

House of Representatives

Supplementary Order Paper

Tuesday, 18 October 2022

Organic Products Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper amends the Organic Products Bill. In summary, the amendments include—

- strengthening consultation requirements and demonstrating how the Bill recognises and respects the Crown’s responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi;
- adding a new offence of breaching or failing to comply with specified provisions of the Bill when enacted (the **Act**) and certain regulations;
- replacing *clause 44A* to enable and regulate information sharing;
- empowering the relevant Ministry to consolidate notices when statutory prerequisites have been met;
- providing a transitional scheme for existing overseas market access requirements;
- exempting some notices issued under *new clause 111B* for the purposes of *clause 46*, which relates to requirements on exports, from presentation, disallowance, and publication requirements;
- making wording changes and technical changes to improve legislative coherence.

Strengthening consultation with Māori

New clause 3A sets out how the Bill provides for recognising and respecting the Crown’s responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi, through consultation with Māori about regulations, notices, and 3-yearly reviews of cost recovery, and through appropriate and suitably representative Māori membership on advisory councils established by the Minister under *clause 114A*. *New clause 3A* lists the relevant provisions, which in turn refer to the consultation requirements provided in *new clause 104A*.

New clause 88A offence

In order to enhance enforcement, *new clause 88A* sets out the offence of breaching or failing to comply with specified requirements and regulations.

Clause 44A replaced

The Primary Production Committee recommended the inclusion of *clause 44A*, to restrict the use of information collected or provided for the purposes of the organic products regime. *Clause 44A* is replaced by *new clause 44A*, which regulates disclosure of information by allowing information sharing between related overlapping statutory schemes.

Consolidation of notices

New clause 113A enables the relevant Ministry to consolidate notices when statutory prerequisites have been met. This provision addresses the issue of an inability to consolidate notices that has been identified in relation to similar statutory schemes.

Transitional scheme

Clauses 1 to 4 in Part 1 of Schedule 1 provide for the transition of administrative programmes, for the purpose of facilitating international trade in organic products, that are already in existence when the Act comes into force.

Exemptions for notices issued for purposes of clause 46

New clauses 123B and 123C allow exemptions from presentation, disallowance, and publication, in specified circumstances, for notices that are issued under the general notice-making power in *new clause 111B* for the purposes of *clause 46*.

New clause 123B amends the Legislation Act 2019. The amendment allows notices issued under *new clause 111B* for the purposes of *clause 46*, which relates to requirements on exports, to be exempt from disallowance, and to be exempt from presentation to the House if the specified exemption grounds are met.

New clause 123C amends the Legislation (Publication) Regulations 2021 to allow the notices to be exempt from publication requirements, if specified qualifying criteria are met.

The exemptions are required so that notices specifying export requirements under *clause 46(1)* are treated in the same way that the Secondary Legislation Act 2021 treats notices specifying existing export requirements under section 60 of the Animal Products Act 1999.

Wording and technical changes

Changes to the wording of many provisions in the Bill arise from revisiting the expression and definitions of several key terms in the Bill. For example, the Bill as reported back from the Primary Production Committee contained references to when an organic standard is “in force”, to distinguish between the Bill’s requirements before and during the time when an organic standard affected whether a product could properly be described as organic. Making such distinctions clearer and more explicit also involved many related changes of wording.

The technical aspects of administering the regime, for example, which will be set out in the regulations and notices, have been aligned more closely with similar schemes, such as those established under the Animal Products Act 1999 and the Food Act 2014.

Transitional provisions, such as those for the existing international trade in organic products referred to above, have been included.

Some changes have also been made because of the overall application of the Legislation Act 2019, especially in regard to how secondary legislation is referred to. Changes have also been made to the notification and publication requirements.

Departmental disclosure statement

The Ministry for Primary Industries is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2022&no=262&>

The Honourable Damien O'Connor, in Committee, to propose the amendments shown in the following document.

Hon Damien O'Connor

Organic Products Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

- (1) ~~Section 123~~ (which amends the Dairy Industry Restructuring Act 2001) comes into force on the later of the following:
- (a) ~~1 June 2021;~~
 - (b) ~~the day after the date on which this Act receives the Royal assent.~~
- (2) ~~The rest of this~~ This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is to—

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

3A Te Tiriti o Waitangi/Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi, this Act provides that,—

- (a) with respect to **section 55** (which relates to 3-yearly reviews of cost recovery), the relevant Minister must be satisfied there has been consultation with Māori (or their representatives) that appear to the Minister likely to be substantially affected in relation to the review; and
- (b) with respect to the following provisions (which relate to powers to make regulations, or to issue notices supplementing organic standards), before recommending the making of regulations or issuing a notice, the relevant Minister or relevant chief executive, as the case may be, must be satisfied that there has been consultation with Māori (or their representatives)

that appear to the consuler likely to be substantially affected by the regulations or notice:

- (i) **section 105** (organic standards regulations):
 - (ii) **section 107** (general power to make regulations):
 - (iii) **section 107AA** (regulations relating to tracing and recall):
 - (iv) **section 107AAB** (regulations relating to verification):
 - (v) **section 108** (exemptions for classes of persons):
 - (vi) **section 109** (regulations imposing fees and charges):
 - (vii) **section 110** (regulations imposing levies):
 - (viii) **section 111** (regulations providing for exemptions, waivers, and refunds for a class of person or case):
 - (ix) **section 111A** (notices supplementing organic standards); and
- (c) with respect to **section 114A** (which relates to the power to establish advisory councils), the relevant Minister must ensure that any advisory council includes appropriate and suitably representative Māori membership.

4 Outline of Act

- (1) **Part 1** provides for preliminary matters, including—
 - (a) the purpose of the Act; and
 - (aa) how the Act recognises and respects the Crown’s responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (b) the interpretation of terms used; and
 - (c) that the Act binds the Crown.
- (2) **Part 2** ~~relates to~~ deals with some general matters and with approval and recognition, and empowers the relevant chief executive—
 - (a) to approve operators so that they can describe products as organic ~~prod-ucts~~; and
 - (b) to recognise a range of entities that have oversight of operators’ activities.
- (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
 - (b) infringement offences; and
 - (c) other offences.
- (6) **Part 6** provides for powers for making regulations and ~~giving~~ issuing notices.

- (7) **Part 7** sets out general provisions, including establishing an advisory council, providing review rights in relation to certain decisions under this Act, and the use of automated electronic systems.
- (7A) **Part 8** makes consequential amendments to other enactments.
- (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

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

described as organic, in relation to a product, has the meaning given in **section 9 7A**

export means the export from New Zealand of a product, described as organic, for reward or for purposes of trade

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

exporter means an operator exporting from New Zealand, for reward or for purposes of trade, a product described as organic

~~**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~~
- (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~~

final consumer service has the meaning given in **section 10A**

financial year means a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year

~~**importer** means a person who imports a product into New Zealand for reward or for purposes of trade in relation to which an organic standard would have been in force if the product was produced in New Zealand at the time of importation, and **import** has a corresponding meaning~~

importer means an operator importing into New Zealand, for reward or for purposes of trade, a product that would have been restricted by an organic standard if the product were produced in New Zealand at the time of importation, and **import** has a corresponding meaning

infringement fee means the infringement fee prescribed for an infringement offence

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

marae includes the area of land on which all buildings such as wharehau (meeting house), wharekai (dining room), ablution blocks, and any other associated buildings are situated

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; but
- (b) in relation to ~~an organic standard~~ administering the organic products regime under this Act, secondary legislation made under it, and directions given under it, with regard to a particular organic standard, means the relevant Minister

Ministry,—

- (a) in relation to this Act, means the department as defined in section 5 of the Public Service Act 2020 that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act; but
- (b) in relation to ~~an organic standard~~ administering the organic products regime under this Act, secondary legislation made under it, and directions given under it, with regard to a particular organic standard, means the relevant Ministry

