



Organic Products Bill 2020 221-1

Bills Digest 2616

Policy objectives

The [Organic Products Bill 2020](#) (the bill) proposes a regime to regulate organic claims and the businesses that make them. It is intended that the bill will:¹

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

Background

Meaning of organic

A [Cabinet paper](#) presented to the Cabinet Legislation Committee noted that there is no “agreed or consistent” definition of ‘organic’ in New Zealand. However, to provide some context, the [Regulatory Impact Statement](#) prepared by the Ministry for Primary Industries states that:

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

Organic products are a growing market. The Cabinet paper notes that most countries have developed a legislative response to protect the use of ‘organic’ labels

In order to achieve the bill’s objectives, the bill will allow for the development of mandatory standards, as well as providing a compliance regime.

Current regime

Pages 10 to 11 of the Regulatory Impact Statement outlines the key elements for the current organic framework. In summary, while there is no specific legislation that regulates organic products, organic products must comply with a number of non-specific laws that apply to both organic and non-organic products. For example, the Fair Trading Act 1986 prohibits false and misleading claims.

In the absence of specific regulation, a number of private standards have been developed to provide credence to organic claims, for example:

¹ Organic Products Bill, Explanatory note, General policy statement, p.1.

- AsureQuality Organic Standards: <https://www.asurequality.com/our-industries/organic-certification/asurequality-organic-standard/>
- BioGro Organic Standards: <https://www.biogro.co.nz/biogro-standards>

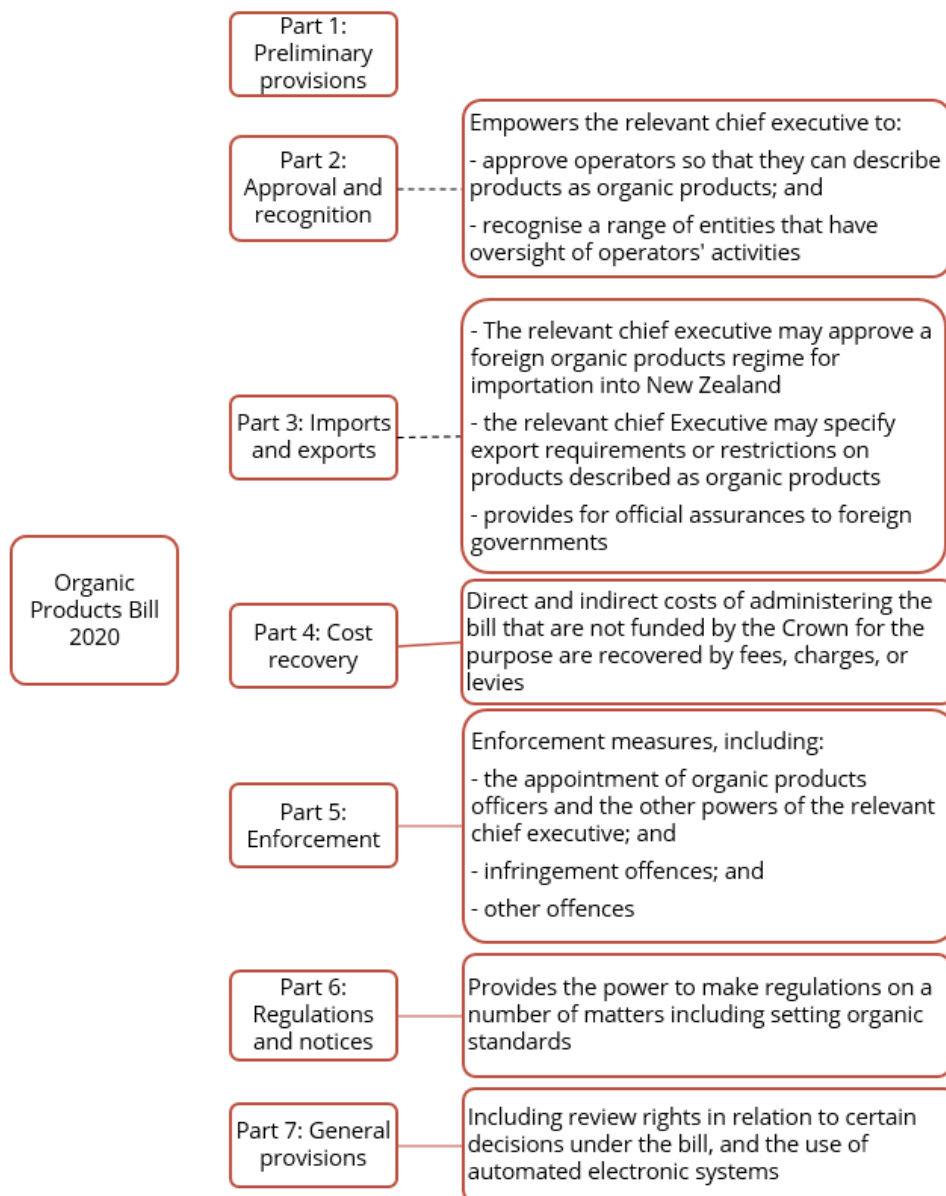
In addition, the Ministry for Primary Industries (MPI) also administers an assurance programme called the Official Organic Assurance Programme (this programme is not supported by legislation). The purpose of the programme is to enable exporters to provide assurances to export markets that require them.

