



SUMMARY of the BILL for the ORGANIC PRODUCTS ACT 2019

Please note that this document is intended as a brief summary of the bill. For specific wording and clarification of any points, please refer directly to the bill itself. The ODPG do not take any responsibility for misinterpretation, and recommend reading the bill in its entirety. Please do not quote any part of the summary in an official submission.

Notes:

- Where the text reads 'executive' this is an abbreviation of the term 'relevant chief executive'.
- Where the text reads 'Minister', this is an abbreviation for 'relevant Minister'.
- Where the text reads "organic' product' this is an abbreviation of the term 'product described as an organic product'.
- Where the text reads 'fee', this is an abbreviation of the term 'fee, charge, or levy'.

PURPOSE

The purpose of this Act is to

- (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.

OUTLINE OF ACT

Part 1 provides for **preliminary matters**, including the purpose of the Act, an interpretation of terms, and that the Act binds the Crown.

Part 2 relates to **approval and recognition**, and empowers the executive to approve operators so that they can describe products as organic products, and to recognise a range of entities that have oversight of operators' activities.

Part 3 sets out provisions relating to **imports and exports**.

Part 4 relates to **cost recovery**.

Part 5 deals with **enforcement**, including the appointment of organic products officers and the other powers of the executive, infringement and other offences

Part 6 provides for powers for **making regulations** and giving notices.

Part 7 sets out **general provisions**, including review rights in relation to certain decisions under this Act, and the use of automated electronic systems.

PART ONE: Preliminary Provisions

Please refer to the terms in the bill for PART ONE.

PART TWO: Approval and recognition

Subpart 1—Describing product as organic

A product classed as Organic must comply with the standard to be described as an organic product.

An organic product description uses words such as “organic”, “organically grown”, “organically produced”, or “organic standards” on its label/advertising

Subpart 2—Approval as operator

The operator, a person who is describing a product as organic, must be approved as the operator.

The operator is not the final consumer, providing a final consumer service, or a retailer selling pre-packaged organic products.

A person may apply to be approved as an operator if they provide a service that can affect whether a product meets an organic standard and does not describe the product as an organic product in providing the service.

11-13. Applying to be an Operator

The Operator must apply in the prescribed form. The executive assesses that the operator complies with regulations and requirements, and is competent, taking into consideration the assessments of the recognised entity.

If the Operator does not meet the criteria during the review, the executive will deny the application and must inform the applicant of the reasons.

14. Transferring Approval

Approval cannot be transferred from the operator to anyone else.

15. Surrendering Approval

An operator may surrender their approval in writing to the executive.

16. Suspending Approval

The executive may suspend an operator’s approval if it is determined that the operator has failed to provide necessary access to their property, things, or information that enable the executive, an organic products officer, or entity to carry out their functions.

The operator may also be suspended if they fail to meet the organic standard or provide evidence to show compliance, or fail to meet any other obligations required under the act.

Suspension continues until the failure has been rectified, the operator surrenders their approval, or approval is withdrawn. The executive must notify the operator in writing of the suspension with reasons, duration and further information. The duration of the suspension must not exceed 3 months or any further time that the executive allows.

17. Withdrawing approval

An executive may withdraw an operator's approval, by notifying them with reasons, if:

- there are grounds to believe that a failure has not been rectified during suspension
- suspension has not proven effective in the past
- the person has ceased to act as an operator
- or the operator has failed to pay any imposed fees

18. Use of national mark

Operators may use a national mark on products that meet the relevant organic standard.

Subpart 3—Recognising entities

Who must apply for recognition and how to gain it

19. Recognising Agencies

A person who wants to be recognised as an agency responsible for duties relating to organic compliance must apply in the prescribed form to the executive for recognition.

The applicant may be recognised if the executive has considered whether to impose a condition on recognition and imposes it after assessing that the person is competent to carry out the duties.

20. Recognising Natural Persons

Procedure as per (19)

21. Recognising Classes of Natural Persons

Procedure as per (19) but the executive must be satisfied that the applicant represents the class of persons or is an appropriate person to apply on behalf of the class of persons.

Before recognising a class of natural persons, the executive must consult the members of the class to determine if it is appropriate and should be recognised, looking at:

- Whether the class can be specifically and accurately defined.
- That the qualifications and skills of members of the class correspond with competency to carry out the duties they are recognised for.
- Whether any member of the class should be refused recognition.

If a class of persons is recognised, each member of the class (except those refused) is a recognised person and may independently carry out the functions for which the class is recognised. References to the recognised class are to be read as references to each member of the class.

Who does not need to apply for recognition

22. Executive may recognise certain entities without application

An executive may, without receiving an application, recognise the relevant Ministry or a group of designated natural persons within the Ministry, **as an agency** responsible for the management and carrying out of specified functions and duties.

An executive may, without receiving an application, recognise an officer or employee of the relevant Ministry or an officer or employee of any department of the Public Service **as natural persons** or a class of them to carry out specified functions and duties.