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 product** means a product in relation to which an organic standard is in force and that is produced in compliance with the standard by an operator~~

organic products officer means an officer appointed under **section 60**

~~**organic standard**, in relation to a product, means a standard, or any part of a standard, made under this Act~~

organic standard, in relation to a product,—

- (a) means a relevant organic standards regulation; and
- (b) includes any relevant organic standards notice

organic standards notice means a notice issued under **section 111A**

organic standards regulation means a regulation made under **section 105**

recognised agency means—

- (a) a person ~~who is~~ recognised by a relevant chief executive under **section 19**; and
- (b) a group of persons ~~who are~~ recognised by the a relevant 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

recognised person means a person recognised by a relevant chief executive under **section 20**

regulations means regulations made under this Act

relevant chief executive means the chief executive of the relevant Ministry

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~~ administering the organic products regime under this Act, secondary legislation made under it, and directions given under it, with regard to a particular organic standard

relevant Ministry, ~~in relation to an organic standard~~, means the department as defined in section 5 of the Public Service Act 2020 that, with the authority of the Prime Minister, is for the time being responsible for ~~the administration of the organic standard~~ administering the organic products regime under this Act, secondary legislation made under it, and directions given under it, with regard to a particular organic standard

restricted by an organic standard has the meaning given in **section 7B**

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~~ this Act or secondary legislation made under it for which the entity is recognised by the relevant chief executive

standard work of reference means a work of reference that the relevant chief executive is satisfied is internationally accepted as a standard to refer to on its subject matter.

supplementary notice means a notice issued under **section 111B(2)**

vehicle has the meaning given in section 3(1) of the Search and Surveillance Act 2012

verification includes the application of methods, procedures, tests, and other checks to confirm,—

- (a) in relation to an organic standard, the matters specified in regulations made under **section 107AAB**; and
- (b) in relation to a product that is described as organic and for the export of which an official assurance is required, whether the product meets the requirements for the official assurance; and
- (c) whether an operator (or other person referred to in **section 14AAB(2)**) has complied with a requirement imposed by or under this Act, secondary legislation made under it, or directions given under it

verifier means a recognised person (including a class of recognised persons) with specified functions and duties that include carrying out verification functions and duties

verifying agency means a recognised agency with specified functions and duties that include managing and carrying out verification functions and duties.

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

This Act binds the Crown.

Meaning of some key terms

7A Meaning of described as organic

A product, whether or not restricted by an organic standard, is **described as organic** 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 organic.

7B Meaning of restricted by an organic standard

A product is **restricted by an organic standard** on and from the commencement of the provision of the relevant organic standards regulation that states that, unless the product complies with the standard, it must not be described as organic.

Part 2

Approval General matters, and approval and recognition

Subpart 1—Describing product as organic

8 ~~Restriction on describing product as organic product~~

~~A person must not describe a product in relation to which an organic standard is in force as an organic product unless the product complies with the standard.~~

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.~~

Subpart 1—General matters

Limits on how product may be described

7C Limits on how product may be described

- (1) A person selling or marketing a product, other than an imported product, that is restricted by an organic standard must not describe the product as organic unless the product complies with the standard.
- (2) In relation to an imported product, see **section 45AAA**.

Actions before product restricted by an organic standard

7D Actions that may be taken before product is restricted by an organic standard

Between the time, if any, that an organic standard is made and when a product is restricted by it, a person may do any of the following in relation to the product:

- (a) apply to be and be approved as an operator:
- (b) apply to be and be recognised as a recognised entity:
- (c) voluntarily comply with the organic standard:
- (d) use a national mark.

Use of national mark

7E Use of national mark

A prescribed class of person may use a national mark on or in relation to products or services if the use is in accordance with any prescribed requirements.

Subpart 2—Approval as operator

*Who must be approved***9A Approved operator may be part of group of operators**

For the purposes of this Part, a reference to a person's application to be approved as an operator or their approval as an operator may also be read as a reference to the person's application to be approved, or their approval, as one of a group of operators.

10 Who must, need not, or may be approved as operator

- (1) ~~A person who describes a product in relation to which an organic standard is in force as an organic product must be approved as an operator.~~
- (1) A person selling or marketing a product, or importing a product to sell or market it, must be approved as an operator in regard to the product if it is restricted by an organic standard.
- (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) ~~is providing a final consumer service; or~~
 - (c) is a retailer selling products described as organic products restricted by an organic standard, if—
 - (i) ~~the only products described as organic products restricted by an organic standard and described as organic~~ 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.
- (2A) ~~Despite **subsection (2)(c)**, an importer selling products that the importer has imported and that are described as organic products in the circumstances set out in that paragraph must be approved as an operator.~~
- (2A) Despite **subsection (2)(c)**, the following must be approved as an operator:
- (a) an importer, if the importer is also retailing the products that the importer has imported and that are described as organic, in the circumstances set out in that paragraph:
 - (b) an exporter, if the exporter is also retailing the products that are described as organic, in the circumstances set out in that paragraph.
- (2B) ~~A person may apply to be approved as an operator in respect of a product in relation to which an organic standard has been made but is not yet in force.~~
- (3) A person may apply to be approved as an operator if the person—

- (a) provides a service that can affect whether a product ~~would comply with an organic standard~~, that is restricted by an organic standard or in relation to which an organic standard can be voluntarily complied with (as referred to in **section 7D(c)**), complies with the standard; and
- (b) does not describe the product as ~~an organic product~~ organic in providing the service.

10A Meaning of final consumer service

A final consumer service means—

- (a) the preparation and service of a food or drink product described as organic, whether or not the product is restricted by an organic standard, at premises where consumers purchase the product ready to consume on the premises or elsewhere, for example, a restaurant; or
- (b) the use of a product described as organic, whether or not the product is restricted by an organic standard, 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 organic by a person other than the hairdresser; or
- (c) a service that is declared by the Governor-General, by Order in Council under **section 107**, to be a final consumer service for the purposes of this Act; but
- (d) does not include a service that is declared by the Governor-General, by Order in Council under **section 107**, not to be a final consumer service for the purposes of this Act.

How to apply for approval

11 Applying for approval

A person or persons seeking the relevant chief executive's approval as an operator or group of operators must—

- (a) apply in the form approved by the relevant chief executive for that purpose; and
- (b) provide any prescribed information.

12 Considering whether to approve as operator

(1) ~~The relevant chief executive receiving the application must be satisfied that the person is, or each person is,—~~

- (a) ~~complying with—~~
 - (i) ~~what would be, or are, the obligations under the relevant organic standard; and~~
 - (ii) ~~any other prescribed requirements; and~~

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- (b) a fit and proper person and competent to be an operator.
- (2) ~~When considering the matters in **subsection (1)(a)**, the chief executive must—~~
 - (a) ~~consider the assessments and other prescribed information the recognised entity provides in regard to the person or group of persons; and~~
 - (b) ~~follow any prescribed process.~~
- (3) ~~When considering the matters in **subsection (1)(b)**, the chief executive must take into account any prescribed matters.~~

12 Considering whether to approve as operator

- (1) A relevant chief executive who receives an application from a person or persons must be satisfied that any product or class of products, other than any imported product or class of products, in relation to which the person, or each person, is seeking approval complies with, or can comply with, the relevant organic standard (whether because a product is restricted by the organic standard or by voluntarily complying with the standard as referred to in **section 7D(c)**).
- (2) A relevant chief executive who receives an application from a person or persons must be satisfied that any imported product or class of products described as organic—
 - (a) complies with, or can comply with, approval of that product or class of products given by notice issued under **section 111B(1)** by the relevant chief executive in accordance with **section 45** in relation to that product or class of products; or
 - (b) if no such notice has been issued, complies with, or can comply with, the relevant organic standard (to the extent that is practicable, given that the product was not produced or processed in New Zealand), whether because a product is restricted by the organic standard or by voluntarily complying with the standard as referred to in **section 7D(c)**.
- (3) In addition to the matters in **subsection (1) or (2)** (as the case requires), the chief executive must also be satisfied that the person, or each person,—
 - (a) is complying with, or can comply with, any other prescribed requirements; and
 - (b) is a fit and proper person and competent to be an operator.
- (4) When considering the matters in **subsection (1) or (2) and subsection (3)(a)**, the chief executive must—
 - (a) consider the assessments and other prescribed information the recognised entity provides in regard to the person or group of persons; and
 - (b) follow any prescribed process.

- (5) When considering the matters in **subsection (3)(b)**, the chief executive must take into account any prescribed matters.

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—
- (aaa) consider whether to impose a condition on approval, and impose it if the chief executive considers it appropriate; and
- (a) approve the person as an operator; and
- (b) notify the person of the approval in accordance with any prescribed requirements; and
- (c) specify the expiry date of the approval, if it is of fixed duration.
- (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)**—
- (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—
- (a) in accordance with any prescribed requirements; and
- (b) giving the reasons for the refusal.