Other jurisdictions

Attached is a comparison table which outlines the organic regimes in New Zealand, Australia, Canada, EU and USA and was prepared by MPI as part of its [Discussion Paper](#) questioning whether New Zealand would benefit from new organic regulation.

In summary, internationally organic products are becoming more and more regulated. According to the Discussion Paper (page 5), of the world's top 25 organic markets, all but New Zealand and Australia have developed mandatory domestic standards.

Scheme of the bill



Main provisions

Overview of the bill

The bill does not provide a broad brush definition of 'organic'. Rather, it provides a framework to allow for regulations that will set organic standards in relation to products, or classes of products. Therefore, what 'organic' means depends on what the relevant product standard requires.

MPI is the administering department for the bill. However, the Cabinet paper (page 3) noted that organic production covers a wide range of products that are within the mandate of ministries other than MPI therefore:

...the Bill enables any relevant ministry to become responsible for organic standards relevant to products within their mandate, including the administration, monitoring and enforcement of associated regulatory requirements...

An example of products that may require an organic standard and which may not come under MPI's remit is body care products and cosmetics.

It was noted in the Cabinet paper that a number of regulations will be needed to bring the bill into operation. An [earlier Cabinet paper](#) (page 2) noted that the high-level processes to be set by regulation ought to be considered by the Select Committee at the same time as the bill so that submitters can see how the bill and the regulations will work together.

Finally by way of summary, the Cabinet paper explains that it is businesses which describe their product as organic through advertising or labelling who need to seek approval and be responsible for ensuring the bill is complied with. The Cabinet paper (page 2) expands on clause 10(2) of the bill which states who the bill applies to:

- retailers of final pre-packaged products, or those who prepare or use final products for the consumer (e.g. hairdressers using shampoo): this is because there is low-risk of these organisations compromising the organic nature of the products they sell or use; or
- businesses providing a service, for example, transport of organic products: these businesses are not responsible for ensuring compliance with the relevant standard but rather would have to indirectly meet requirements through contractual arrangements with an organic business.

Some of the main provisions of the bill that support the bill's three main objectives are summarised below.

Describing product as organic product

Clause 8 prohibits a person from describing a product to which an organic standard applies as an organic product if the product does not comply with the standard.

Approval as operator

Subpart 2 of Part 2 of the bill concerns approval as "operator" for those who describe a product to which an organic standard applies as an organic product. A person seeking approval as an operator must apply to the relevant ministry chief executive (clause 11).

Pursuant to clause 12 of the bill the relevant ministry chief executive must:

- check whether the person is complying with the relevant organic standard and any other prescribed requirements; and
- be satisfied the person applying is a fit and proper person.

Approval may be suspended by the relevant chief executive if the operator has, for example, failed to meet the relevant organic standard or to provide the prescribed evidence that demonstrates compliance with the standard (clause 16). If issues are not rectified within the duration of a suspension, or if suspension has not proven effective in the past, an operator's approval may be withdrawn (clause 17).

Operator use of national mark

Clause 18 of the bill provides that a prescribed class of operator can use a 'national mark' on products that meet the organic standard that applies to the particular product.

Recognising agencies

Subpart 3 of Part 2 is about compliance. Agencies who wish to carry out compliance must apply in the prescribed form.

Recognised agencies may be a natural person, or a class of natural persons (clauses 20 and 21). Relevant Ministries and employees of relevant Ministries may be automatically recognised as agencies responsible for compliance without an application (clause 22).

Pursuant to clause 28, recognised agencies must (among other things) ensure that they can:

- carry out the specified functions and duties they are recognised for; and
- comply with any conditions of recognition; and
- manage conflicts of interests
- comply with the bill and regulations in relation to recognition.

The relevant chief executive has the power to suspend recognition in whole or in part if the entity has failed to perform their obligations under the bill or regulations, or meet any other prescribed criteria (clause 33). If failures are not rectified during the suspension period, or if suspension has not proven effective in the past, recognition can be withdrawn (clause 34).

Main provisions – Part 3

Imports

Clause 45 provides that a relevant chief executive may, approve a foreign organic products regime for products described as organic products that are imported into New Zealand. The chief executive must be satisfied that the foreign products regime has equivalent or similar outcomes to New Zealand's organic products regime.

By way of commentary, the Cabinet paper (page 4) notes that New Zealand and Australia are parties to the Trans-Tasman Mutual Recognition Arrangement:

"...which means that products meeting the requirements for sale in Australia can be sold in New Zealand and vice versa. Australia does not have mandatory organic standards, meaning that such products would not meet a government recognised standard. However, products imported from Australia would need to comply with Australia's Competition and Consumer Act 2010, which regulates false and deceptive claims. This arrangement would continue if the Bill is enacted".

Exports

Clause 46 provides that the relevant chief executive may specify export requirements or restrictions on organic products. Exporting organic products is prohibited unless the exporter is approved, and the product meets the relevant organic standard, export requirements/restrictions. (clause 46).