23. Interrelationship between sections 19 to 22

A natural person may be recognised under any of the sections (19) to (22) despite already being recognised in another capacity under any of those sections.

Refusing, granting, and varying conditions of recognition

24. Refusing application for recognition

The executive must refuse recognition (in accordance with section (36)) if it is determined that the applicant does not meet the criteria for recognition.

25. Granting recognition

An executive who agrees to recognise an agency, a natural person, or a class of natural persons must specify:

- Their functions and duties
- The type of organic products specifically recognised
- Any conditions to which recognition is subject.
- The duration of the recognition.

26. Varying conditions of recognition – may be imposed by the executive where appropriate.

27. Recognition is not transferable.

Duties of recognised entity

28. Duties of recognised entity

A recognised entity must ensure that they can (and only) carry out the specified functions and duties they are recognised for, complying with conditions, maintaining independence, impartiality and confidentiality, and managing conflicts of interest.

A recognised agency must also ensure that each natural person, or class it manages maintains competency, and has adequate resources and systems in place to carry out duties.

29. Recognised entity accountable to executive

A recognised entity is accountable to the 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

A recognised entity may carry out functions or activities outside the scope of their specified duties, but not in their capacity as a recognised entity or while acting as a recognised entity.

Ongoing or ceasing recognition

31. Renewal of recognition

A recognised entity wishing to continue to be recognised must apply for renewal in time and in the right manner or they will be treated as a new application.

32. Surrendering recognition

A recognised entity may surrender their recognition in whole or in part, in writing to the executive (or if a recognised natural person, to their agency). The executive will acknowledge the notice, and surrender takes effect as per the notice, or when the public register is updated, or the entity is removed from the register.

An entity must also notify the operators that they manage about their surrender.

33. Suspending recognition of recognised entity

If it is determined that the recognised entity has failed to comply, perform obligations or meet criteria, the executive may suspend recognition in whole or in part

When suspending recognition, the executive may impose conditions or require the suspended entity to take corrective actions before lifting suspension

When suspending recognition, the executive must notify the entity/recognised agency in writing, and specify the functions the suspension relates to, the reason for suspension and the duration (which must not exceed 3 months or any further time as notified by the executive).

Suspension continues until the executive considers that the relevant failure has been rectified, the recognised entity surrenders their recognition or recognition is withdrawn.

Suspension does not affect any other actions the executive may take under this Act.

34. Withdrawing recognition

An executive may withdraw recognition, in whole or in part, if

- The failure has not been rectified within the suspension period
- Suspension might be used but has not proven effective in the past
- The entity no longer carries out the duties they are recognised for
- The entity has failed to pay any fees

An executive who proposes to withdraw recognition must act in accordance with section 36.

The entity must also notify the operators they manage that recognition has been withdrawn

Subpart 4—Provisions Applying to both Approval and Recognition

Requesting information

35. Requesting further information from applicant

Further information/material may be requested before the executive determines whether to grant approval or recognition. If the additional information/material is not supplied within the time frame, the approval/recognition may lapse.

36. Proposing to refuse or withdraw approval or recognition

A process and time frame for review must be followed by the executive when proposing to refuse or withdraw approval/recognition. The person/operator/entity must be notified about the proposal, with reasons, and with a reasonable opportunity for responses.

Imposing and waiving fee

37. Fees and charges payable

An applicant/recognised entity, must pay the prescribed fees to become approved or recognised or to renew recognition (as the case may be), except as provided in section 38.

38. Executive must consider exemption, waiver, or refund of fees

The executive must consider an exemption, a waiver, or a refund of fees if an application is made concurrently for, or to renew, more than one type of approval or recognition, or a person is liable to pay a fee for more than one type of ongoing recognition.

This 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

An executive must maintain a public register of all their approved operators and their recognised entities. The register must be kept so that it enables the public, operators, and recognised entities to know details of operators and recognised entities and facilitates the Ministry's compliance, audit, and other supportive functions

40. Content of register – Names, contact details and prescribed information of operators/entities.

41 Access to register

The register should be 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. The executive should supply a copy of information at a reasonable cost to a person who requests it.

But the executive may decide not to disclose a person's physical address if disclosure may impact the personal safety of the person or the person's family.

42. Removal from register

An executive must remove an operator or entity from the register if approval or recognition is surrendered or withdrawn, or if an entity's recognition period expires.

Operator and recognised entity information and records

43. Operator and recognised entity to provide information

An operator or a recognised entity must provide the executive with their name, contact details and any other prescribed information. This also applies 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

An operator or a recognised entity must keep records of information showing they meet the requirements of the Act and any other prescribed matters. Records must be kept for the prescribed period and in the prescribed manner, if any.

The operator or recognised entity must give information in the records to the executive, or an organic products officer, or any other prescribed person, if and when requested. They must do so by giving the person access to the information, allowing the person to inspect the information, and/or allowing the person to make copies of the information.