13A When condition on approval may be imposed

A relevant chief executive may impose a condition on approval before or after approval.

13B Varying conditions of approval

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

13C Proposing after approval to impose or vary condition of approval

- (1) A relevant chief executive who proposes, after approval, to impose or vary a condition of approval must act in accordance with **section 36**.
- (2) The chief executive may impose or vary the condition—
- (a) after following the process referred to in **subsection (1)**; or

- (b) if the applicant does not respond to notice of the proposed condition, after the time has expired for applying to review the proposed imposing or varying of the condition.

13D Duties of operator

An operator must—

- (a) ensure that they can carry out the specified activities they are approved for; and
- (b) ensure that they can comply with all applicable requirements of this Act, secondary legislation made under it, and directions given under it; and
- (c) comply with any conditions of approval; and
- (d) comply with all applicable directions given under this Act; and
- (e) report to the relevant Ministry, in accordance with any applicable requirements of this Act, secondary legislation made under it, or any direction given under it, any matter that the operator is required to report.

Approval not transferable

14 Operator's approval not transferable

Approval cannot be transferred from one operator to another person.

Further requirements for operators: tracing and recall, and verification

14AA Operator must comply with tracing and recall requirements

- (1) An operator must, as and when required by regulations made under **section 107AA** or any supplementary notice,—
- (a) have in place any procedures for tracing and recalling products described as organic (whether or not the product is restricted by an organic standard); and
- (b) conduct simulations or other tests of those procedures; and
- (c) implement those procedures to trace or recall products described as organic.
- (2) This section applies also to—
- (a) a person that, although exempt from some of the requirements of, or obligations under, this Act, secondary legislation made under it, or directions given under it (including the requirement to be approved as an operator), is required, despite the exemption, to comply with tracing and recall requirements; and
- (b) any other person that has, or is in a class of persons who have, any obligation under this Act or secondary legislation made under it; and

- (c) a person that is, or is in a class of persons that is, specified by regulations.

14AAB Operator must comply with verification requirements

- (1) An operator must—
- (a) give a verifier or verifying agency—
- (i) the access to places, things, and information that the verifier or verifying agency reasonably needs to undertake the verification;
and
- (ii) any reasonable assistance requested by the verifier or verifying agency to undertake the verification; and
- (b) comply with any other requirements relating to the verification set out in regulations made under **section 107AAB** or any supplementary notice.
- (2) This section applies also to—
- (a) a person that, although exempt from some of the requirements of, or obligations under, this Act, secondary legislation made under it, or directions given under it (including the requirement to be approved as an operator), is required, despite the exemption, to comply with verification requirements; and
- (b) any other person that has, or is in a class of persons who have, any obligation under this Act or secondary legislation made under it; and
- (c) a person that is, or is in a class of persons that is, specified by regulations.

Ongoing or ceasing approval

14A Renewal of approval

- (1) ~~An operator whose approval is—~~ If an operator has approval of fixed duration and who wishes to continue to be approved after expiry of the specified duration of their approval, they must apply in the prescribed way and within the prescribed time for renewal of their approval.
- (2) ~~An operator who—~~ If an operator fails to apply for renewal in the prescribed way or within the prescribed time, they will be treated as ~~making~~ having made a new application for approval.
- (3) **Section 13** applies with all necessary modifications to applications under this section.

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

- (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) ~~the operator has failed~~ 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
 - (b) ~~the product or any class of product in relation to which the operator has been approved has failed to meet what would be, or are, the obligations under~~ the relevant organic standard; or
 - (c) ~~the operator has failed~~ to provide the prescribed evidence that demonstrates compliance with the standard; or
 - (d) ~~the operator has failed to meet any other obligations under this Act or regulations, secondary legislation made under it, or directions given under it.~~
- (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.
- (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—
 - (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—
 - (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
 - (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—
 - (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.~~

Subpart 3—Recognising entities

Who must apply for recognition and how to gain it

19 Recognising agencies

- (1) ~~A person who wants to be recognised~~ seeking recognition 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 form approved by the relevant chief executive for the purpose; and
 - (b) providing any prescribed information.
- (2) ~~The relevant chief executive may~~ must recognise the applicant if, and must not recognise the applicant unless, the chief executive—
 - (a) has considered whether to impose a condition on recognition, and imposes it if the chief executive considers it appropriate after following the process in **section 25A**; 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.
- (3) When ascertaining the matters in **subsection (2)(b)**, the chief executive must take into account any prescribed matters.

20 Recognising natural persons

- (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~~ must recognise the applicant if, and must not recognise the applicant unless, the chief executive—

- (a) has considered whether to impose a condition on recognition, and imposes it if the chief executive considers it appropriate after following the process in **section 25A**; 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.
- (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.

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.
- (2) ~~The relevant chief executive may must, after following the processes in **subsections (3) and (4)**, recognise the class of natural persons to carry out specified functions and duties and activities if, and must not recognise the class of natural persons to carry out specified functions and duties unless, 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.
- (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
 - (b) be satisfied that the class is an appropriate class to carry them out; and
 - (c) have considered whether to impose a condition on recognition, and impose it if the chief executive considers it appropriate after following the process in **section 25A**.
- (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
 - (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 is not a fit and proper person or does not satisfy the matters referred to in **paragraph (b)**; and
 - (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~~ duties 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

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 relating to organic compliance:
 - (a) the relevant Ministry;
 - (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 relating to organic compliance:
 - (a) an officer or employee of the relevant Ministry;
 - (b) an officer or employee of any department as defined in section 5 of the Public Service Act 2020.
- (3) **Section 19 and sections 20 and 21** apply to **subsections (1) and (2)** respectively, with all necessary modifications.

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.

*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—
 - (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

- (1) A relevant chief executive who agrees to recognise an agency or a natural person must, in writing,—
 - (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
 - (d) state any conditions to which recognition is subject; and
 - (e) specify the duration of the recognition.
- (2) A relevant chief executive who agrees to recognise a class of natural persons must—
 - (a) notify the recognition on the relevant Ministry's Internet site; and
 - (b) in writing, to the applicant referred to in **section 21(1)**,—
 - (i) specify the functions and duties in relation to which the class is recognised; and
 - (ii) specify the type of organic products in relation to which the class is recognised; and
 - (iii) state any conditions to which recognition is subject, including whether a member of the class is not recognised; and
 - (iv) specify the duration of the recognition.
- (3) Recognition begins,—
 - (a) for an agency or a natural person, on the date stated in the notice given under **subsection (1)(a)**; and
 - (b) for a class of natural persons, on the date on which the relevant chief executive notifies the recognition under **subsection (2)(a)**.

25A Proposing to impose condition

- (1) ~~A relevant chief executive who proposes to impose a condition on registration must act in accordance with **section 36**.~~
- (2) The chief executive may impose the condition—
 - (a) ~~after following the process set out in **subsection (1)**; or~~
 - (b) ~~if the applicant does not respond to notice of the proposed condition, after the time has expired for applying to review the proposed imposition.~~

25A When condition on recognition may be imposed

A relevant chief executive may impose a condition on recognition before or after recognition.

26 Varying conditions of recognition

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

26A Proposing after recognition to impose or vary condition of recognition

- (1) ~~A relevant chief executive who proposes, after recognition, to impose or vary a condition on registration of recognition must act in accordance with **section 36**.~~
- (2) The chief executive may impose or vary the condition—
 - (a) ~~after following the process set out referred to in **subsection (1)**; or~~
 - (b) ~~if the applicant does not respond to notice of the proposed condition, after the time has expired for applying to review the proposed variation imposing or varying of the condition.~~

Recognition not transferable

27 Recognition not transferable

Recognition cannot be transferred from one recognised entity to another person or class of persons.

