functions and duties and activities if the chief executive is reasonably satisfied that the applicant—
- (a) represents the class of persons; or
- (b) is an appropriate person to make an application on behalf of the class of persons. 20
- (3) Before recognising a class of natural persons, the chief executive must—
- (a) consult the members of the class about whether it is an appropriate class to carry out the specified functions and duties for which the class is proposed to be recognised; and 25
- (b) be satisfied that the class is an appropriate class to carry them out.
- (4) In determining whether a class is an appropriate class, the chief executive may take into account any matters the chief executive considers relevant, and must take into account—
- (a) whether the class can be defined with appropriate accuracy and specificity; and 30
- (b) the degree to which the qualifications and skills of members of the class correspond with competency to carry out the specified functions and duties for which the class is proposed to be recognised; and
- (c) whether any member of the class should be refused recognition because the chief executive considers on reasonable grounds that the member does not satisfy the matters referred to in **paragraph (b)**; and 35
- (d) any other prescribed matters.
- (5) If a class of persons is recognised,—

- (a) each member of the class, except for a member refused recognition in terms of **subsection (4)(c)**,—
- (i) is a recognised person; and
 - (ii) is subject to the duties of recognised persons; and
 - (iii) may independently carry out the specified functions and activities for which the class is recognised; and
- (b) references to the recognised class are to be read, unless otherwise indicated, as references to each member of the class (except for a member refused recognition in terms of **subsection (4)(c)**).

Who does not need to apply for recognition 10

22 Relevant chief executive may recognise certain entities without application

- (1) A relevant chief executive may, without receiving an application, recognise any of the following as an agency that is responsible for the management and carrying out of specified functions and duties:
- (a) the relevant Ministry: 15
 - (b) a group of natural persons within the Ministry that is designated by the chief executive for the purpose.
- (2) A relevant chief executive may, without receiving an application, recognise any of the following natural persons or a class of them to carry out specified functions and duties: 20
- (a) an officer or employee of the relevant Ministry:
 - (b) an officer or employee of any department of the Public Service listed in Schedule 1 of the State Sector Act 1988.
- (3) **Section 19 and sections 20 and 21** apply to **subsections (1) and (2)** respectively, with all necessary modifications. 25

Natural person may be recognised as different types of recognised entity

23 Interrelationship between sections 19 to 22

A natural person may be recognised under any 1 or more of **sections 19 to 22** despite already being recognised in another capacity under any 1 or more of those sections. 30

Refusing, granting, and varying conditions of recognition

24 Refusing application for recognition

- (1) A relevant chief executive who proposes to refuse recognition must act in accordance with **section 36**.
- (2) The chief executive must refuse recognition if the chief executive determines that the applicant does not meet the criteria for recognition— 35

- (a) after the process set out in **subsection (1)**; or
- (b) if the applicant does not respond to notice of the proposed refusal, after the time has expired for applying to review the proposed refusal.

25 Granting recognition

A relevant chief executive who agrees to recognise an agency, a natural person, or a class of natural persons must, in writing,— 5

- (a) notify the entity; and
- (b) specify the functions and duties in relation to which the entity is recognised; and
- (c) specify the type of organic products in relation to which the entity is recognised; and 10
- (d) state any conditions to which recognition is subject, including whether a member of a class is not recognised; and
- (e) specify the duration of the recognition.

26 Varying conditions of recognition 15

A relevant chief executive who imposes conditions of recognition may also vary the conditions if the chief executive considers it appropriate in the circumstances.

Recognition not transferable

27 Recognition not transferable 20

Recognition cannot be transferred from one recognised entity to another.

Duties of recognised entity

28 Duties of recognised entity

- (1) A recognised entity must ensure that they can—
 - (a) carry out the specified functions and duties they are recognised for; and 25
 - (b) carry out only specified functions and duties that are within the scope of their recognition; and
 - (c) comply with any conditions of recognition; and
 - (d) maintain an appropriate degree of independence and impartiality; and
 - (e) maintain appropriate confidentiality; and 30
 - (f) manage conflicts of interest; and
 - (g) comply with all applicable requirements of this Act and regulations in relation to recognition and to any of the matters specified in **paragraphs (a) to (f)**.
- (2) A recognised agency must also ensure that— 35

- (a) each recognised natural person or class of natural persons that it manages maintains competency to undertake its duties under **subsection (1)**; and
- (b) it has adequate resources and systems in place to ensure that it can comply with its duties under **subsection (1)**. 5
- 29 Recognised entity accountable to chief executive**
- A recognised entity is accountable to the relevant chief executive when carrying out its specified functions or duties, even when it has subcontracted them to other parties.
- 30 Recognised entity may act in other capacities** 10
- A recognised entity may carry out functions or activities that are outside the scope of their specified functions or duties, but must not do so—
- (a) in their capacity as a recognised entity; or
- (b) while purporting to act as a recognised entity.
- Ongoing or ceasing recognition* 15
- 31 Renewal of recognition**
- (1) A recognised entity wishing to continue to be recognised must apply in the prescribed way and within the prescribed time for renewal of their recognition.
- (2) A recognised entity that fails to apply for renewal in the prescribed way or within the prescribed time will be treated as making a new application for recognition. 20
- (3) **Sections 19 to 21 and 24 to 26** apply with all necessary modifications to applications under this section.
- 32 Surrendering recognition**
- (1) A recognised entity may surrender their recognition in whole or in part. 25
- (2) A recognised entity that surrenders recognition must notify, in writing,—
- (a) the relevant chief executive; and
- (b) if the entity is a recognised natural person, their recognised agency, if any.
- (3) The chief executive must acknowledge in writing a notice received under **subsection (2)(a)**. 30
- (4) The surrender takes effect on the latest of the following:
- (a) a date specified in the notice;
- (b) the date when the chief executive updates the public register for the recognised entity: 35
- (c) the date when the chief executive removes the entity from the register.

- (5) The entity must also take steps, as soon as practicable, to notify the operators that they manage that recognition has been surrendered, or surrendered in relation to the part that applies to the operator (as the case may be).

33 Suspending recognition of recognised entity

- (1) The relevant chief executive may suspend recognition in whole or in part of a recognised entity if the chief executive determines that the entity has failed— 5
- (a) to comply with or satisfactorily perform their obligations under the Act or regulations; or
 - (b) to meet any other prescribed criteria.
- (2) When suspending recognition, the chief executive may do any of the following: 10
- (a) impose conditions or further conditions that must be complied with before suspension is lifted:
 - (b) require the suspended entity to take corrective actions:
 - (c) take any other prescribed action.
- (3) When suspending recognition, the chief executive must, in writing,— 15
- (a) notify—
 - (i) the entity; and
 - (ii) if the suspended entity is employed by a recognised agency, the recognised agency; and
 - (b) specify— 20
 - (i) the functions or duties the suspension relates to; and
 - (ii) the reason for suspension; and
 - (iii) the duration of the suspension (which must not exceed 3 months, or any further time that the chief executive allows by notice in writing); and 25
 - (iv) any other prescribed matters.
- (4) Suspension continues until the earliest of the following:
- (a) the chief executive considers that the relevant failure has been rectified:
 - (b) the recognised entity surrenders their recognition:
 - (c) the recognised entity's recognition is withdrawn. 30
- (5) Suspension does not affect any other actions the chief executive may take under this Act.