PART THREE: Imports and Exports

45. Executive approval of foreign organic products regimes for importation into New Zealand

An executive may approve a foreign organic products regime for 'organic' products imported into New Zealand. They must not approve unless the foreign organic products regime is equivalent or similar to New Zealand's organic products regime

The executive may also impose conditions or a time limit on the approval or withdraw the approval if not satisfied.

A retailer selling products they have imported, described as organic products, must be approved as an importer.

The executive must publish a notice in the Gazette and the relevant Ministry's Internet site.

46. Restriction on exports

An executive may specify export requirements or restrictions on products described as organic.

A person must not export a product that is described as an organic product unless the person is approved as an operator who may export organic products. The products must meet the relevant organic standard and any other export requirements or restrictions.

The executive must publish a notice in the Gazette and the relevant Ministry's Internet site.

47 Official assurances

An official assurance - a statement to a foreign government, or agent, concerning an organic product where one or more of the following applies:

- A specified process has been completed under the requirements of this Act.
- The product meets the relevant organic standard, or organic notice, or both.
- The overseas market access requirements of the foreign government (that is recognised by New Zealand and as stated in the assurance) have been met by the system under which the product was made.
- The situation in New Zealand, in relation to any matter concerning New Zealand's organic products regime, is as stated in the assurance.

On application, the executive may issue an official assurance for the purposes of meeting the overseas market access requirements of that foreign government and if satisfied that the requirements of the importing country are met.

The executive may withdraw the official assurance at any time if it was incorrectly or inappropriately given, or if it no longer applies or is misleading.

48. Status of official assurances

An official assurance is not a guarantee that the contents of the particular consignment meet the commercial requirements of the importer, are fit for the intended purpose*, or are fit for a purpose other than that for which the consignment was intended.

* This applies regardless of the status or description of the consumer, or what has happened to the consignment since it left New Zealand.

49 Providing statement of compliance

A written statement about an 'organic' product that is produced or processed and handled in New Zealand, and about a particular consignment or class of the product. The product must have been handled as required by an applicable organic standard or other requirements under this Act.

The executive may give a statement if requested by a person who is an exporter or intending exporter and the executive is satisfied that the request is correct and the fee has been paid (if any).

The executive may withdraw the statement at any time it was incorrectly or inappropriately given, or it no longer applies or is misleading.

The statement is not a guarantee that the product meets commercial requirements, overseas market requirements, or is still meeting the requirements when it arrives in the overseas market.

The Crown, the chief executive, and employees of the relevant Ministry are not liable in any civil proceedings for loss arising because the relevant overseas market authority does not admit an 'organic' product about which the chief executive has given a statement to the market.

50. Exemption from organic standard for exported product

The Governor-General may make regulations exempting any class of 'organic' products intended for export from specific requirements of the relevant organic standard.

The Minister must not recommend the making of regulations under subsection (1) unless appropriate to do so with regard to overseas market requirements.

PART FOUR: Cost Recovery

51-52. Costs to be recovered/ Principles of recovery

Minister and executive must take steps to ensure that the costs of administering this Act that are not Crown-funded are recovered by fees, charges, or levies.

The following criteria should be taken into account:

- Equity - sourced from the users of the service to the level of the benefits received
- Efficiency - costs allocated and recovered that ensure maximum benefits are delivered at minimum cost
- Justifiability - costs collected only to meet the actual and reasonable costs (incl. indirect)
- Transparency - costs identified and allocated in relation to tangible service provision for the recovery period

A strict apportionment of costs based on usage of a service is not required. Fees may be set at a level that is determined by averaged cost/potential cost calculations, taking into account indirect costs arising from the delivery of the service to persons who use the service.

53. Methods of cost recovery

Here are the methods by which costs may be recovered

- Fixed fees or charges, that may be determined by a formula, or based on a scale/formula/rate determined on an hourly or other unit basis
- The recovery of actual expended costs for the service
- Estimated fees or charges paid before the provision of the service and then reconciled with an extra payment or refund after provision of the service.
- Refundable/non-refundable deposits paid before provision of the service
- Fees or charges imposed on users of services or third parties
- Levies.

54. Cost recovery to relate to financial year

Regulations that set a fee, charge, or levy that applies in any financial year must have been made before the start of that financial year, applying in that year and all subsequent years until revoked or replaced.

The above does not prevent the alteration or setting of a fee payable in that year if the fee is reduced, removed, or restated without substantive alteration. In the case of an increase or a new fee, consultation should be carried out with persons substantially affected by the alteration or setting, and the Minister should be satisfied that those persons agree (or do not substantially disagree).

The above also does not prevent the amendment of a regulation for fees in order to correct an error.

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).

55. Three-yearly review of cost recovery

The 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

- Product described as an organic product
- Operator
- Recognised entity
- Other person or matter

Consultation must take place with persons or organisations the Minister considers appropriate.