Duties of recognised entity

28 Duties of recognised entity

- (1) A recognised entity must ensure that they—
 - (a) can carry out the specified functions and duties they are recognised for; and
 - (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
 - (f) manage conflicts of interest; and
 - (fa) comply with all applicable directions given under this Act; and
 - (fb) report to the relevant Ministry, in accordance with any applicable requirements of this Act, secondary legislation made under it, or any direction given under it, any matter that the recognised entity is required to report; and
 - (g) can comply with all applicable requirements of this Act, ~~organic standards, and regulations in relation to recognition and to any of the matters specified in paragraphs (a) to (f)~~ secondary legislation made under it, and directions given under it.
- (2) A recognised agency must also ensure that—
- (a) each recognised natural person or member of a recognised class of natural persons that it manages maintains competency to undertake ~~its~~ their duties under **subsection (1)**; and
 - (b) ~~it has~~ they have adequate resources and systems in place to ensure that ~~it can comply with its duties~~ they can comply with their duties under **subsection (1)**.

29 **Recognised entity accountable to chief executive**

A recognised entity is accountable to the relevant chief executive when carrying out their specified functions or duties, even when they have subcontracted them to other parties.

30 **Recognised entity may act in other capacities**

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.

30A Relevant chief executive may require notification of termination of contracts

- (1) A relevant chief executive may, by notice under **section 111B**, require any recognised entity to notify the chief executive of the termination of any contract with a client for the management and carrying out of specified functions and duties.
- (2) The notice may apply generally or to any particular case or class of case.

- (3) The recognised entity must notify the relevant chief executive in writing of the termination as soon as practicable, and in no case later than 7 days after it occurs.
- (4) A notice issued under **section 111B** in reliance on this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Ongoing or ceasing recognition

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.
- (3) **Sections 19 to 21 and 24 to 26 26A** 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.
- (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)**.
- (4) The surrender takes effect on the ~~latest~~ earliest 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;
 - (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 or a significant proportion of the recognised class, as the case may be, has failed—

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- (a) to comply with or satisfactorily perform their obligations under ~~the Act or regulations~~ this Act, secondary legislation made under it, or directions given under it; or
 - (b) to meet any other prescribed criteria.
- (2) When suspending recognition, the chief executive may do any of the following:
- (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,—
- (a) notify—
 - (i) the entity; and
 - (ii) if the suspended entity is employed by a recognised agency, the recognised agency; and
 - (b) specify—
 - (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
 - (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.
- (5) Suspension does not affect any other actions the chief executive may take under this Act, secondary legislation made under it, or directions given under it.

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—
- (a) for the entity or a significant proportion of the recognised class, as the case may be, 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 or a significant proportion of the recognised class, as the case may be, has ceased to carry out the specified functions and duties they are recognised for; or
 - (d) the entity or a significant proportion of the recognised class, as the case may be, 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.

Subpart 4—Provisions applying to both approval and recognition

Requesting information

35 Requesting further information from applicant

- (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**.

36 Proposing to refuse or withdraw approval or recognition or to impose or vary conditions of after approval or recognition

- (1) A relevant chief executive who proposes to refuse or withdraw approval or recognition or, after approval or recognition, to impose or vary conditions of approval or recognition (as the case may be) must follow the prescribed process and time frames about review of the ~~proposal~~ proposed decision, including—
- (a) notifying the person, operator, or entity about the ~~proposal~~ proposed decision; and
 - (b) giving the reasons for the ~~proposal~~ proposed decision; 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.
- (2) The relevant chief executive must notify a recognised class of persons under **subsection (1)(a)** on the relevant Ministry's Internet site.

*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 approval or recognition, as the case may be, except as provided in **section 38**.

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

- (1) The relevant chief executive must consider an exemption, a waiver, or a refund of fees ~~or charges, charges, or levies~~ 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
 - (b) an application is made to renew more than 1 type of approval or recognition; or
 - (c) a person is liable to pay a prescribed fee ~~or charge, charge, or levy~~ for more than 1 type of ongoing approval or recognition; or
 - (d) the chief executive is authorised to do so by regulations made under **section 111(1)(b)**.
- (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.~~
- (2) The chief executive must comply with any regulations made under **section 111(2)** that prescribe circumstances in which an exemption, a waiver, or a refund may be granted.

*Register ~~Public register of operators and recognised entities~~***39 Public register of operators and recognised entities**

- (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—
- (a) can be stored, accessed, and reproduced, including by electronic means; and
 - (b) enables the public, operators, and recognised entities to know details of operators and recognised entities for the purposes of ~~the~~ this Act; and

- (c) facilitates the compliance, audit, and other supportive functions of the relevant Ministry under this Act.

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:
- (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
- (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~~ determine 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.

42 Removal from register

A relevant chief executive must, as soon as practicable, remove the following from the register:

- (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

(1) An operator or a recognised entity must provide the relevant chief executive with the following information and keep it up to date:

- (a) name:
- (b) contact details:
- (c) any other prescribed information relating to the requirements of ~~the Act~~ this Act, secondary legislation made under it, or directions given under it.

- (2) This section applies also to a person that, although exempt from some of the requirements of, or obligations under, this Act, secondary legislation made under it, or directions given under it (including the requirement to be approved as an operator or recognised as a recognised entity), 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:
- (a) information showing that they meet the requirements of ~~the Act~~ this Act, secondary legislation made under it, and directions given under it; and
 - (abaa) any required samples for testing and the results of those tests; and
 - (b) any other prescribed matters.
- (2) The operator or recognised entity must keep the records—
- (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;
 - (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;
 - (c) allowing the person to make copies of the information.
- (5) This section applies also to a person ~~who~~ that, although exempt from some of the requirements of, or obligations under, this Act, secondary legislation made under it, or directions given under it (including the requirement to be approved as an operator or recognised as a recognised entity), is required despite the exemption to keep records.

44A ~~Information collected under Act not to be used for other purposes~~

~~Information collected from or provided by an operator or a recognised entity for the purposes of this Act must not be used for other purposes by the relevant Ministry or other department as defined in section 5 of the Public Service Act 2020—~~

- ~~(a) without the express permission of the operator or recognised entity; or~~
- ~~(b) unless expressly authorised by this Act.~~

Disclosure of information

44A Disclosing information collected under Act

- (1) The purpose of this section is to ensure that approved agencies and other persons involved in organic standards or the administration of other requirements of this Act, secondary legislation made under it, or directions given under it, are able to disclose to each other any information that is necessary or desirable—
 - (a) to promote the purpose of this Act; or
 - (b) to enable persons to perform their functions or duties, or exercise their powers, under this Act, secondary legislation made under it, or directions given under it.
- (2) Despite information privacy principles 2 and 11 set out in section 22 of the Privacy Act 2020, an approved agency may disclose to any other approved agency any information supplied or obtained under or for the purposes of any of the following if the disclosure of that information is necessary or desirable for the purpose specified in **subsection (1)**:
 - (a) this Act, secondary legislation made under it, or directions given under it:
 - (b) any other Act that is declared by the Governor-General, by Order in Council made under **section 107A**, to be an Act for the purposes of this subsection.
- (3) Nothing in **subsection (2)** authorises the disclosure of any information to an approved agency listed in **subsection (4)(f) to (i)** unless the disclosure is necessary or desirable to enable them to properly discharge their obligations under this Act, secondary legislation made under it, or directions given under it.
- (4) In this section, **approved agency** means—
 - (a) the Minister or a relevant Minister:
 - (b) the Ministry or a relevant Ministry:
 - (c) a Ministry that is for the time being charged with the administration of an Act referred to in **subsection (2)(b)**:
 - (d) the officers or employees of an approved agency:
 - (e) a chief executive:
 - (f) an operator:
 - (g) a recognised entity:
 - (h) an organic products officer:
 - (i) any other person that is declared by the Governor-General, by Order in Council made under **section 107A**, to be an approved agency for the purposes of this subsection.

Part 3

Imports and exports

45AAA Requirements on imported products

A person selling or marketing an imported product that is restricted by an organic standard must not describe the product as organic—

- (a) unless—
 - (i) the product complies with the relevant standard; and
 - (ii) the person meets any other prescribed requirements; or
- (b) unless the product is approved under **section 45**.