34 Withdrawing recognition

- (1) A relevant chief executive may withdraw recognition from a recognised entity, in whole or in part, if the chief executive has reasonable grounds to believe that— 35

- (a) the suspension period allowed for rectifying the failure has expired and the failure has not been rectified; or
 - (b) suspension might be used but has not proven effective in the past; or
 - (c) the entity has ceased to carry out the specified functions and duties they are recognised for; or 5
 - (d) the entity has failed to pay any fees, charges, or levies imposed by this Act or regulations.
- (2) A chief executive who proposes to withdraw recognition must act in accordance with **section 36**.
- (3) The entity must also take steps, as soon as practicable, to notify the operators that they manage that recognition has been withdrawn, or withdrawn in relation to the part that applies to the operator (as the case may be). 10

Subpart 4—Provisions applying to both approval and recognition

Requesting information

- 35 Requesting further information from applicant** 15
- (1) A relevant chief executive may require an applicant to supply further information or material before determining whether to grant approval or recognition.
- (2) An application for approval or recognition lapses if the additional information or other material is not supplied within the time specified in or allowed under **section 120**. 20
- 36 Proposing to refuse or withdraw approval or recognition**
- A relevant chief executive who proposes to refuse or withdraw approval or recognition must follow the prescribed process and time frames about review of the proposal, including—
- (a) notifying the person, operator, or entity about the proposal; and 25
 - (b) giving the reasons for the proposal; and
 - (c) providing the person, operator, or entity a reasonable opportunity to respond and have their responses considered; and
 - (d) any other prescribed matters relating to the review of the proposed decision. 30

Imposing and waiving fee

- 37 Fees and charges payable**
- An applicant for approval or recognition, or a recognised entity, must pay the prescribed fees and charges (if any) to become approved or recognised or to renew recognition (as the case may be), except as provided in **section 38**. 35

38 Relevant chief executive must consider exemption, waiver, or refund of fees

- (1) The relevant chief executive must consider an exemption, a waiver, or a refund of fees or charges if—
 - (a) an application is made concurrently for more than 1 type of approval or recognition, for example, when a person applies concurrently for recognition as both a recognised agency and a recognised natural person; or 5
 - (b) an application is made to renew more than 1 type of recognition; or
 - (c) a person is liable to pay a prescribed fee or charge for more than 1 type of ongoing recognition. 10
- (2) However, **subsection (1)** only applies if the chief executive complies with any regulations prescribing the circumstances in which an exemption, a waiver, or a refund may be granted.

Register of operators and recognised entities

39 Public register of operators and recognised entities 15

- (1) A relevant chief executive must keep and maintain a public register of all—
 - (a) operators approved by the chief executive; and
 - (b) recognised entities recognised by the chief executive.
- (2) The chief executive must keep the public register in a manner that the chief executive sees fit, but so that the register— 20
 - (a) can be stored, accessed, and reproduced; and
 - (b) enables the public, operators, and recognised entities to know details of operators and recognised entities for the purposes of the Act; and
 - (c) facilitates the compliance, audit, and other supportive functions of the relevant Ministry under this Act. 25

40 Content of register

A relevant chief executive must hold the following information in the register in relation to each operator and recognised entity:

- (a) name:
- (b) contact details: 30
- (c) any other prescribed information.

41 Access to register

- (1) A relevant chief executive must—
 - (a) make the register available for public inspection at all reasonable times, free of charge, by publishing it on an Internet site maintained by, or on behalf of, the relevant Ministry; and 35

- (b) supply a copy of information contained in the register at no more than a reasonable cost to a person who requests the information.
- (2) The chief executive may direct that a person's address must not be available for inspection or otherwise disclosed if the chief executive is satisfied, on the person's application, that the disclosure of the person's physical address (as entered in the register) would be prejudicial to the personal safety of the person or the person's family. 5
- 42 Removal from register**
- A relevant chief executive must, as soon as practicable, remove the following from the register: 10
- (a) an operator or a recognised entity, if approval or recognition is surrendered or withdrawn:
- (b) a recognised entity, if the entity's recognition period expires.
- Operator and recognised entity information and records*
- 43 Operator and recognised entity to provide information** 15
- (1) An operator or a recognised entity must provide the relevant chief executive with the following information:
- (a) name:
- (b) contact details:
- (c) any other prescribed information relating to the requirements of the Act. 20
- (2) This section applies also to a person that, although exempt from some of the requirements of this Act, is required despite the exemption to provide this information.
- 44 Duty to keep records**
- (1) An operator or a recognised entity must keep records relating to the following matters: 25
- (a) information showing that they meet the requirements of the Act; and
- (b) any other prescribed matters.
- (2) The operator or recognised entity must keep the records— 30
- (a) for the prescribed period; and
- (b) in the prescribed manner, if any.
- (3) The operator or recognised entity must give information in the records, with reasonable notice, at any reasonable time, to any of the following who request it:
- (a) the relevant chief executive: 35
- (b) an organic products officer:

- (c) any other prescribed person.
- (4) The operator or recognised entity must, if requested, provide the information by any or all of the following:
 - (a) giving the person access to the information:
 - (b) allowing the person to inspect the information: 5
 - (c) allowing the person to make copies of the information.

Part 3 Imports and exports

- 45 Chief executive approval of foreign organic products regimes for importation into New Zealand** 10
- (1) A relevant chief executive may, by notice, approve a foreign organic products regime for products or a class of products described as organic products that are imported into New Zealand.
 - (2) The relevant chief executive must not give approval unless satisfied that—
 - (a) the foreign organic products regime for products or a class of products has equivalent or similar outcomes to New Zealand’s organic products regime; and 15
 - (b) the approval is consistent with the purpose of this Act.
 - (3) The relevant chief executive may also—
 - (a) impose conditions or a time limit on the approval under **subsection (1)**; and 20
 - (b) withdraw the approval if no longer satisfied of the matters in **subsection (2)**.
 - (4) Despite **section 10(2)(c)**, a retailer selling products that the retailer has imported and that are described as organic products in the circumstances set out in that paragraph must be approved as an importer. 25
 - (5) The relevant chief executive must ensure that a notice under this section is published in the *Gazette* and available on the relevant Ministry’s Internet site.
- 46 Restriction on exports**
- (1) A relevant chief executive may, by notice, specify export requirements or restrictions on products described as organic products. 30
 - (2) A person must not export a product that is described as an organic product unless—
 - (a) the person is approved by the relevant chief executive as an operator who may export products described as organic products; and 35
 - (b) the product meets—

- (i) the relevant organic standard; and
 - (ii) any other export requirements or restrictions that are prescribed or specified in a notice given by the relevant chief executive under **subsection (1)**.
- (3) The relevant chief executive must ensure that a notice under this section is published in the *Gazette* and available on the relevant Ministry's Internet site. 5
- 47 Official assurances**
- (1) An **official assurance** is a statement to a foreign government, or an agent of a foreign government, attesting that, as appropriate, 1 or more of the following applies in respect of a product described as an organic product: 10
 - (a) a specified process has been completed under this Act with respect to the product:
 - (b) the product meets the relevant organic standard, or notice, or both:
 - (c) the overseas market access requirements of that foreign government that are recognised by New Zealand, and that are stated in the assurance, have been met by the system under which the product was made: 15
 - (d) the situation in New Zealand, in relation to any matter concerning New Zealand's organic products regime, is as stated in the assurance.
- (2) The relevant chief executive may, on application by a person, issue an official assurance— 20
 - (a) for the purposes of meeting the overseas market access requirements of that foreign government; and
 - (b) if satisfied that the requirements of the importing country are met.
- (3) The chief executive may withdraw the official assurance at any time if satisfied that— 25
 - (a) it was incorrectly or inappropriately given; or
 - (b) events or circumstances occurring since it was given mean that—
 - (i) it no longer applies; or
 - (ii) it is misleading.
- (4) **Subsection (1)** does not limit the matters to which an official assurance may apply. 30
- 48 Status of official assurances**
- (1) An official assurance is not a guarantee that the contents of all or any part of a particular consignment to which it relates—
 - (a) meet the commercial requirements of the importer; or 35
 - (b) are fit for the intended purpose of the product; or