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 20 over-recovery of costs in those years (including any estimated shortfall or overrecovery for the immediately preceding financial year).

Failure to pay

56. Fees, charges, and levies to constitute debt

A fee payable to the Crown is a debt due to the relevant chief executive and recoverable as a debt by the chief executive in a court of jurisdiction.

Until the fee, charge, or levy is paid in full, it remains a debt due to the chief executive and the executive must notify a person of the consequences of nonpayment when advising them of the fee.

In recovering 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.

57. Penalty on unpaid debt

All or part of a fee unpaid after 20 working days since demanded in writing is deemed to have been increased by an amount calculated as below:

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 10% of the debt or any part of it (including any deemed increase calculated under this subsection) that has remained unpaid for every complete 10 period of 6 months after that expiry.

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

A dispute between a person and an executive about the person's liability to pay a fee or penalty does not suspend the obligation of the person to pay the fee or the right of the executive recover the fee or penalty.

59. Services to debtor may be withdrawn

An executive who is satisfied the debt has been calculated correctly, the due payment time has expired and yet the debt has not been paid, may give notice to the debtor that the service be withdrawn, unless the debt is paid within 20 working days or the executive agrees that the debt (or part) is not payable.

PART FIVE: ENFORCEMENT

Subpart 1—Organic Products Officers and Chief Executives

60. Relevant chief executive to appoint organic products officer

The executive may appoint organic products officers for the purposes of this Act. Persons appointed must be employed under the State Sector Act 1988. The appointed officer may be authorised to exercise all of the powers and functions given to organic products officers under this Act (or only the powers given on appointment or with written notice from the executive)

61. Suspending or cancelling organic products officer appointment

An executive may suspend or cancel the appointment of an organic products officer, given in notice that the person's appointment is suspended or cancelled with the reason and when the suspension or cancellation will take effect. In the case of a suspension, also when it will end.

Organic products officer powers

62. Power of warrantless entry

An organic products officer may enter a place (except for a dwelling house or marae) described below at any reasonable time without a search warrant for the purpose of determining whether a person is complying with this Act or a product complies with the requirements of this

A place referred to above is where a person (whether an operator or not) carries out any activities as an operator, OR a recognised entity operates OR the books or records, or other business information of an operator or entity are kept, OR the officer reasonably believes that products described as organic products are held or traded.

*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

The following provisions of the Search and Surveillance Act 2012 apply in relation to applications for a search warrant - section 98 (application for search warrant), section 99 (application must be verified), section 100 (mode of application for search warrant), section 101 (retention of documents).

A constable or an organic products officer may apply to an issuing officer for a search warrant.

64. Issuing search warrant

This section applies if an issuing officer reasonably believes that there is, at a place, any thing in relation to which an offence against this Act has been or is being committed, or that is evidence of the commission of an offence against this Act. The issuing officer may issue a search warrant.

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

An organic products officer and/or a constable may, in accordance with (64) above, enter a place (including a dwelling house or a marae) specified in the warrant.

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.

An exercise of the power of entry at a marae building must take account of the kawa of the marae.

66. Power to test samples

An organic products officer may require samples to be provided, whether under a search warrant issued or otherwise. The officer may have the sample tested, and the person providing the samples must pay for taking and testing the sample, and is not entitled to compensation.

67. Power to issue an improvement notice

If an organic products officer believes there is a failure to comply, they may issue an improvement notice requiring the operator to take action to comply with the requirement by a specified date.

The notice must state how the person is failing, the grounds for the officer's reasonable belief, the nature and extent of the failure, the date for compliance, and the person's right, under section 116, to seek a review.

The person must comply with the notice, but the date may be extended on request, or the notice withdrawn by the organic products officer.

68. Matters may be continued by different organic products officer

Another organic products officer may take further steps on a notice issued by an officer, vary it, or revoke/withdraw it.

Powers of Relevant Chief Executive

69. Statements by relevant chief executive

A relevant chief executive may publish a statement for the purpose of protecting or informing the public.

The statement may be about a product, or batch, with an organic standard applied, anything contained or implied in organic product advertisements, or the performance (including poor performance) of a person in regard to this Act's requirements.

The chief executive must not delegate the power to make statements under this section, and is protected from civil liability for a statement published under this section (unless not made in good faith, or recklessly).

70. Relevant chief executive may request information

The 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. (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 executive may give a direction to organic product officers and recognised entities, either individually or as a class.

72. Giving general directions to operators, etc

In the event of a breach of requirements occurring or being suspected, the executive may give direction on preventative or corrective actions to operators and those in control of a product described as organic so they can meet the requirements.

73. Giving directions to complete declaration or publish statement

If the executive believes a person has breached the Act they may ask the person to disclose information specified by the executive, or to publish a statement specified by the executive.