45 Chief executive approval of foreign organic products regimes for importation into New Zealand

- (1) ~~A relevant chief executive may, by notice, approve a foreign organic products regime for products or a class of products that are imported into New Zealand in relation to which an organic standard would have been in force if the products were produced in New Zealand at the time of importation.~~
- (1) A relevant chief executive may, by notice issued under **section 111B(1)**, approve products or a class of products imported from a foreign organic products regime as compliant with any specified provision of this Act, the relevant organic standard, or any other relevant secondary legislation made under this Act if the products, at the time of their importation, would be restricted by an organic standard if they were produced in 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~~ the regime under this Act; and
 - (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
 - (b) withdraw the approval if no longer satisfied of the matters in **subsection (2)**.
- (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~~ Requirements on exports

- (1) A relevant chief executive may, by notice issued under **section 111B(1)**, specify export requirements ~~or restrictions~~ on products described as organic products, including in relation to their production, inputs, processing, preparation, sampling, and testing.

- (1A) Without limiting **subsection (1)**, export requirements may include any particular overseas market access requirements recognised by New Zealand.
- (2) A person must not export a product that is described as an organic product organic if the product is subject to a notice referred to in **subsection (1)** or restricted by an organic standard, unless—
- (a) the person is approved by the relevant chief executive as an operator who that may export products described as organic products; and
 - (b) the product meets—
 - (i) the relevant organic standard in force restricting it; and
 - (ii) any other the export requirements or restrictions that are prescribed or specified in a notice given by the relevant chief executive under referred to in **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.
- (3) If, under **section 111B(7)**, the notice is not secondary legislation, the relevant chief executive—
- (a) must make it available for inspection free of charge, or for purchase at reasonable cost, to any persons who—
 - (i) are affected by its requirements; and
 - (ii) satisfy the relevant chief executive that their activities cannot be properly undertaken under this Act unless they have that access; and
 - (b) is not required to make it available to any other person.
- (4) **Subsection (3)**—
- (a) prevails over **section 111B(8)**; and
 - (b) does not prevent the Director-General from charging for access to any Internet site or for information or services provided by any Internet site.

47 Official assurances

- (1) An **official assurance** is a statement to a foreign-government Government, or an agent of a foreign-government Government, attesting that, as appropriate, 1 or more of the following applies apply in respect of a product described as an organic product organic, whether or not the product is restricted by an organic standard:
- (a) a specified process has been completed under this Act, secondary legislation made under it, or directions given under it, with respect to the product:
 - (b) the product meets the relevant organic standard, or notice, or both the relevant aspects of this Act, secondary legislation made under it, or directions given under it:

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- (c) the overseas market access requirements of that foreign~~government~~ 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;
 - (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, as prescribed in regulations made under this Act or supplementary notices issued under it, issue an official assurance—
- (a) for the purposes of meeting the overseas market access requirements of that foreign~~government~~ Government; and
 - (b) if satisfied that the relevant recognised requirements of the importing country are met.
- (3) The chief executive may withdraw the official assurance 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.
- (4) **Subsection (1)** does not limit the matters to which an official assurance may apply.

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 commercial requirements; or
 - (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.

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

- (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 in force or other requirements under this Act.~~—
- (i) this Act, secondary legislation made under it, or directions given under it; or
 - (ii) a relevant organic standard voluntarily complied with (as referred to in **section 7D(c)**).
- (2) ~~The relevant chief executive may give a statement, in a form and with content determined by the chief executive, to a person if~~The relevant chief executive may, on application by a person, and as prescribed in regulations made under this Act or supplementary notices issued under it, give the person a statement if (and must not give the person a statement unless)—
- (a) the person is an exporter or intending exporter; and
 - (b) the chief executive is satisfied that it is correct; and
 - (ba) the chief executive is satisfied that any specified process has been completed, if the process that must be followed to check that the product has been produced or processed and handled as required by an applicable organic standard in force or other requirements under this Act has been completed; and—
 - (i) this Act, secondary legislation made under it, or directions given under it; or
 - (ii) a relevant organic standard voluntarily complied with (as referred to in **section 7D(c)**).
 - (e) ~~the person asks for it.~~
- (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.
- (4) ~~The statement is not a guarantee that the product —~~
- (a) ~~meets commercial requirements; or~~
 - (b) ~~meets overseas market requirements; or~~
 - (e) ~~is still meeting the requirements when it arrives in the overseas market.~~
- (4) The statement is not a guarantee that the contents of all or any part of a particular consignment to which it relates—
- (a) meet commercial requirements; or
 - (b) are fit for the intended purpose of the product; or

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- (c) are fit for a purpose other than that for which the consignment was intended; or
 - (d) meet overseas market access requirements; or
 - (e) are still meeting those requirements when they arrive 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.~~

49A No Crown liability for loss through exclusion from overseas market

The Crown, the relevant chief executive, and 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 organic, whether or not the product is restricted by an organic standard, about which the chief executive has issued an official assurance or given a statement of compliance.

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 products described as organic products intended for export from New Zealand from specific requirements of the relevant organic standard in force.~~
- (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.~~

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 product restricted by an organic standard from specific requirements of the relevant organic standard if the products are—
 - (a) intended for export from New Zealand; or
 - (b) imported, and intended—
 - (i) for export from New Zealand without further processing; or
 - (ii) to be processed into product that is intended for export from New Zealand.
- (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.
- (3) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

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.

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:
 - (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;
 - (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;
 - (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—
 - (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—
 - (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:

- (a) fixed fees or charges:

- (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:
- (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:
- (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:
- (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
 - (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
 - (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
 - (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).

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 (including any exemptions) at least once in every 3-year period occurring since the original setting of, or latest change to, the cost recovery for those things:
 - (a) product described as ~~an organic product~~ organic, whether or not the product is restricted by an organic standard:
 - (b) operator:
 - (c) recognised entity:
 - (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.~~
- (2) See **section 104A** for consultation requirements that apply in relation to a review under this section.
- (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).

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—
 - (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.
- (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.

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)**.
- (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.

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~~ Part does not suspend—

- (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—
 - (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—
 - (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.

59A Application to ~~regulations prescribing organic standards~~ secondary legislation

To avoid doubt, this Part and **sections 109 to 111** may be applied in relation to regulations or notices under **Part 6** before ~~those regulations or notices come into force~~ a product or class of products is restricted by an organic standard.

Part 5
Enforcement

Subpart 1—Organic products officers and chief executives

60 Relevant chief executive to appoint organic products ~~officer~~ officers

- (1) The relevant chief executive may appoint organic products officers for the purposes of this Act, secondary legislation made under it, and directions given under it.

- (2) Persons appointed under **subsection (1)** must be employed under the Public Service Act 2020.
- (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

- (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) or vehicle 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~~, secondary legislation made under it, or directions given under it; or
 - (b) a product complies with the requirements of this Act ~~or regulations~~, secondary legislation made under it, or directions given under it.
- (2) A **place or vehicle** 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~~ a person described in **paragraph (a)** are kept; or
 - (d) ~~the~~ an organic products 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);
 - (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

- (1) This section applies if an issuing officer reasonably believes that there is, ~~at a place, any thing in or on a place, vehicle, or other thing, anything—~~
- (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.
- (2) The issuing officer may issue a search warrant ~~for a place~~ in relation to a place, vehicle, or other thing.
- (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) or vehicle specified in the warrant.
- (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.

66 Power to test samples

- (1) To assess compliance with requirements under this Act, secondary legislation made under it, or directions given under it, 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.
- (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
 - (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, secondary legislation made under it, or directions given under it, the officer may issue an improvement notice—
 - (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.
- (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
 - (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~~ issued with an improvement notice ~~is issued~~ must comply with the notice, subject to **subsection (4)**.
- (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.
- (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
 - (b) vary it; or
 - (c) revoke or withdraw it.

68A Opinion or belief of organic products officer

If this Act requires an organic products officer to hold a particular opinion or belief about something before exercising a power, it is sufficient if a more senior organic products officer or the relevant chief executive holds that opinion or belief and directs the organic products officer to exercise the power.

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.
- (2) The statement may be about—
 - (a) a product, or a batch of a product, ~~in relation to which an organic standard is in force~~ that is restricted by an organic standard; or
 - (b) anything contained or implied in advertisements about a product that is restricted by an organic standard and described as an organic product organic—
 - (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, secondary legislation made under it, or directions given under it.~~
- (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.

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~~ this Act, secondary legislation made under it, or directions given under it by that entity or person.
- (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, relating to their func-

tions, duties, or powers under this Act, secondary legislation made under it, or directions given under it, either individually or as a class:

- (a) an organic products officer:
- (b) a recognised entity.