Official assurances

Clause 47 provides for an official assurance which is a statement to a foreign government. This aligns to the bill's objective of facilitating international trade in organic products as people can apply to the relevant chief executive for an official assurance in order to meet overseas market requirements (clause 47).

Statement of compliance

The relevant chief executive may give a statement to a person if the person is an exporter or intending to export. The statement of compliance 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 the bill (clause 49).

Exemption from organic standard for exported product

The Governor-General can, by Order in Council made on the recommendation of the relevant Minister, make regulations exempting any class or classes of products described as organic products intended for export from New Zealand from specific requirements of the relevant organic standard.

Part 5 – Enforcement

Under clause 60 of the bill, an organic products officer may be appointed. An organic products officer has the following powers:

- power of warrantless entry (clause 62)
- entry under search warrant (clause 65)
- power to test samples (clause 66)
- power to issue an improvement notice (clause 67)

The powers of the relevant chief executive include (among others):

- publishing statements to protect or inform the public (clause 69)
- request information relating to compliance with the Act (clause 70)
- giving directions on functions, duties or powers to organic product officers and recognised entities (clause 71)
- giving general directions to operators (clause 72)
- power to direct in certain circumstances (clause 74).

The bill provides for offences as follows:

- infringement offences (these are to be prescribed in regulations yet to be released)
- offences for example, offences involving deception.

In regard to offences, the bill also provides for four strict liability offences:

- sale of non-compliant product that is described as organic (clause 85)
- sale of product described as organic by person not approved as operator (clause 86)
- export of products described as organic when not approved etc. (clause 87)
- offence of breach of duty (clause 88).

Part 6 – Regulations

Clause 105 enables regulations for organic standards and states that the organic standard may set out any of the following (among other things):

- the production, processing, and preparation of organic ingredients, organic components, or organic products
- the packing, storage, and handling of organic ingredients, organic components, or organic products
- requirements for sampling and testing of a product
- obligations to keep records and to provide information
- circumstances and conditions in which a person or an operator can apply to the relevant chief executive for a variation or waiver
- other matters relevant to the management of whether the product can be described as an organic product.

The bill also enables general regulation making powers (clause 107) which allow regulations to be made for a number of purposes, for example, specifying offences that are infringement offences as well as providing for any matters necessary for the bill's administration.

The bill also enables a number of other regulations, for example, regulations exempting a class of persons from the requirement to be approved as an operator or any other requirement under the bill (clause 108) and regulations concerning fees and charges (clause 109).

Other material

Departmental disclosure

<http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=221>

Regulatory impact statement

<https://www.mpi.govt.nz/news-and-resources/consultations/proposed-changesto-the-way-organic-production-is-regulated/>

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Appendix 1: Comparison of organic regimes: New Zealand, Australia, Canada, EU and USA

	Scope	Is the standard voluntary or mandatory?	How are relevant businesses verified?	Current requirements for New Zealand exporters to access this market?
New Zealand (current)	Products such as food and beverages, animal and plant products, live animals and wool.	<p>Voluntary (1A)</p> <p>Mandatory for some (1B)</p> <p>Mandatory for all (1C)</p> <p>Voluntary</p> <p>Operators must meet other overarching legal requirements, including food safety and consumer laws.</p>	<p>Ongoing verification (2A)</p> <p>Spot checks (2B)</p> <p>Ongoing verification with exceptions (2C)</p> <p>Not prescribed</p> <p>There is no prescribed way to demonstrate compliance, however claims must be substantiated.</p>	N/A
New Zealand (preferred options)	As above, with possibility to include aquaculture.	<p>Mandatory for all</p> <p>Would apply to domestic sales, imports and exports.</p>	<p>Ongoing verification with exceptions</p> <p>Businesses required to meet the standard would also have to be verified, except small or local sales.</p>	N/A
Australia	Same as New Zealand, with aquaculture, cosmetics and biodynamics included.	<p>Mandatory for some</p> <p>Applies to exports only. No mandatory requirements for imports or domestic sales.</p>	<p>Independent verification</p> <p>Exporters must be certified by an independent verifier</p>	Overarching Australian Laws (including biosecurity, consumer and food safety)
Canada	Same as New Zealand, with aquaculture included.	<p>Mandatory for most</p> <p>Applies to domestic sales, imports and exports. Products produced and sold within a same province are exempted.</p>	<p>Independent verification</p> <p>Businesses required to meet the standard must be certified by an independent verifier.</p>	Independent verification and certification to the Canada Organic Regime.
United States, European Union	Same as New Zealand, with aquaculture also included in the EU.	<p>Mandatory for all</p> <p>Applies to domestic sales, imports and exports.</p>	<p>Ongoing verification with exceptions</p> <p>All must be independently verified, except direct sales (EU) or businesses with small turnover (USA).</p>	OOAP pathway, including any extra requirements imposed by importing countries.

Figure 1: Comparison of organic regimes: New Zealand, Australia, Canada, EU and USA (Source: Would New Zealand benefit from new organic regulation?, Ministry for Primary Industries, Discussion Paper, May 2018, p.22)