74. Power to direct in certain circumstances

If a person has breached a provision of this Act or a relevant organic standard, OR an operator's approval has been surrendered, suspended, or withdrawn, OR a breach is likely to prejudice the reputation of New Zealand's organic products regime in overseas markets, the executive may:

- require information to determine the person's compliance with the Act
- or require the person to take specific actions (for example, sampling, testing, and investigating) to determine non-compliance of products described as organic products
- or direct the person to keep information and provide reports regarding the direction
- or require the person to notify the executive when the breach has been resolved

The direction must specify the suspected breach or suspected non-compliance, and the products, activities, areas, persons, or operators, or anything else, related to the suspected breach.

Enforceable undertakings

75. Enforceable undertakings

An executive may accept a written undertaking from an operator or entity in connection with any matter relating to the enforcement of this Act. The operator or recognised entity may withdraw or vary the undertaking with the consent of the executive.

An executive who considers there has been a breach may apply to the District or High Court for an order directing the operator to comply with the undertaking, an order for appropriate consequential relief, and/or any other order that the court thinks appropriate.

Subpart 2—Infringement offences

76. Proceedings for infringement offences

A person who is alleged to have committed an infringement offence may be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011, or be issued with an infringement notice under section 77. These proceedings do not require the leave of a District Court Judge or Registrar

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 the person is committing an infringement.

78. Infringement notice may be revoked

The organic products officer may revoke an infringement notice before the infringement fee is paid or an order for payment of a fine is made by a court under section 21 of the Summary Proceedings Act 1957.

An infringement notice is revoked by giving written notice to the person. 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

- Details of the alleged offence with time, place, and nature of the offence.
- Amount of the infringement fee, how it should be paid, and time period of payment.
- Address of the enforcement authority.
- A summary of the provisions of section 21(10) of the Summary Proceedings Act 1957
- A statement that the person has a right to request a hearing
- What will happen if the infringement fee is not paid, nor a hearing requested
- Any other prescribed matters.

80. How infringement notice may be served

An infringement notice may be served by

- Delivering it to the person (or, if the person refuses to accept it, bringing it to the person's notice), sending it by prepaid post to their residence or workplace, or by an electronic address if they have no residence or workplace in NZ*.
- leaving it for the person at their residence with an over-14 year old.
- leaving it for the person at their work address with another person.

*By prepaid post - treated as having been served on that person on the fifth working day after the date on which it was posted

*By valid electronic address - treated as having been served at the time it first enters an information system outside the control of the enforcement authority.

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 executive.

Subpart 3—Offences

82. Offences involving deception for benefit, etc

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:

- Makes false or misleading statements or a material omission in a communication / application / records required for the purposes of this Act.
- Falsifies, removes, alters, or misrepresents a label, brand, national mark, or product description of organic products.
- Misrepresents, substitutes in whole or in part, adulterates, or tampers with a product to which an organic standard applies, so it no longer matches its description or official assurance as an organic product.

- Falsifies certificates, official assurances, or other documents.
- Falsifies, removes, suppresses, or tampers with samples, test results, or other evidence.
- Aids, or conspires with, another person to commit an offence under this section
- Sells or markets a product to which an organic standard applies as an organic product if the product does not meet the standard.

A person who commits an offence (as detailed above) is liable on conviction, in the case of an individual, to a fine not exceeding \$200,000, or in the case of a body corporate, to a fine not exceeding \$600,000.

If a person is convicted of an offence (as detailed above) the court may, in addition to any penalty, order the person to pay an amount not exceeding the value of a material benefit gained or material detriment avoided. The value must be assessed by the court, and any amount is recoverable in the same manner as a fine.

83. Personating organic products officer, etc

A person commits an offence if the person, with intent to deceive, personates or pretends to be an organic products officer, an employee of the relevant Ministry, a person exercising powers delegated from the executive, or a recognised entity.

A person who commits such an offence is liable on conviction, in the case of an individual, to a fine not exceeding \$20,000, and in the case of a body corporate, to a fine not exceeding \$100,000.

84. Obstruction of officers

A person commits an offence if they resist, obstruct, or delay an organic products officer, a recognised entity, or a person exercising powers from the executive, or a person assisting that officer, entity, or person.

A person who commits such an offence is liable on conviction, in the case of an individual, to a fine not exceeding \$20,000, and 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

A person commits an offence if they sell or market a product described as organic, but not meeting the standard.

A person who commits such an offence is liable on conviction, in the case of an individual, to a fine not exceeding \$50,000, and in the case of a body corporate, to a fine not exceeding \$250,000.

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

A person commits an offence if they sell a product described as organic but the person is not approved as an operator or is exempt from requiring approval as an operator under this Act.

A person who commits such an offence is liable on conviction, in the case of an individual, to a fine not exceeding \$20,000, and 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

An exporter of a product described as organic commits an offence if an organic standard is prescribed but the exporter is not approved by the relevant Ministry for export of the product, or does not comply with any relevant prescribed export requirements.