72 Giving general directions to operators, etc

- (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 that is restricted by an organic standard and described as organic.
- (2) Before a breach of requirements ~~under the Act~~ this Act, secondary legislation made under it, or directions given under it 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~~ this Act, secondary legislation made under it, or directions given under it.
- (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
 - (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 notices~~ secondary legislation made under it, or directions given under it; or
 - (b) an operator's approval has been surrendered under **section 16(2)(b)**, 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,—
 - (a) require information to allow the chief executive to determine the person's compliance ~~with the Act, regulations, or notices~~ this Act, secondary legislation made under it, or directions given under it; or

- (b) require the person to take specific actions (for example, sampling, testing, verifying, and investigating) to determine or manage non-compliance of products that are restricted by an organic standard and described as organic ~~products~~; or
 - (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.
 - (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, secondary legislation made under it, or directions given under it.
- (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:
 - (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

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**.
- (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.

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

- (1) ~~The~~ An 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.
- (3) ~~The revocation of an infringement notice under this section is not a bar to any other enforcement action before the infringement fee is paid is not a bar to any further action as described in section 76(1)(a) or (b) against the person to whom the notice was issued in respect of the same matter.~~ The revocation of an infringement notice under this section is not a bar to any further action as described in section 76(1)(a) or (b) 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;
- (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;
- (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;
- (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

- (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
 - (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.
- (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.

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

- (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 a false or misleading statements statement or a material omission in a communication, in an application, or in records required for the purposes of this Act, secondary legislation made under it, or directions given under it; or
 - (b) falsifies, removes, alters, or misrepresents a label, brand, national mark, or product description of organic products restricted by an organic standard that is required or authorised by this Act, secondary legislation made under it, or directions given under it; or
 - (c) misrepresents, substitutes in whole or in part, adulterates, or tampers with a product in relation to which restricted by an organic standard is in force, so that the product no longer matches its description or official assurance as an organic product as organic, or its official assurance; or
 - (d) falsifies certificates, official assurances, or other documents required or authorised by this Act, secondary legislation made under it, or directions given under it; or

- (e) falsifies, removes, suppresses, or tampers with samples, test results, or other evidence required for the purposes of this Act, secondary legislation made under it, or directions given under it; or
 - (f) aids, or conspires with, another person to commit an offence under this section; or
 - (g) sells or markets a product ~~in relation to which an organic standard is in force as an organic product~~ described as organic that is restricted by an organic standard if the product does not meet the standard.
- (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.~~
- (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.~~

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 exercising powers or performing functions under this Act, secondary legislation made under it, or directions given under it; or
 - (c) a person exercising powers or performing functions delegated from the relevant chief executive under this Act, secondary legislation made under it, or directions given under it; or
 - (d) a recognised entity.
- (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.

84 Obstruction of officers

- (1) A person commits an offence if the person intentionally 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.

- (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.

Strict liability offences

84A Prosecution need not prove intention to commit certain offences

In a prosecution for an offence against any of **sections 85, 86, 86A, 87, 88, and 88A**, it is not necessary to prove that the defendant intended to commit the offence.

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 a relevant organic standard is in force and the product does not meet the standard.
- (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.

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.
- (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

- (1) A person commits an offence who exports a product that is described as an organic product if a relevant organic standard is in force and—
- (a) the person is not approved by the relevant chief executive as an operator who may export products described as organic products; or
 - (b) the product does not meet—
 - (i) the relevant organic standard; or

- (ii) ~~any other export requirement or restriction that is prescribed or specified in a notice given by the relevant chief executive under **section 46(1)**.~~
- (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.~~

85 Sale of non-compliant product that is described as organic

A person who breaches **section 7C(1)** commits an offence and 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.

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

A person who breaches **section 10(1) or (2A)** commits an offence and 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.

86A Sale of non-compliant imported product that is described as organic

A person who breaches **section 45AAA** commits an offence and 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.

87 Export of products described as organic when not approved, etc

A person who breaches **section 46(2)** commits an offence and 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.

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.~~
- (1) An operator commits an offence if the operator breaches or fails to carry out any of the duties specified in **section 13D** or **section 44**.
- (1A) A recognised entity commits an offence if the entity breaches or fails to carry out any of the duties specified in **section 28** or **section 44**.

- (2) ~~A recognised entity who~~ An operator or a recognised entity that commits an offence under **subsection (1) or (1A)** 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.

88A Offence of breaching or failing to comply with requirement

- (1) A person commits an offence if the person breaches or fails to comply with a requirement of—
- (a) any of the following:
 - (i) **section 14AA:**
 - (ii) **section 14AAB(1):**
 - (iii) **section 15(2)(a):**
 - (iv) **section 19(1):**
 - (v) **section 20(1):**
 - (vi) **section 21(1):**
 - (vii) **section 30:**
 - (viii) **section 30A(3):**
 - (ix) **section 32(2) or (5):**
 - (x) **section 34(3):**
 - (xi) **section 43(1):**
 - (xii) **section 120;** or
 - (b) any provision of regulations made under this Act that the failure to comply with is identified in the regulations as an offence.
- (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.

Defences for certain offences

89 Defences for certain offences

- (1) It is a defence to an offence under **section 85, 86, 86A, 87, ~~or 88 88, or 88A~~** if the defendant can prove that—
- (a) the offence relates to events that were outside the defendant's control; or
 - (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, secondary legislation made under it, or directions given under it; and
 - (ii) could not with reasonable diligence have ascertained that the products were not compliant.
- (1A) It is a further defence to an offence under **section 86A** if the defendant can prove that the product complies with the relevant standard to the extent that is practicable given that the product was not produced or processed in New Zealand.
- (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
 - (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, or within such further time that the court allows.

Prosecution administration requirements

90 Evidence of testing, sampling, etc

- (1) Documents that may be used under this Act, secondary legislation made under it, or directions given under it 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
 - (c) a certificate given by an employee of a laboratory-specified approved 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.

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,—
 - (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 certifi-

cate or document as a witness at the hearing or to call evidence about the nature of the document; and

- (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.
- (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—
 - (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 or secondary legislation made under it.
- (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.

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—
 - (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.

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.

- (2) The documents are—
 - (a) a document presented by an organic products officer purporting to be a requirement of this Act, secondary legislation made under it, or directions given under it; and
 - (b) a copy of the *Gazette* in which the requirement was notified, if applicable.
- (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—
 - (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.

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—
 - (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.
- (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, secondary legislation made under it, or directions given under it as being also the act or omission of the principal.
- (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.

97A Order to pay amount because of commercial gain

- (1) This section applies to a person convicted of an offence against any of **sections 82, 83, 85, 86, 87, 88, and 88A.**
- (2) The court may make an order under **subsection (4) or (5)** if it is satisfied that the offence was committed in the course of producing a commercial gain.
- (3) The court may make the order in addition to, or instead of, a penalty that the court may impose under the relevant offence provision.
- (4) The court may make an order under this subsection whether or not the person is a body corporate. The order is that the person pay an amount up to 3 times the value of the commercial gain resulting from committing the offence.
- (5) The court may make an order under this subsection if the person is a body corporate and the value of the gain cannot be readily ascertained. The order is that the person pay an amount up to 10% of the combined turnover of the body corporate and every interconnected body corporate it has over the period of the offending.
- (6) The court must assess the value of a gain that is readily ascertainable.
- (7) An amount that the court orders to be paid under this section is recoverable in the same manner as a fine.
- (8) In this section, **interconnected** and **turnover** have the same meanings as in the Commerce Act 1986.

Charging documents

97B Charging documents

Despite anything to the contrary in the Criminal Procedure Act 2011, a charging document in respect of any offence against this Act may be filed in any case within 4 years after the time when the offence was committed or within any longer time allowed by the Criminal Procedure Act 2011.

Immunities and excluding liability for loss

98 Protection of persons acting under authority of Act or secondary legislation

- (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:

- (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, secondary legislation made under it, or directions given under it; 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, secondary legislation made under it, or directions given under it.

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, secondary legislation made under it, or directions given under it:

- (a) the Crown;
- (b) the relevant chief executive;
- (c) a person recognised under **section 22** (persons recognised without application).

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;
- (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.
- (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.