- (c) are fit for a purpose other than that for which the consignment was intended.
- (2) **Subsection (1)(b)** applies regardless of the following:
- (a) the status or description of the consumer:
- (b) what has happened to the consignment since it left New Zealand. 5
- 49 Providing statement of compliance**
- (1) This section applies to a written statement that—
- (a) is about a product described as organic that is produced or processed and handled in New Zealand; and
- (b) is about a particular consignment of the product or a particular class of consignment of the product; and 10
- (c) is to the effect that the product in the consignment or class has been produced or processed and handled as required by an applicable organic standard or other requirements under this Act.
- (2) The relevant chief executive may give a statement, in a form and with content determined by the chief executive, to a person if— 15
- (a) the person is an exporter or intending exporter; and
- (b) the chief executive is satisfied that it is correct; and
- (c) the person asks for it; and
- (d) the person pays the fee, if any, prescribed for the giving of statements. 20
- (3) The chief executive may withdraw the statement at any time if satisfied that—
- (a) it was incorrectly or inappropriately given; or
- (b) events or circumstances occurring since it was given mean that—
- (i) it no longer applies; or
- (ii) it is misleading. 25
- (4) The statement is not a guarantee that the product—
- (a) meets commercial requirements; or
- (b) meets overseas market requirements; or
- (c) is still meeting the requirements when it arrives in the overseas market.
- (5) The Crown, the chief executive, and the employees of the relevant Ministry are not liable in any civil proceedings for loss arising because the relevant authority of an overseas market does not admit a product described as an organic product about which the chief executive has given a statement to the market. 30
- 50 Exemption from organic standard for exported product**
- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, make regulations exempting any class or classes of 35

products described as organic products intended for export from New Zealand from specific requirements of the relevant organic standard.

- (2) The Minister must not recommend the making of regulations under **subsection (1)** unless satisfied that it is appropriate to do so, having regard to the requirements of the relevant overseas market. 5

Part 4 Cost recovery

51 Costs to be recovered

The relevant Minister and relevant chief executive must take all reasonable steps to ensure that the direct and indirect costs of administering this Act that are not funded by the Crown for the purpose are recovered by fees, charges, or levies. 10

52 Principles of cost recovery

- (1) In determining the most appropriate method of cost recovery, the relevant Minister and relevant chief executive must take into account, as far as is reasonably practicable, the following criteria: 15
- (a) equity, in that funding for a particular function, power, or service (the **service**), or a particular class of service, should generally, and to the extent practicable, be sourced from the users or beneficiaries of the service at a level commensurate with their use of or benefit from the service: 20
 - (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:
 - (c) justifiability, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the provision or performance of the service: 25
 - (d) transparency, in that costs should be identified and allocated as closely as practicable in relation to tangible service provision for the recovery period in which the service is provided.
- (2) A strict apportionment of costs to be recovered based on usage of a particular service is not required, and a fee or charge may be set at a level or in a way that— 30
- (a) is determined by calculations that involve an averaging of costs or potential costs; and
 - (b) takes into account costs or potential costs of services that— 35
 - (i) are not directly to be provided to the person who pays the fee or charge, but that are an indirect or potential cost; and

- (ii) arise from the delivery of the service to a class of persons or all persons who use the service.

53 Methods of cost recovery

The methods by which costs may be recovered are any 1 or more of the following: 5

- (a) fixed fees or charges: 5
- (b) fees or charges based on a scale or formula or at a rate determined on an hourly or other unit basis:
- (c) use of a formula or other method of calculation for fixing fees and charges: 10
- (d) the recovery by way of fee or charge of actual and reasonable costs expended in, or associated with, the performance of a service or function:
- (e) estimated fees or charges, or fees or charges based on estimated costs, paid before the provision of the service or function, followed by reconciliation and an appropriate further payment or refund after provision of the service or function: 15
- (f) refundable or non-refundable deposits paid before provision of the service or performance of the function:
- (g) fees or charges imposed on users of services or third parties: 20
- (h) levies.

54 Cost recovery to relate to financial year

- (1) Except as provided in **subsection (2)**, regulations that set a fee, charge, or levy that applies in any financial year—
 - (a) must have been made before the start of that financial year; but 25
 - (b) except as the regulations may otherwise provide, apply in that year and all subsequent years until revoked or replaced.
- (2) **Subsection (1)** does not prevent the alteration or setting during any financial year of a fee, charge, or levy payable in that year if—
 - (a) the fee, charge, or levy is reduced, removed, or restated without substantive alteration; or 30
 - (b) in the case of an increase or a new fee, charge, or levy,—
 - (i) appropriate consultation has been carried out with persons or representatives of persons substantially affected by the alteration or setting; and 35
 - (ii) the relevant Minister is satisfied that those persons, or their representatives, agree or do not substantially disagree with the alteration or setting.

- (3) **Subsection (1)** does not prevent the amendment of a regulation that sets a fee, charge, or levy if a substantive alteration effected by the amendment is for the purpose of correcting an error.
- (4) Recovery may be made in any financial year of a shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for over-recovery of costs in those years (including an estimated shortfall or over-recovery for the immediately preceding financial year). 5

55 Three-yearly review of cost recovery

- (1) The relevant Minister must review the levels and methods of cost recovery in relation to any class of the following at least once in every 3-year period occurring since the original setting of, or latest change to, the cost recovery for those things: 10
- (a) product described as an organic product:
 - (b) operator:
 - (c) recognised entity: 15
 - (d) other person or matter.
- (2) The Minister must ensure that consultation takes place in relation to the review with persons or organisations that the Minister considers appropriate.
- (3) A review may provide for recovery in any relevant financial year of any shortfall in cost recovery for any of the preceding 4 financial years, or allow for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year). 20

Failure to pay

56 Fees, charges, and levies to constitute debt

- (1) A fee, charge, or levy that has become payable to the Crown is— 25
- (a) a debt due to the relevant chief executive; and
 - (b) recoverable as a debt by the chief executive in a court of competent jurisdiction.
- (2) Until the fee, charge, or levy is paid in full, it remains a debt due to the chief executive. 30
- (3) The relevant chief executive must notify a person of the consequences of non-payment when it notifies the person of the fee, charge, or levy.
- (4) In an action for recovery of the debt, the court may exercise any power of waiver contained in regulations made under **section 111** if the court is satisfied in the terms set out in those regulations. 35

57 Penalty on unpaid debt

- (1) All or part of a fee, charge, or levy made under this Act or the regulations that remains unpaid after 20 working days since it was demanded in writing is deemed to have been increased by an amount calculated in accordance with **subsection (2)**. 5
- (2) The amount by which the unpaid amount increases is the sum of—
- (a) 10% of the debt (or of that part of the debt that remained unpaid after the expiry of the time provided for the debt's payment); and
 - (b) 10% of the debt or any part of it (including any deemed increase calculated under this subsection) that has remained unpaid for every complete period of 6 months after that expiry. 10

58 Dispute does not suspend obligation to pay fee, charge, levy, or penalty

A dispute between a person and a relevant chief executive about the person's liability to pay a fee, charge, levy, or penalty under this subpart does not suspend— 15

- (a) the obligation of the person to pay the fee, charge, levy, or penalty; or
- (b) the right of the chief executive to receive and recover the fee, charge, levy, or penalty.