An exporter who commits such an offence is liable on conviction, in the case of an individual, to a fine not exceeding \$20,000, and in the case of a body corporate, to a fine not exceeding \$100,000.

88. Offence of breach of duty

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.

A recognised entity who commits such an offence is liable on conviction, in the case of an individual, to a fine not exceeding \$20,000, and in the case of a body corporate, to a fine not exceeding \$100,000.

Defences for certain offences

89. Defences for certain offences

It is a defence to an offence under section 85, 86, 87, or 88 if the defendant can prove that the offence relates to events that were outside the defendant's control, they took reasonable steps to prevent the offence, or they were supplied with products that do not comply and could not with reasonable diligence have ascertained that the products were not compliant.

A defence under this section is available only if the defendant delivers to the prosecutor a notice in writing that states that the defendant intends to rely on the defence, specifies the circumstances, and is delivered at least 10 working days before the hearing, unless the court allows longer.

Prosecution administration requirements

90. Evidence of testing, sampling, etc

Documents that may be used under this Act as evidence of testing, sampling, analysis, and similar matters may be produced by a certificate given by a recognised entity, an employee of the entity, an employee of a laboratory specified by the executive, or another means acceptable to the court.

When produced in a prosecution, 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.

91. Evidence in proceedings

A certificate/document is not admissible in evidence unless, at least 20 days before the hearing, a copy is served on the defendant or their agent and, at the same time, that person is informed in writing that the prosecutor does not propose to call the signatory of the certificate as a witness, or to call evidence about the nature of the document.

A certificate/document is not admissible in evidence unless, at least 10 days before the hearing, the defendant applies that the document should not be admissible. The court may then order that the document should not be admissible at least 5 days before the hearing, or less for special circumstances, as the court sees fit.

92. Evidence of officer or delegated power

The executive may give a certificate stating that a person is an organic products officer or holds a position under or relevant to this Act. Such a certificate is admissible in proceedings in a New Zealand court relating to an alleged or proven offence against this Act. In the absence of proof to the contrary, the certificate is sufficient evidence, and it is not necessary to prove the signature on a certificate.

93. Evidence of person's documents

The document is an application, form, record, report, or similar, completed, kept or provided by a person or on the person's behalf. Production of the document is sufficient evidence that the person completed, kept, or provided the document.

94. Evidence of requirement of this Act

The document is presented by an organic products officer purporting to be a requirement of this Act, and a copy of the Gazette in which the requirement was notified, if applicable. The documents submitted are sufficient evidence of the existence, notification, and contents of the requirement.

95. Liability of body corporate

When a body corporate is charged with an offence and it is necessary for the prosecution to establish state of mind, it is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of authority, had the state of mind.

96 Liability of director or manager of body corporate

A director or manager of the body corporate is also guilty of the offence if it is proved that the director or manager permitted or participated in the act or omission that constituted the offence, or knew that the offence was being committed and failed to take steps to prevent or stop it.

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

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 as being also the act or omission of the principal.

Despite this, if a principal is charged in relation to the act or omission of an agent for an offence they had knowledge of, it is a defence to the charge if the principal proves that they took steps to prevent the commission of the offence or others of that kind.

Immunities and excluding liability for loss

98. Protection of persons acting under authority of Act

This section applies to the executive, an employee/agent of the Ministry, an employee/agent of a recognised entity, a recognised natural person employed or engaged by another recognised entity and an organic products officer.

The person is protected from civil and criminal liability for any act that the person does/omits to do in good faith and with reasonable cause.

99. Exclusion of loss

The Crown, the executive, and persons recognised without application are not liable for any loss arising through the actions/omissions of a recognised entity acting under this Act.

Subpart 4—Amendments to other enactments

100. Amendment to Search and Surveillance Act 2012, and;

101. Amendment to Summary Proceedings Act 1957

Minor amendments to the acts referred to in this schedule.

Subpart 5—Jurisdiction

102. District Court

The District Court may hear and determine the following matters

- Applications from the relevant Ministry for orders to pay additional amounts resulting from commercial gain
- Applications from the relevant Ministry for orders to enforce undertakings of less than \$350,000.

103. High Court

This section applies to a decision of the District Court as above (102) to dismiss the proceedings or otherwise finally determine the proceedings. A party to the proceedings, or other person prejudicially affected by the decision, may appeal to the High Court against the decision.

This section also applies to applications from the Ministry to enforce undertakings of or above \$350,000.

104. Appeals to Court of Appeal or Supreme Court

With the leave of the court appealed to, a party may appeal to the Court of Appeal or the Supreme Court against a determination of the High Court. On an appeal under this section, the Court of Appeal or the Supreme Court has the same power to adjudicate as the High Court had.