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.
- (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 Regulations and notices

104A Consultation about certain regulations, notices, and reviews

- (1) A relevant Minister must comply with this section before making a final decision on a review or recommending the making of regulations, as the case may be, under any of the following:
 - (a) **section 55** (3-yearly reviews of cost recovery):
 - (b) **section 105** (organic standards regulations):
 - (c) **section 107** (general power to make regulations):
 - (d) **section 107AA** (regulations relating to tracing and recall):
 - (e) **section 107AAB** (regulations relating to verification):
 - (f) **section 107B** (regulations imposing import requirements on products restricted by organic standard and described as organic):
 - (g) **section 108** (regulations providing for exemptions for classes of persons):
 - (h) **section 109** (regulations imposing fees and charges):
 - (i) **section 110** (regulations imposing levies):
 - (j) **section 111** (regulations providing for exemptions, waivers, and refunds for a class of persons or case).
- (2) A relevant Minister must also comply with this section before recommending the revocation of an Order in Council under **section 108 or 111**.
- (3) A relevant chief executive must comply with this section before issuing notices supplementing organic standards under **section 111A**.
- (4) A relevant Minister, or a relevant chief executive in relation to issuing supplementary notices under **section 111A**, must be satisfied there has been consultation with the persons (or their representatives) including Māori (or their representatives) that appear to the consulter likely to be substantially affected by the decision on the review or by any regulations made in accordance with the recommendation or by the notice, as the case may be.

- (5) The process for consultation must, to the extent practicable in the circumstances, include—
- (a) adequate and appropriate notice of the proposed terms of the decision, recommendation, or notice, and of the reasons for it; and
 - (b) a reasonable opportunity for consulted persons to consider the decision, recommendation, or notice and make submissions; and
 - (c) adequate and appropriate consideration of submissions.
- (6) A failure to comply with this section does not affect the validity of any review, regulations, or notice to which it applies.
- (7) This section does not apply in relation to any Order in Council, regulations, or notice if the relevant Minister or relevant chief executive (as the case may be) considers it necessary or desirable in the public interest that the Order in Council, regulations, or notice be made, issued, or revoked as a matter of urgency.

Subpart 1—Regulations

Scope of regulations

104B Scope of regulations

Regulations made under this Act may do either or both of the following:

- (a) authorise the relevant Minister, the relevant chief executive, or an organic products officer to decide a matter:
- (b) confer any other discretion on the relevant Minister, the relevant chief executive, or an organic products officer.

Organic standards regulations

105 Organic standards regulations

- (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.
- (2) Without limiting the generality of **subsection (1)**, ~~the an~~ organic standard may set out include requirements in relation to any of the following:
 - (a) the production, processing, and preparation of organic ingredients, organic components, or organic products:
 - (b) the packing, storage, and handling of organic ingredients, organic components, or organic products:
 - (ba) the identification and labelling of organic products, including—
 - (i) the information or other matters that must be specified, or that may or must not be specified, in any label on a product or class of product; and

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- (ii) the requirements that must be met for that information or other matter to be specified or not specified:
- (c) requirements for sampling and testing of a product:
- (ca) conversion periods for a product or class of products:
- (d) obligations to keep records and to provide information:
- (da) any periods in which the standards may be complied with voluntarily (as referred to in **section 7D(c)**):
- (e) the circumstances and conditions in which a person or an operator can apply to the relevant chief executive for a variation or waiver a waiver or variation of, or an alternative to, an aspect or a requirement of the standard in a specific case:
- (f) other matters relevant to the management of whether a product can be described as an organic product restricted by an organic standard may be described as organic.
- (3) ~~An organic standard must—~~
 - (a) ~~specify the scope of the products or class of products to which it applies; and~~
 - (b) ~~contain high-level guidance for notices that may be given in relation to the organic standard.~~
- (3) Regulations made under **subsection (1)** must—
 - (a) specify the scope of the products or class of products to which they apply; and
 - (b) specify the date on which the product or class of products becomes restricted by the organic standard.
- (4) Regulations made under **subsection (1)** may be supplemented by organic standards notices issued under **section 111A**.
- (5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

106 Prerequisites for ~~prescribing organic standards~~ organic standards regulations

~~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~~
- (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.~~

- (1) Before making a recommendation for the purposes of **section 105**, the relevant Minister must be satisfied that—
 - (a) the organic standard was developed in response to a demand from the relevant sector for the product to be restricted by an organic standard; and
 - (b) the sector has the competence and capacity required to assist, if the Minister considers it appropriate, in the development of any organic standards notice issued under **section 111B**; and
 - (c) making the regulations will meet the purpose of this Act.
- (2) See **section 104A** for consultation requirements that apply to the making of regulations under **section 105**.

106A Emergency organic standards

- (1) A relevant Minister may, by order, issue emergency organic product standards if, in the opinion of the Minister,—
 - (a) an emergency or urgent situation has arisen involving risk to—
 - (i) consumer confidence in purchasing organic products; or
 - (ii) New Zealand’s international trade in organic products; and
 - (b) it is not practicable in the circumstances of the particular case, in time to deal with the situation, to—
 - (i) make or amend regulations under **section 105** or issue or amend a supplementary notice; or
 - (ii) otherwise effectively alleviate or minimise the relevant risk.
- (2) An order may contain any matter that could be included in regulations made under **section 105** or a supplementary notice.
- (3) An order must, as soon as practicable, to the extent practicable, be brought to the attention of all persons likely to be affected by it.
- (4) A ministerial order under this section—
 - (a) takes effect on the day specified in the order (which must not be earlier than the day it is published under the Legislation Act 2019, except in the case of any person affected who has been supplied with a copy of the order at any earlier time); and
 - (b) unless sooner revoked, expires at the end of 6 months after the date of its publication under the Legislation Act 2019, unless extended by the Minister by notice for a further period not exceeding 6 months (at the end of which period it expires).
- (5) Before making an order under this section, the Minister must ensure that such consultation as is reasonable and practicable in the circumstances has been undertaken, but **section 104A** does not apply to an order under this section.

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- (6) In the case of inconsistency between a ministerial order under this section and any organic product standard or supplementary notice, the ministerial order prevails.
- (7) A ministerial order may be amended in the same manner as it was made.
- (8) Despite anything in clause 5 of Schedule 6 of the Public Service Act 2020, the Minister must not delegate to any other person the power to make orders under this section, or to extend or revoke the orders.
- (9) The following are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements):
 - (a) an order made under this section:
 - (b) a notice issued under **subsection (4)(b)**.

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:

Final consumer service

- (aaa) declaring a service to be, or not to be, a final consumer service:

Approval and recognition

- (a) prescribing information, requirements, processes, obligations, time frames, and other matters in relation to—
 - (i) applications for approval or recognition, or renewal of approval or recognition:
 - (ia) determining whether an applicant is a fit and proper person to be approved as an operator or recognised to carry out the specified functions and duties for which recognition is sought:
 - (ii) granting or refusing approval or recognition:
 - (ia) specifying a document that may be required to show how ~~an operator intends to a product will~~ comply with an organic standard:
 - (iaa) specifying a document that may be required to show how an operator will comply with any prescribed requirements:
 - (iib) factors a relevant chief executive must take into account when specifying the duration of approval or recognition:
 - (iic) specifying the activities and duties of an operator:
 - (iid) specifying the functions and duties of a recognised entity:
 - (iie) prescribing competencies, qualifications, experience, or other requirements that must be met—

- (A) in order for a person to be approved as an operator under **subpart 2 of Part 2:**
 - (B) in order for a person to be recognised as a recognised agency or a recognised person under **subpart 3 of Part 2:**
 - (C) in order for a class of persons to be recognised as a recognised class under **subpart 3 of Part 2:**
 - (D) by an operator:
 - (E) by a recognised agency, recognised person, or recognised class:
- (iif) prescribing performance standards or other requirements that must be met by a recognised entity—
- (A) when they are carrying out their specified functions and duties; and
 - (B) if they are a recognised agency, when they are managing a recognised person or member of a recognised class of natural persons:
- (iii) maintaining approval or recognition:
- (iv) suspending or withdrawing recognition or approval:
- (~~abaa~~) for the purposes of **subsection (1)(a)**, prescribing different methods and requirements for different types of approval (for example, group approvals):—
- (i) different types of approval (for example, group approvals):
 - (ii) different conditions on approval:
- Use of national mark*
- (d) prescribing in relation to a national mark—
- (i) the nature and form of the mark:
 - (ii) the class of operators ~~who~~ that may use the mark:
 - (iii) requirements and restrictions on its use:
- Public register, information, and records*
- (e) prescribing information for the content of the public register under **section 39:**
- (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:
- (h) prescribing persons that the operator or entity must provide with information under **section 44:**