59 Services to debtor may be withdrawn

- (1) A relevant chief executive who is satisfied of the matters in **subsection (2)** may give notice to the debtor that service of the kind to which the debt relates may be withdrawn or no longer provided to the person unless— 20
- (a) the debt is paid within 20 working days; or
 - (b) the chief executive agrees that the debt or part of the debt is not payable.
- (2) The matters are— 25
- (a) the debt has been correctly calculated; and
 - (b) the notified time for paying the debt has expired; and
 - (c) the debt has not been paid.

Part 5**Enforcement** 30

Subpart 1—Organic products officers and chief executives

60 Relevant chief executive to appoint organic products officer

- (1) The relevant chief executive may appoint organic products officers for the purposes of this Act.

- (2) Persons appointed under **subsection (1)** must be employed under the State Sector Act 1988.
- (3) An organic products officer may be authorised, on appointment, to exercise and perform—
- (a) all of the powers and functions conferred on organic products officers under this Act; or
 - (b) only those powers and functions specified in—
 - (i) the officer’s instrument of appointment; or
 - (ii) a subsequent written notice from the chief executive to the officer.

61 Suspending or cancelling organic products officer appointment 10

- (1) A relevant chief executive may suspend or cancel the appointment of an organic products officer.
- (2) The chief executive must give the person a notice stating—
- (a) that the person’s appointment is suspended or cancelled; and
 - (b) the reason for the suspension or cancellation; and
 - (c) when the suspension or cancellation will take effect; and
 - (d) in the case of a suspension, when it will end.

Organic products officer powers

62 Power of warrantless entry

- (1) An organic products officer may enter a place (except for a dwelling house or marae) described in **subsection (2)** at any reasonable time without a search warrant for the purpose of determining whether—
- (a) a person is complying with this Act or regulations; or
 - (b) a product complies with the requirements of this Act or regulations.
- (2) A **place** referred to in **subsection (1)** is where—
- (a) a person (whether or not the person is an operator) carries out any activities as an operator; or
 - (b) a recognised entity operates; or
 - (c) the books or records, or other business information kept in writing or electronic form, of an operator or a recognised entity are kept; or
 - (d) the officer reasonably believes that products described as organic products are held or traded.
- (3) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8 and sections 118 and 119) applies to anything done under this section.

63 Applying for search warrant

- (1) The following provisions of the Search and Surveillance Act 2012 apply in relation to applications for a search warrant:
- (a) section 98 (application for search warrant):
 - (b) section 99 (application must be verified): 5
 - (c) section 100 (mode of application for search warrant):
 - (d) section 101 (retention of documents).
- (2) A constable or an organic products officer may apply to an issuing officer for a search warrant.

64 Issuing search warrant

10

- (1) This section applies if an issuing officer reasonably believes that there is, at a place, any thing—
- (a) in relation to which an offence against this Act has been or is being committed; or
 - (b) that is evidence of the commission of an offence against this Act. 15
- (2) The issuing officer may issue a search warrant for a place.
- (3) Sections 102 to 104 and 107 and subpart 5 of Part 4 of the Search and Surveillance Act 2012 apply.

65 Entry under search warrant

- (1) An organic products officer or a constable, or both, may, under and in accordance with the conditions of a search warrant issued under **section 64**, enter a place (including a dwelling house or a marae) specified in the warrant. 20
- (2) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8 and sections 118 and 119) applies to anything done under this section.
- (3) An exercise of the power of entry at a marae or a building associated with a marae must take account of the kawa of the marae so far as practicable in the circumstances. 25

66 Power to test samples

- (1) To assess compliance with requirements under this Act, an organic products officer may require samples to be taken and provided to the officer, whether under a search warrant issued under **section 64** or otherwise. 30
- (2) An organic products officer may test the sample or have it tested.
- (3) The person providing the samples—
- (a) must pay costs reasonably incurred in taking the sample and testing it; and 35

- (b) is not entitled to compensation for losses resulting from the taking or testing of a sample if the taking or testing was reasonable and was done in a reasonable manner.

67 Power to issue an improvement notice

- (1) If an organic products officer reasonably believes that an operator is failing or has failed to comply with 1 or more requirements under this Act, the officer may issue an improvement notice— 5
- (a) requiring the operator to take action to comply with the requirement; and
- (b) specifying the date by which the person must comply with the requirement. 10
- (2) The notice must state—
- (a) the requirement that the officer reasonably believes the person is failing, or has failed, to comply with; and
- (b) the grounds for the officer’s reasonable belief; and
- (c) the nature and extent of the failure to comply with the requirement; and 15
- (d) the date by which the person must comply with the requirement; and
- (e) the person’s right, under **section 116**, to seek a review of the decision to issue the improvement notice.
- (3) A person to whom an improvement notice is issued must comply with the notice, subject to **subsection (4)**. 20
- (4) The date by which the person must comply with the applicable requirement may be extended by the organic products officer at the person’s request.
- (5) An organic products officer may withdraw an improvement notice.

68 Matters may be continued by different organic products officer

- (1) An action initiated or taken under this Act by an organic products officer may be continued by another organic products officer. 25
- (2) Without limiting **subsection (1)**, if an organic products officer has issued an improvement notice or an infringement offence notice under this Act, another organic products officer may—
- (a) take further steps on or in relation to that notice; or 30
- (b) vary it; or
- (c) revoke or withdraw it.

Powers of relevant chief executive

69 Statements by relevant chief executive

- (1) A relevant chief executive may publish a statement for the purpose of protecting or informing the public. 35

- (2) The statement may be about—
- (a) a product, or a batch of a product, in relation to which an organic standard exists; or
 - (b) anything contained or implied in advertisements about a product described as an organic product— 5
 - (i) generally; or
 - (ii) in a particular advertisement; or
 - (iii) in a class of advertisement; or
 - (iv) in classes of advertisements; or
 - (c) the performance (including poor performance) of a person in regards to requirements and obligations imposed by this Act or regulations. 10
- (3) The chief executive—
- (a) must not delegate the power to make statements under this section; and
 - (b) is protected from civil liability for a statement published under this section, unless the statement was not made in good faith or was made recklessly. 15
- 70 Relevant chief executive may request information**
- (1) The relevant chief executive may request any information from a recognised entity or other person (regardless of the person’s approval status as an operator) relating to compliance with the requirements of the Act by that entity or person. 20
 - (2) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 applies to anything done under this section.
- 71 Giving general directions on functions, duties, or powers**
- The relevant chief executive may give a direction relating to their functions, duties, or powers under the Act to the following persons, either individually or as a class: 25
- (a) an organic products officer:
 - (b) a recognised entity.
- 72 Giving general directions to operators, etc** 30
- (1) The relevant chief executive may give a direction described in **subsection (2)** to the following persons:
 - (a) an operator:
 - (b) a person in control of, or reasonably appearing to be in control of, a product described as organic. 35

- (2) Before a breach of requirements under the Act occurs or is suspected, the chief executive may give directions on preventive or corrective actions necessary to meet the requirements.

73 Giving directions to complete declaration or publish statement

- (1) This section applies if a relevant chief executive believes on reasonable grounds that a person has breached or is suspected of breaching the Act, or regulations or notices made under it. 5
- (2) If this section applies, the relevant chief executive may give a direction to the person—
- (a) to disclose information specified by the chief executive; or 10
- (b) to publish a statement specified by the chief executive.

74 Power to direct in certain circumstances

- (1) This section applies if—
- (a) a person has breached or is suspected to have breached a provision of this Act, regulations, or a relevant organic standard; or 15
- (b) an operator's approval has been surrendered, suspended, or withdrawn; or
- (c) a breach or suspected breach is likely to prejudice the reputation of New Zealand's organic products regime in overseas markets.
- (2) The relevant chief executive may, by direction to the person,— 20
- (a) require information to allow the chief executive to determine the person's compliance with the Act, regulations, or standard; or
- (b) require the person to take specific actions (for example, sampling, testing, and investigating) to determine or manage non-compliance of products described as organic products; or 25
- (c) direct the person to keep information and provide reports regarding the matters of the direction; or
- (d) require the person to notify the chief executive when the breach has been resolved or if no breach has been identified.
- (3) The direction must specify the suspected breach or suspected non-compliance. 30
- (4) The direction may specify the products, activities, areas, persons, or operators, or anything else, related to the suspected breach.