PART SIX: Regulations and Notices

Subpart 1—Regulations Organic standards

105. Organic standards

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing an organic standard in relation to a product or class of products, which may set out:

- Production, processing, and preparation of organic ingredients components, or products
- Packing, storage, and handling of organic ingredients, components, or products
- Requirements for sampling and testing of a product.
- Obligations to keep records and to provide information.
- Conditions in which a person or operator can apply for a variation or waiver.
- Other matters relevant to whether the product can be described as an organic product.

An organic standard must specify the scope of the products or class of products to which it applies.

106. Prerequisites for prescribing organic standards

Before making a recommendation for the above (105), the Minister must be satisfied that there is a demand from the relevant sector to develop the standard, that the sector has the competence and capacity required to assist in the development of the standard, making the standard will meet the purpose of this Act and there has been consultation with appropriate persons and organisations.

General regulation-making powers

107. General regulation-making power

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

Approval and recognition

- Prescribing forms, information, requirements, processes, obligations, and other matters in relation to:

- Applications for approval, recognition, or renewal of recognition
- Granting or refusing approval or recognition
- Maintaining recognition
- Suspending or withdrawing recognition or approval

- Prescribing fees and charges in relation to approval and recognition:

- Prescribing circumstances in which the executive may grant an exemption, waiver, or refund of fees.

Use of national mark

- Prescribing the nature and form of the national mark, the class of operators who may use the mark, and the requirements and restrictions on its use

Public register, information, and records

- Prescribing information for the content of the public register.
- Prescribing information that an operator, recognised entity, or other person must provide.
- Prescribing matters about which records must be kept, for how long and in what manner.
- Prescribing persons that the operator or entity must provide with information.

Imports and exports

- Prescribing export and import requirements.
- Prescribing fees for giving statements of compliance
- Exempting a class of organic product intended for export from specific requirements of an organic standard

Infringement offences

- Prescribing forms for infringement notices.
- Prescribing particulars that infringement notices must contain.
- Specifying the offences in this Act that are infringement offences.
- Prescribing infringement offences for the breach of regulations.
- Prescribing infringement fees not exceeding \$1,000, and fines not exceeding \$2,500

Review of proposed decisions

- Prescribing processes, time frames, and other matters relating to reviews

General

- Providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Before making a recommendation, the Minister must be satisfied that there has been consultation with appropriate persons and organisations, unless the regulation is making a minor or technical amendment.

Exemptions for classes

108. Exemptions for class of persons

The Governor-General may, by Order in Council as recommended by the Minister, make regulations exempting a class of persons from the requirement to be approved as an operator, or any other requirement under the Act (other than the requirement to meet the relevant organic standard). This may specify provisions of the Act that apply to that class.

The Minister may make a recommendation if satisfied that granting the exemption is consistent with the purpose of the Act and will not have an adverse impact on New Zealand's reputation or result in consumers being misled. Also that complying with the requirement is unreasonably burdensome and disproportionate to the benefits to the class.

Before making a recommendation, the Minister must be satisfied of consultation with appropriate persons and organisations.

Regulations imposing fees and charges

109. Regulations may impose fees and charges

The Governor-General may, by Order in Council as recommended by the Minister, make regulations prescribing fees for the purposes of this Act. See point 53 for how the fees may be prescribed.

Different fees, rates or types of fees, may be prescribed in respect of different classes, product descriptions, persons, operators, operations, recognised entities, or other persons or matters, or any combination of them.

The fees prescribed may:

- Differ depending on whether or not a special/urgent service is provided.
- Include more than one level of fee for the same service provided in different ways, or places.
- Differ for otherwise similar services provided in different ways, or to different categories of persons.
- Differ depending on the amount of service or the service components required for the particular person or class
- Use a formula or other method of calculation, setting out a maximum rate,

If regulations prescribe a formula for determining a fee, the value to be attributed to a formula component may be specified in the formula by notice by the executive.

Before making a recommendation, the Minister must be satisfied that there has been consultation with appropriate persons and organisations.

Regulations imposing levies

110. Regulations may impose levies

The Governor-General may, by Order in Council as recommended by the Minister, make regulations prescribing levies for the purposes of this Act. Levies prescribed by regulations are payable to the executive.

Different levies/rates of levy, or bases for calculating the levy, may be prescribed for different purposes and/or different classes or descriptions of organic products, persons, operators, operations, recognised entities, or other matters, or any combination.

Regulations imposing levies may:

- Specify when and how a levy is to be paid, and require it to be paid in advance.
- Specify persons (other than those responsible for paying the levy) to collect a levy, and provide for retention of any part of the levy money collected.
- Use a formula or other method of calculation
- Set out a maximum rate.
- Require, or empower the executive to require, the provision of information and returns in relation to levies.
- 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.
- Prescribe a method of mediation for disputes, and provide for related matters - including procedures and remuneration for arbitrators or mediators whether or not a person is required to pay, or collect, the levy concerned - and the amount of levy for payment or collection.