Enforceable undertakings

75 Enforceable undertakings

- (1) A relevant chief executive may accept a written undertaking given by, or on behalf of, an operator or a recognised entity in connection with any matter relating to the enforcement of this Act. 35

- (2) The operator or recognised entity may withdraw or vary the undertaking with the consent of the chief executive.
- (3) A chief executive who considers that the operator or recognised entity has breached the undertaking may apply to the District Court or the High Court for 1 or more of the following: 5
- (a) an order directing the operator or recognised entity to comply with the undertaking:
 - (b) an order for any consequential relief that the court thinks appropriate:
 - (c) any other order that the court thinks appropriate in the circumstances.
- Subpart 2—Infringement offences** 10
- 76 Proceedings for infringement offences**
- (1) A person who is alleged to have committed an infringement offence may—
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be issued with an infringement notice under **section 77**. 15
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued. 20
- 77 When infringement notice may be issued**
- An organic products officer may issue an infringement notice to a person if the organic products officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- 78 Infringement notice may be revoked** 25
- (1) The organic products officer may revoke an infringement notice before—
- (a) the infringement fee is paid; or
 - (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked. 30
- (3) The revocation of an infringement notice under this section is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter.

79 What infringement notice must contain

An infringement notice must be in the prescribed form and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence: 5
- (b) the amount of the infringement fee:
- (c) the address of the enforcement authority:
- (d) how the infringement fee may be paid:
- (e) the time within which the infringement fee must be paid:
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957: 10
- (g) a statement that the person served with the notice has a right to request a hearing:
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing: 15
- (i) any other prescribed matters.

80 How infringement notice may be served

- (1) An infringement notice may be served on the person who the organic products officer believes is committing or has committed the infringement offence by—
 - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or 20
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
 - (c) leaving it for the person at the person's place of business or work with another person; or 25
 - (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
 - (e) sending it to an electronic address of the person in a case where the person does not have a known place of residence or business in New Zealand. 30
- (2) Unless the contrary is shown,—
 - (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and
 - (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first enters an information system that is outside the control of the enforcement authority. 35

81 Payment of infringement fees

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account designated by the relevant chief executive.

Subpart 3—Offences

- 82 Offences involving deception for benefit, etc** 5
- (1) A person commits an offence if the person, with intent to deceive and for the purpose of obtaining a material benefit or avoiding a material detriment,—
- (a) makes false or misleading statements or a material omission in a communication, in an application, or in records required for the purposes of this Act; or 10
 - (b) falsifies, removes, alters, or misrepresents a label, brand, national mark, or product description of organic products that is required or authorised by this Act; or
 - (c) misrepresents, substitutes in whole or in part, adulterates, or tampers with a product to which an organic standard applies, so that the product no longer matches its description or official assurance as an organic product; or 15
 - (d) falsifies certificates, official assurances, or other documents required or authorised by this Act; or
 - (e) falsifies, removes, suppresses, or tampers with samples, test results, or other evidence required for the purposes of this Act; or 20
 - (f) aids, or conspires with, another person to commit an offence under this section; or
 - (g) sells or markets a product to which an organic standard applies as an organic product if the product does not meet the standard. 25
- (2) A person who commits an offence under **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$200,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$600,000.
- (3) If a person is convicted of an offence under **subsection (1)**, the court may, in addition to any penalty that the court may impose under that subsection, order the person to pay an amount not exceeding the value of a material benefit gained or material detriment avoided resulting from the conduct referred to in that subsection. 30
- (4) The value must be assessed by the court, using the standard of proof that applies in civil proceedings, and any amount ordered to be paid is recoverable in the same manner as a fine. 35

83 Personating organic products officer, etc

- (1) A person commits an offence if the person, with intent to deceive, personates or pretends to be—
- (a) an organic products officer; or
 - (b) an employee of the relevant Ministry; or 5
 - (c) a person exercising powers delegated from the relevant chief executive under this Act; or
 - (d) a recognised entity.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction,— 10
- (a) in the case of an individual, to a fine not exceeding \$20,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

84 Obstruction of officers

- (1) A person commits an offence if the person resists, obstructs, or delays an organic products officer, a recognised entity, or a person exercising powers delegated from the relevant chief executive, or a person assisting that officer, entity, or person. 15
- (2) A person who commits an offence under **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$20,000: 20
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

*Strict liability offences***85 Sale of non-compliant product that is described as organic**

- (1) A person commits an offence if the person sells or markets a product described as an organic product if there is an organic standard that relates to the product and the product does not meet the standard. 25
- (2) A person who commits an offence under **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$50,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$250,000. 30

86 Sale of product described as organic by person not approved as operator

- (1) A person commits an offence if the person sells a product described as an organic product and the person, in regard to the product, is not—
- (a) approved as an operator; or
 - (b) exempt from requiring approval as an operator under this Act or regulations. 35

- (2) A person who commits an offence under **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$20,000;
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- 87 Export of products described as organic when not approved, etc** 5
- (1) An exporter of a product described as an organic product commits an offence if an organic standard is prescribed in regard to the product and the exporter—
- (a) is not approved by the relevant Ministry for export of the product; or
- (b) does not comply with any relevant prescribed export requirements.
- (2) An exporter who commits an offence under **subsection (1)** is liable on conviction,— 10
- (a) in the case of an individual, to a fine not exceeding \$20,000;
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- 88 Offence of breach of duty**
- (1) A recognised entity commits an offence if the entity breaches or fails to carry out any of the duties specified in this Act or regulations. 15
- (2) A recognised entity who commits an offence under **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$20,000;
- (b) in the case of a body corporate, to a fine not exceeding \$100,000. 20

Defences for certain offences

- 89 Defences for certain offences**
- (1) It is a defence to an offence under **section 85, 86, 87, or 88** if the defendant can prove that—
- (a) the offence relates to events that were outside the defendant's control; or 25
- (b) the defendant took reasonable steps to prevent the commission of the offence; or
- (c) the defendant—
- (i) was supplied with products that do not comply with requirements under this Act; and 30
- (ii) could not with reasonable diligence have ascertained that the products were not compliant.
- (2) A defence under this section is available only if the defendant delivers to the prosecutor a notice in writing that—
- (a) states that the defendant intends to rely on the defence; and 35

- (b) specifies the circumstances relating to **subsection (1)** that the defendant intends to rely on as a defence under this section; and
- (c) is delivered at least 10 working days before the hearing is held in regard to the offence, unless the court allows longer.

Prosecution administration requirements

5

90 Evidence of testing, sampling, etc

- (1) Documents that may be used under this Act as evidence of testing, sampling, analysis, and similar matters may be produced by way of—
 - (a) a certificate given by a recognised entity; or
 - (b) a certificate given by an employee of a recognised entity; or 10
 - (c) a certificate given by an employee of a laboratory specified by the relevant chief executive; or
 - (d) some other means acceptable to the court.
- (2) When produced in a prosecution for an offence against this Act, the evidence must not be ruled inadmissible or disregarded only because compliance with this Act's requirements about the taking or testing of a sample has been reasonable instead of strict. 15

91 Evidence in proceedings

- (1) A certificate or document is not admissible in evidence unless,—
 - (a) at least 20 days before the hearing at which the certificate or document is to be tendered,— 20
 - (i) a copy is served, by or on behalf of the prosecutor, on the defendant or the defendant's agent or counsel; and
 - (ii) that person is at the same time informed in writing that the prosecutor does not propose to call the person who signed the certificate or document as a witness at the hearing or to call evidence about the nature of the document; and 25
 - (b) the court has not ordered, after following the process referred to in **subsection (2)**, that the certificate or document should not be admissible as evidence in the proceedings. 30
- (2) The process is as follows:
 - (a) the defendant must apply at least 10 days before the hearing for an order that the certificate or document should not be admissible as evidence in the proceedings:
 - (b) the court, on the defendant's application, may order that the certificate or document should not be admissible as evidence in the proceedings— 35
 - (i) at least 5 days before the hearing; or

- (ii) in a shorter period than 5 days before the hearing, as the court thinks fit in the special circumstances of the case.

92 Evidence of officer or delegated power

- (1) The relevant chief executive may give a certificate stating that a person is an organic products officer or holds a position under or relevant to this Act. 5
- (2) A certificate given under **subsection (1)** is admissible in proceedings in a New Zealand court that relate to an offence alleged or proved to have been committed against this Act and is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the certificate.
- (3) It is not necessary to prove the signature on a certificate given under this section. 10

93 Evidence of person's documents

- (1) This section applies to the production in evidence of a document described in **subsection (2)** in a prosecution for an offence against this Act.
- (2) The document— 15
- (a) is an application, form, record, report, or other means of stating information; and
- (b) purports to be completed, kept, or provided by a person or on the person's behalf.
- (3) The production in evidence of the document is sufficient evidence, in the absence of evidence to the contrary, that the person completed, kept, or provided the document. 20

94 Evidence of requirement of this Act

- (1) This section applies to the production in evidence of the documents described in **subsection (2)** in a prosecution for an offence against this Act. 25
- (2) The documents are—
- (a) a document presented by an organic products officer purporting to be a requirement of this Act; and
- (b) a copy of the *Gazette* in which the requirement was notified, if applicable. 30
- (3) The production in evidence of the documents is sufficient evidence, in the absence of evidence to the contrary, of the existence, notification, and contents of the requirement.

95 Liability of body corporate

- (1) This section applies when— 35
- (a) a body corporate is charged with an offence against this Act; and

- (b) for the purpose of the prosecution, it is necessary to establish the body corporate's state of mind.
- (2) It is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of his or her actual or apparent authority, had the state of mind. 5
- 96 Liability of director or manager of body corporate**
- (1) This section applies when a body corporate commits an offence against this Act.
- (2) A director or manager of the body corporate is also guilty of the offence if it is proved that the director or manager— 10
- (a) authorised, permitted, consented to, or participated in the act or omission that constituted the offence; or
- (b) knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all practicable steps to prevent or stop it. 15
- (3) A director or manager may be convicted of an offence against this section even though the body corporate has not been charged with that offence or a similar offence.
- 97 Liability of companies and persons for actions of agent or employee**
- (1) An act or omission on behalf of a body corporate or other person (the **principal**) by a director, agent, or employee (the **agent**) of the principal is to be treated for the purposes of this Act as being also the act or omission of the principal. 20
- (2) Despite **subsection (1)**, if a principal is charged under this Act in relation to the act or omission of an agent for an offence that requires that the act or omission is done knowingly, it is a defence to the charge if the principal proves that the principal took all reasonable steps to prevent the commission of the offence or the commission of offences of that kind. 25
- Immunities and excluding liability for loss*
- 98 Protection of persons acting under authority of Act** 30
- (1) This section applies to the following persons:
- (a) the relevant chief executive:
- (b) an employee or agent of the relevant Ministry:
- (c) an employee or agent of a recognised entity:
- (d) a recognised natural person employed or engaged by another recognised entity: 35
- (e) an organic products officer.

- (2) The person is protected from civil and criminal liability, however it may arise, for any act that the person does or omits to do in good faith and with reasonable cause—
- (a) under a requirement of this Act; or
 - (b) in the performance or purported performance of the person’s functions or duties, or the exercise or purported exercise of the person’s powers, under a requirement of this Act. 5
- 99 Exclusion of loss**
- The following are not liable for any loss arising through the actions or omissions of a recognised entity acting under this Act: 10
- (a) the Crown;
 - (b) the relevant chief executive;
 - (c) a person recognised under **section 22** (persons recognised without application).
- Subpart 4—Amendments to other enactments 15
- Amendment to Search and Surveillance Act 2012*
- 100 Amendment to Search and Surveillance Act 2012**
- (1) This section amends the Search and Surveillance Act 2012.
 - (2) In the Schedule, insert in its appropriate alphabetical order the item set out in **Schedule 2** of this Act. 20
- Amendment to Summary Proceedings Act 1957*
- 101 Amendment to Summary Proceedings Act 1957**
- (1) This section amends the Summary Proceedings Act 1957.
 - (2) In section 2(1), definition of **infringement notice**, after paragraph (je), insert:
(jf) **section 77** of the **Organic Products Act 2019**; or 25
- Subpart 5—Jurisdiction
- 102 District Court**
- The District Court may hear and determine the following matters:
- (a) applications from the relevant Ministry for orders to pay additional amounts resulting from commercial gain: 30
 - (b) applications from the relevant Ministry for orders to enforce undertakings of less than \$350,000.

103 High Court

- (1) This section applies to a decision of the District Court under **section 102** to—
 - (a) dismiss the proceedings; or
 - (b) otherwise finally determine the proceedings.
- (2) This section also applies to applications from the Ministry to enforce undertakings of or above \$350,000. 5
- (3) A party to proceedings to which this section applies, or other person prejudicially affected by a decision referred to in **subsection (1)**, may appeal to the High Court against the decision.
- (4) The High Court Rules and sections 126 to 130 of the District Court Act 2016, with all necessary modifications, apply to an appeal under **subsection (3)** as if it were an appeal under section 124 of that Act. 10

104 Appeals to Court of Appeal or Supreme Court

- (1) With the leave of the court appealed to, a party to an appeal under **section 103** may appeal to the Court of Appeal or the Supreme Court against a determination of the High Court in the appeal. 15
- (2) On an appeal under this section, the Court of Appeal or the Supreme Court has the same power to adjudicate on the proceedings as the High Court had.
- (3) **Subsection (1)** is subject to section 75 of the Senior Courts Act 2016.

Part 6 20**Regulations and notices**

Subpart 1—Regulations

*Organic standards***105 Organic standards**

- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, make regulations prescribing an organic standard in relation to a product or class of products. 25
- (2) Without limiting the generality of **subsection (1)**, the organic standard may set out any of the following:
 - (a) the production, processing, and preparation of organic ingredients, organic components, or organic products: 30
 - (b) the packing, storage, and handling of organic ingredients, organic components, or organic products:
 - (c) requirements for sampling and testing of a product:
 - (d) obligations to keep records and to provide information: 35

- (e) circumstances and conditions in which a person or an operator can apply to the relevant chief executive for a variation or waiver:
 - (f) other matters relevant to the management of whether the product can be described as an organic product.
- (3) An organic standard must specify the scope of the products or class of products to which it applies. 5

106 Prerequisites for prescribing organic standards

Before making a recommendation for the purposes of **section 105**, the relevant Minister must be satisfied that—

- (a) there is a demand from the relevant sector to develop the standard; and 10
- (b) the sector has the competence and capacity required to assist in the development of the standard; and
- (c) making the standard will meet the purpose of this Act; and
- (d) there has been consultation with the persons and organisations that the Minister considers appropriate. 15

General regulation-making powers

107 General regulation-making power

- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, make regulations for any of the following purposes:

Approval and recognition 20

- (a) prescribing forms, information, requirements, processes, obligations, and other matters in relation to—
 - (i) applications for approval, recognition, or renewal of recognition:
 - (ii) granting or refusing approval or recognition:
 - (iii) maintaining recognition: 25
 - (iv) suspending or withdrawing recognition or approval:
- (b) prescribing fees and charges in relation to approval and recognition:
- (c) prescribing circumstances in which the relevant chief executive may grant an exemption, a waiver, or a refund of the fees or charges:

Use of national mark 30

- (d) prescribing in relation to a national mark—
 - (i) the nature and form of the mark:
 - (ii) the class of operators who may use the mark:
 - (iii) requirements and restrictions on its use:
- #### *Public register, information, and records* 35
- (e) prescribing information for the content of the public register:

- (f) prescribing information that an operator, recognised entity, or other person must provide to the chief executive under **section 43**:
- (g) prescribing matters about which records must be kept, the period for which the records must be kept, and the manner in which the records must be kept: 5
- (h) prescribing persons that the operator or entity must provide with information under **section 44**:
- Imports and exports*
- (i) prescribing export and import requirements:
- (j) prescribing fees for giving statements of compliance: 10
- (k) exempting a class or classes of organic product intended for export from specific requirements of an organic standard:
- Infringement offences*
- (l) prescribing forms for infringement notices:
- (m) prescribing particulars that infringement notices must contain: 15
- (n) specifying the offences in this Act that are infringement offences:
- (o) prescribing infringement offences for the breach of regulations made under this Act:
- (p) prescribing infringement fees not exceeding \$1,000:
- (q) prescribing infringement fines not exceeding \$2,500: 20
- Review of proposed decisions*
- (r) prescribing processes, time frames, and other matters relating to reviews under **section 36** of proposed decisions:
- General*
- (s) providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 25
- (2) Before making a recommendation, the relevant Minister must be satisfied that there has been consultation with the persons and organisations that the Minister considers appropriate, unless the regulation is making an amendment that the Minister considers to be minor or technical in nature. 30

Exemptions for classes

108 Exemptions for class of persons

- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, make regulations exempting a class of persons from—
- (a) the requirement to be approved as an operator; or 35

- (b) any other requirement of or obligation under this Act or regulations or notices made under it (other than the requirement to meet the relevant organic standard).
- (2) An order under **subsection (1)** may specify provisions of the Act that apply to the class. 5
- (3) The relevant Minister may make a recommendation if satisfied that—
- (a) granting the exemption is consistent with the purpose of the Act; and
- (b) granting the exemption will not—
- (i) have an adverse impact on New Zealand’s reputation; or
- (ii) result in consumers being misled; and 10
- (c) complying with the requirement or obligation is unreasonably burdensome and disproportionate to the benefit of compliance to the class.
- (4) Before making a recommendation, the relevant Minister must be satisfied that there has been consultation with the persons and organisations that the Minister considers appropriate. 15

Regulations imposing fees and charges

109 Regulations may impose fees and charges

- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, make regulations prescribing fees and charges for the purposes of this Act. 20
- (2) The fees and charges may be prescribed using any 1 or more of the methods specified in **section 53**.
- (3) Different fees and charges, or different rates or types of fees or charges, may be prescribed in respect of different classes or descriptions of product, persons, operators, operations, recognised entities, or other persons or matters, or any combination of them. 25
- (4) Without limiting **subsection (3)**, the fees and charges prescribed may—
- (a) differ depending on whether or not a special or an urgent service is provided; and
- (b) include more than 1 level of fee or charge for the same service provided in different ways, or provided in or in respect of different places; and 30
- (c) differ for otherwise similar services provided in different ways; and
- (d) differ for otherwise similar services provided to different categories of persons; and
- (e) differ depending on the amount of service required or the components of the service required for the particular person or class of persons; and 35
- (f) use a formula or other method of calculation; and

- (g) set out a maximum rate when using a formula or other method of calculation.
- (5) If regulations prescribe a formula for determining a fee or charge, the value to be attributed to a component of that formula may—
- (a) be specified in the formula; or 5
- (b) be specified by notice by the relevant chief executive.
- (6) Before making a recommendation, the relevant Minister must be satisfied that there has been consultation with the persons and organisations that the Minister considers appropriate.
- Regulations imposing levies* 10
- 110 Regulations may impose levies**
- (1) The Governor-General may, by Order in Council, made on the recommendation of the relevant Minister, make regulations prescribing levies for the purposes of this Act.
- (2) Levies prescribed by regulations are payable to the relevant chief executive. 15
- (3) Different levies or rates of levy, or different bases on which an amount of levy is to be calculated or ascertained, may be prescribed for either or both of the following:
- (a) different purposes:
- (b) different classes or descriptions of organic products, persons, operators, operations, recognised entities, or other matters, or any combination of them. 20
- (4) Without limiting **subsection (1)**, regulations imposing levies may do any 1 or more of the following:
- (a) specify when and how a levy is to be paid: 25
- (b) require that a levy, or an estimated amount of levy, be paid in advance of the performance of the services or functions to which it relates:
- (c) specify persons, other than persons primarily responsible for paying the levy, who are to be responsible for collecting a levy, and provide for retention of any part of the levy money collected as a fee for that service: 30
- (d) use a formula or other method of calculation:
- (e) set out a maximum rate when using a formula or other method of calculation:
- (f) require, or empower the relevant chief executive to require, the provision of information and returns in relation to levies: 35
- (g) require the keeping of separate trust accounts for levy money received or deducted by persons responsible for collecting levies, and prescribe matters in relation to those trust accounts:

- (h) prescribe a method of arbitration or mediation for disputes about the following, and provide for related matters, including procedures and remuneration for arbitrators or mediators:
- (i) whether or not a person is required to pay, or collect, the levy concerned: 5
- (ii) the amount of levy a person is required to pay or collect.
- (5) Before making a recommendation, the relevant Minister must be satisfied that there has been consultation with the persons and organisations that the Minister considers appropriate.
- 111 Regulations may provide for exemptions, waivers, and refunds** 10
- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, make regulations that do either or both of the following:
- (a) provide for exemptions from, or waivers or refunds of, a fee or charge imposed under **section 109**, or a levy imposed under **section 110**, in whole or in part, in any class of case: 15
- (b) authorise the relevant chief executive to grant an exemption, a waiver, or a refund in a particular case or class of case.
- (2) Regulations made under this section must—
- (a) expire within a specified period not exceeding 5 years; and 20
- (b) set out the circumstances in which the exemption, waiver, or refund may be granted.
- (3) Before making a recommendation, the relevant Minister must be satisfied that there has been consultation with the persons and organisations that the Minister considers appropriate. 25

Subpart 2—Notices

Notices: exemptions

- 112 Exemption for individual cases**
- (1) The relevant chief executive may, by notice, grant a person an exemption from a requirement of or an obligation under this Act (other than the requirement to meet the relevant organic standard) if the chief executive considers the criteria in **subsection (4)** are met. 30
- (2) A person who wishes to be granted an exemption under this section must apply in the manner prescribed by regulation to the chief executive.
- (3) Exemptions granted under this section are— 35
- (a) for a limited time set out in the notice; and
- (b) subject to—

- (i) prescribed criteria; and
 - (ii) prescribed processes; and
 - (iii) any other prescribed matters relating to the exemptions.
- (4) Before giving notice under **subsection (1)**, the chief executive must be satisfied that— 5
- (a) granting the exemption is consistent with the purpose of the Act; and
 - (b) granting the exemption will not—
 - (i) have an adverse impact on New Zealand’s reputation; or
 - (ii) result in consumers being misled; and
 - (c) the requirements or obligations to which the exemption relates are unreasonably burdensome and disproportionate to the benefit that the person might gain from it. 10
- (5) The chief executive must ensure that a notice under this section is published in the *Gazette* and available on the relevant Ministry’s Internet site.
- 113 Exemption for certain operators or products** 15
- The relevant chief executive may, by notice, grant an operator or a product described as organic an exemption from a requirement or an obligation that relates to exporters and exported products under this Act (other than the requirement to meet the relevant organic standard) if the chief executive is satisfied that the product is exported for 1 or more of the following purposes: 20
- (a) for research and development:
 - (b) as a trade sample or to assess an overseas market for the initial development of that market:
 - (c) for personal use or other non-commercial use of the person travelling with the consignment: 25
 - (d) for consumption during transit by a passenger or crew on a vessel or aircraft leaving New Zealand.