Before making a recommendation, the relevant Minister must be satisfied that there has been consultation with the appropriate persons and organisations

111. Regulations may provide for exemptions, waivers, and refunds

The Governor-General may, by Order in Council as recommended by the Minister, make regulations that provide for exemptions/waivers/refunds of a fee imposed under section 109, or a levy imposed under section 110, in whole or in part, in any class of case. And/or authorise the executive to grant the exemption/waiver/refund.

Regulations made under this section must expire within a specified period not exceeding 5 years; and set out the circumstances in which the exemption/waiver/refund may be granted.

Before making a recommendation, the Minister must be satisfied that there has been consultation with appropriate persons and organisations.

Subpart 2—Notices

Notices: exemptions

112. Exemption for individual cases

The executive may, by notice, grant a person who has applied an exemption from a requirement (other than the requirement to meet the relevant organic standard) if the executive considers the criteria below are met. A person must apply for an exemption as prescribed by regulation.

Exemptions granted under this section are for a limited time, as set out in the notice, and subject to prescribed criteria.

Before giving notice executive must be satisfied that granting the exemption is consistent with the purpose of the Act and will not have an adverse impact on New Zealand's reputation or result in consumers being misled. Also that complying with the requirement is unreasonably burdensome and disproportionate to the benefits to the class.

The executive must publish a notice in the Gazette and make it available on the Ministry's Internet site.

113. Exemption for certain operators or products

The executive may, by notice, grant an operator or a product described as organic, an exemption from a requirement relating to them under this Act (other than the requirement to meet the relevant organic standard).

The executive must be satisfied that the product is:

- Exported for research and development.
- As a trade sample or to assess an overseas market for initial development of the market.
- For personal/non-commercial use of the person travelling with the consignment.
- For consumption during transit by a passenger/crew on a vessel/aircraft leaving NZ.
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Subpart 3—Incorporation by reference

114. Incorporation of material by reference

Regulations and notices may incorporate material by reference, in whole or in part, and with modifications specified in the regulations or the notice. Material may also include standards made under the Standards and Accreditation Act 2015.

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 the material is not a standard work of reference or the amendment is to the part of a standard work of reference that the regulations or notice specifies is subject to those provisions.

If the material is a standard work of reference (or part) to which the above does not apply, every amendment to material incorporated by reference is to be treated as being a part of the regulations or notice, and 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 SEVEN: General Provisions

Commodity levies

115. Application of Commodity Levies Act 1990 to organic products

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. 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.

Right of review

116. Right of review of certain decisions made under Act

A person directly affected and dissatisfied by a decision may seek a review of the decision.

This section applies to any of the following decisions made under this Act - refusing approval (13), suspending approval (16), withdrawing approval (17), refusing recognition (24), making recognition conditional (25), varying conditions of recognition (26), suspending recognition (33), withdrawing recognition (34), withdrawing an official assurance (47), withdrawing a statement of compliance (49) issuing an improvement notice (67).

An application for a review must be applied for in writing to the executive within 20 working days of the original decision, and state the grounds on which the applicant believes the decision was inappropriate.

117. Conduct of review

An executive who was not involved in the original decision may conduct the review or designate a person who was not involved in the original decision.

If the executive was involved in the original decision, they must designate a person who was not involved in the original decision to conduct the review.

The decision sought to be reviewed remains valid unless/until altered by the executive or designated person. The executive or designated person must notify the applicant about the decision of the review, with reasons. A decision by the executive or designated person is final, unless determined otherwise by a court of law of competent jurisdiction.

118. Time allowed for review

The executive or designated person must review the matter within 40 working days or an extended period of no more than a further 20 working days given by notice in writing to the applicant. However, if the chief executive or designated person requires the applicant to supply further information that time is not to be counted as part of the specified time limit.

Time limits

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

An executive who suspects that the person has breached the Act/regulations/organic standard may, in writing, request information or material relating to compliance from them.

The information must be provided within 10 working days of the request or any further time that allowed by notice in writing.

120. Time limit generally for providing information under this Act

If this Act allows a person to seek further information, the information must be provided within 3 months of the request or any further time allowed by notice in writing.

Automated electronic systems

121. Arrangement for system

The executive - and organic products officers upon the executive's approval - may use an automated electronic system to exercise a power, carry out a function or duty and to make decisions. Also to perform such actions and communicate them.

The executive may arrange this only if satisfied that the system has the capacity to do the action with reasonable reliability, and a process is available to review the action of the system.

A system used in accordance with an arrangement may include components outside New Zealand.

The executive must consult the Privacy Commissioner about collection or use of personal information.

122. Effect of use of system

An action allowed or required by this Act done by an automated electronic system is treated as an action done properly by the appropriate person referred to in section 121.

If an action done by the system is completed in accordance with any applicable provisions in the enactment on the use of an automated electronic system, the action is treated as an action done properly by the appropriate person referred to in section 121.

If the system operations are clearly wrong, the action may be done by the appropriate person referred to in section 121.