Subpart 3—Incorporation by reference

- 114 Incorporation of material by reference**
- (1) Regulations and notices made or given under this Act may incorporate material by reference— 30
- (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the regulations or notice.
- (2) Without limiting **subsection (1)**, material may include standards made under the Standards and Accreditation Act 2015. 35

- (3) Sections 49(4), 51, and 52 to 57 of the Legislation Act 2012 apply in relation to the incorporation in regulations or notices of provisions under this section if—
- (a) the material is not a standard work of reference; or
 - (b) the amendment is to the part of a standard work of reference that the regulations or notice specifies is subject to those provisions. 5
- (4) If the material is a standard work of reference, or a part of a standard work of reference, to which **subsection (3)** does not apply,—
- (a) every amendment to material incorporated by reference under **subsection (1)** that is made by the person or organisation originating the material is to be treated as being a part of the regulations or notice; and 10
 - (b) sections 49(4), 51, 52, and 54 to 57 of the Legislation Act 2012 apply in relation to the incorporation in the regulations or notice.

Part 7 General provisions

Commodity levies 15

115 Application of Commodity Levies Act 1990 to organic products

- (1) The provisions of the Commodity Levies Act 1990 apply to a product to which an organic standard applies, as if the product were a commodity.
- (2) A levy order made in accordance with this section and the provisions of the Commodity Levies Act 1990 must be made on the recommendation of the relevant Minister. 20

Right of review

116 Right of review of certain decisions made under Act

- (1) A person directly affected by a decision to which this section applies and who is dissatisfied with it may seek a review of the decision. 25
- (2) This section applies to any of the following decisions made under this Act:
 - (a) refusing approval under **section 13**;
 - (b) suspending approval under **section 16**;
 - (c) withdrawing approval under **section 17**;
 - (d) refusing recognition under **section 24**: 30
 - (e) making recognition conditional under **section 25(d)**;
 - (f) varying conditions of recognition under **section 26**;
 - (g) suspending recognition under **section 33**;
 - (h) withdrawing recognition under **section 34**;
 - (i) withdrawing an official assurance under **section 47(3)**: 35

- (j) withdrawing a statement of compliance under **section 49(3)**;
- (k) issuing an improvement notice under **section 67**.
- (3) An application for a review must—
- (a) be in writing; and
- (b) state the grounds on which the applicant believes that the original decision was inappropriate; and 5
- (c) be provided to the chief executive within 20 working days after the original decision was notified to the applicant.
- 117 Conduct of review**
- (1) A relevant chief executive who was not involved in the original decision to conduct the review may— 10
- (a) conduct the review; or
- (b) designate a person who was not involved in the original decision to conduct the review.
- (2) If the chief executive was involved in the original decision to conduct the review, the chief executive must designate a person who was not involved in the original decision to conduct the review. 15
- (3) The decision sought to be reviewed remains valid unless and until altered by the chief executive or designated person.
- (4) The chief executive or designated person must, as soon as practicable, notify the applicant for review of his or her decision on the review in writing, giving reasons for the decision. 20
- (5) A decision by the chief executive or a designated person under this section is final, unless determined otherwise by a court of law of competent jurisdiction.
- 118 Time allowed for review** 25
- (1) The relevant chief executive or designated person must review the matter within—
- (a) 40 working days; or
- (b) an extended period of no more than a further 20 working days specified by the chief executive or designated person by notice in writing to the applicant. 30
- (2) However, if the chief executive or designated person requires the applicant to supply further information than that provided with the application for review, that time is not to be counted for the purposes of the time limits specified in **subsection (1)(a) and (b)**. 35

*Time limits***119 Time limits for providing information related to investigation, monitoring, and enforcement**

- (1) A relevant chief executive who suspects that the person has breached this Act, regulations, or an organic standard may, in writing, request the person to provide information or material relating to the person's compliance with the Act, regulations, or standard. 5
- (2) The request must specify that the information must be provided within—
- (a) 10 working days of the request; or
 - (b) any further time that the chief executive allows by notice in writing. 10

120 Time limit generally for providing information under this Act

If this Act allows a person to seek information, or further information, other than information referred to in **section 119(1)**, the person from whom the information is sought must provide the information within—

- (a) 3 months of the request; or 15
- (b) any further time that the person seeking the information allows by notice in writing.

*Automated electronic systems***121 Arrangement for system**

- (1) The relevant chief executive may arrange for the use of an automated electronic system to do the actions described in **subsection (2)** that this Act or another enactment allows or requires the persons described in **subsection (3)** to do for the purposes of this Act. 20
- (2) The actions are—
- (a) exercising a power: 25
 - (b) carrying out a function:
 - (c) carrying out a duty:
 - (d) making a decision:
 - (e) doing an action for the purpose of exercising a power, carrying out a function or duty, or making a decision: 30
 - (f) communicating the exercising of a power, carrying out of a function or duty, or making of a decision.
- (3) The persons are—
- (a) the relevant chief executive:
 - (b) organic products officers. 35
- (4) The relevant chief executive may make an arrangement only if satisfied that—

-
- (a) the system has the capacity to do the action with reasonable reliability; and
- (b) a process is available under which a person affected by an action done by the system can have the action reviewed.
- (5) A system used in accordance with an arrangement may include components outside New Zealand. 5
- (6) The relevant chief executive must consult the Privacy Commissioner about including in an arrangement actions that involve the collection or use of personal information.
- 122 Effect of use of system** 10
- (1) This section applies to an action done by an automated electronic system.
- (2) An action allowed or required by this Act done by the system—
- (a) is treated as an action done properly by the appropriate person referred to in **section 121(3)**; and
- (b) is not invalid by virtue only of the fact that it is done by the system. 15
- (3) If an action allowed or required by another enactment done by the system is done in accordance with any applicable provisions in the enactment on the use of an automated electronic system, the action—
- (a) is treated as an action done properly by the appropriate person referred to in **section 121(3)**; and 20
- (b) is not invalid by virtue only of the fact that it is done by the system.
- (4) If the system operates in such a way as to render the action done or partly done by the system clearly wrong, the action may be done by the appropriate person referred to in **section 121(3)**.

Schedule 1
Transitional, savings, and related provisions

s 6

Part 1
Provisions relating to this Act as enacted

5

There are no transitional, savings, or related provisions relating to this Act as enacted.

Schedule 2
Amendment to Search and Surveillance Act 2012

s 100

Organic Products Act 2019	62	Power of warrantless entry	All (except subparts 2, 3, 6, and 8 and sections 118 and 119)
	63	Applying for search warrant	Sections 98 to 101
	64	Issuing search warrant	Sections 102 to 104 and 107 and subpart 5
	65	Entry under search warrant	All (except subparts 2, 3, 6, and 8 and sections 118 and 119)
	70	Relevant chief executive may request information	Subpart 5