~~Imports and exports~~ Importers and exporters

- (i) prescribing export and import requirements for, and obligations that must be met by, importers and exporters:

Exports

- (ia) prescribing procedures and requirements for applying for and obtaining official assurances and statements of compliance, and otherwise prescribing matters in relation to official assurances and statements of compliance:

Samples and testing

- (ka) requiring samples and tests to be carried out in relation to products within the scope of ~~the~~ this Act, and for those samples or the results of those tests, or both, to be reported to recognised entities or the relevant chief executive:

Infringement offences

- (l) prescribing forms for infringement notices:
 (m) prescribing particulars that infringement notices must contain:
 (n) specifying the offences in this Act that are infringement offences:
 (o) prescribing infringement offences for the breach of regulations secondary legislation made under this Act, supplementary notices issued under it, or directions given under it:
 (oa) setting out the amounts, up to \$1,000, of infringement fees that are payable for infringement offences, including different fees for a first offence, a second offence, and subsequent offences:
 (p) prescribing infringement fees not exceeding \$1,000:
 (q) prescribing infringement fines not exceeding \$2,500:

Offences

- (qa) specifying matters in regulations that constitute offences for the purposes of **section 88A(1)(b)**:

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.
- (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.~~

- (2) See **section 104A** for consultation requirements that apply to the making of regulations under this section.
- (3) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Regulations relating to tracing and recall, and verification

107AA Regulations relating to tracing and recall

- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements and procedures that apply to operators, and to persons referred to in **section 14AA(2)**, in relation to tracing and recalling products described as organic (whether or not they are restricted by an organic standard).
- (2) The regulations may (without limitation) do any or all of the following:
 - (a) specify operators, and specify other persons and classes of persons referred to in **section 14AA(2)**, that are required to have procedures for tracing and recalling products described as organic:
 - (b) set requirements relating to—
 - (i) the content of those procedures:
 - (ii) the conducting of simulations and other tests of those procedures:
 - (iii) the implementation of those procedures to trace or recall products described as organic:
 - (c) specify matters in relation to tracing and recall that must be recorded in any documentation.
- (3) See **section 104A** for consultation requirements that apply to the making of regulations under this section.
- (4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

107AAB Regulations relating to verification

- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements and processes that apply to operators, and to persons and classes of persons referred to in **section 14AAB(2)**, in relation to verification.
- (2) The regulations may (without limitation) do any or all of the following:
 - (a) specify operators, and specify other persons and classes of persons referred to in **section 14AAB(2)**:
 - (b) specify how changes to an operator's approval, renewal, suspension, withdrawal, or conditions will be notified to its verifier or verifying agency:
 - (c) prescribe the verification requirements and processes for products that are described as organic, whether or not they are restricted by an organic standard, for the export of which an official assurance may be sought:

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- (d) prescribe the verification requirements and processes to monitor compliance by operators, and by other persons and classes of persons referred to in **section 14AAB(2)**, with requirements imposed by or under this Act, secondary legislation made under it, or directions given under it:
 - (e) specify the operations, or parts of the operations, that must be verified:
 - (f) set requirements relating to the frequency, intensity, and cost of verification:
 - (g) specify matters in relation to verification that must be included in any documentation:
 - (h) set out matters relating to the rights of verifiers and verifying agencies in relation to the undertaking of verification activities:
 - (i) set reporting requirements for verifiers and verifying agencies:
 - (j) set out other requirements relating to the exercise, carrying out, and managing of verification functions and duties.
- (3) See **section 104A** for consultation requirements that apply to the making of regulations under this section.
- (4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Regulations for disclosure of information

107A Regulations for purposes of section 44A

- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, make regulations—
- (a) declaring any Act to be an Act for the purposes of **section 44A(2)(b)**:
 - (b) declaring any person to be an approved agency for the purposes of **section 44A(4)(i)**.
- (2) Regulations made under **subsection (1)** may apply for the purposes of information under any specific secondary legislation or direction, or specific class of secondary legislation or directions, under this Act.
- (3) Before recommending the making of regulations under this section, the relevant Minister must be satisfied that there has been consultation with the persons and organisations that the Minister considers appropriate.
- (4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Regulations imposing import requirements on certain products

107B Regulations imposing import requirements on products restricted by organic standard and described as organic

- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, make regulations prescribing import requirements on products restricted by an organic standard and described as organic, including the following:
 - (a) general requirements that apply to imported products:
 - (b) different requirements for different categories of products:
 - (c) how the requirements must be met:
 - (d) when the requirements must be met:
 - (e) who is responsible for ensuring that the requirements are met:
 - (f) how the organic standard must or may be met:
 - (g) any documentation or other evidence that must accompany the products, such as a declaration, certificate, or assurance:
 - (h) other matters related to requirements.
- (2) See **section 104A** for consultation requirements that apply to the making of regulations under this section.
- (3) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Exemptions for classes

108 ~~Exemptions~~ Regulations providing for exemption 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
 - (b) any other requirement of or obligation under this Act, secondary legislation made under it, or directions given under it ~~or regulations or notices made under it (other than the requirement to meet the relevant organic standard).~~
- (2) ~~An order exemption~~ under **subsection (1)** may specify provisions of ~~the Act~~ this Act, secondary legislation made under it, or directions given under it that apply to the class.
- (3) The relevant Minister may make a recommendation if satisfied that—
 - (a) granting the exemption is consistent with the purpose of ~~the~~ this 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) 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.~~
- (4) See **section 104A** for consultation requirements that apply to the making or revocation of regulations under this section.
- (5) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

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, including fees and charges payable on an ongoing basis by a person given a particular status under this Act, for the purposes of this Act or secondary legislation made under it.
- (2) The fees and charges may be prescribed using any 1 or more of the methods specified in **section 53** (excluding **section 53(h)**).
- (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.
- (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
 - (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
 - (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
- (b) be specified by supplementary 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.~~
- (6) See **section 104A** for consultation requirements that apply to the making of regulations under this section.
- (7) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Regulations imposing levies

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, including levies payable on an ongoing basis by a person given a particular status under this Act, for the purposes of this Act or secondary legislation made under it.
- (2) Levies prescribed by regulations are payable to the relevant chief executive.
- (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.
- (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:
 - (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:
 - (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:

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- (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:
 - (ii) the amount of levy a person is required to pay or collect.
- (4A) If regulations prescribe a formula for determining a levy, the value to be attributed to a component of that formula may be—
- (a) specified in the formula; or
 - (b) specified by supplementary notice by the relevant chief executive.
- (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.~~
- (5) See **section 104A** for consultation requirements that apply to the making of regulations under this section.
- (6) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- 111 Regulations may provide for exemptions, waivers, and refunds for class of persons or case**
- (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 for any class of persons:
 - (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) ~~provide that any exemption, waiver, or refund granted by the regulations in a particular case or class of case expires within a specified period not exceeding 5 years; and~~
 - (b) ~~set out the circumstances in which the exemption, waiver, or refund may be granted.~~
- (2) Regulations made under this section must 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.~~
- (3) See **section 104A** for consultation requirements that apply to the making or revocation of regulations under this section.
- (4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Subpart 2—Notices

Notices: organic standards

111A Notices for organic standards

~~The relevant chief executive may, by notice, specify for an organic standard in relation to a product or class of products—~~

- ~~(a) technical detail relevant to the standard; and~~
- ~~(b) acceptable and unacceptable inputs for the production and processing of the product or class of products.~~

111A Organic standards notices

- (1) The relevant chief executive may issue organic standards notices under **section 111B(2)** to supplement organic standards regulations in relation to a product or class of products covered by those regulations.
- (2) Supplementary notices referred to in **subsection (1)** may, in addition to the matters referred to in **section 111B**, provide—
 - (a) technical detail relevant to the regulations; and
 - (b) acceptable and unacceptable inputs for the production and processing of the product or class of products.

General notices

111B General notices

- (1) A relevant chief executive may issue notices under this subsection to do anything that a provision of this Act permits to be done by notice under this subsection.
- (2) A relevant chief executive may issue notices under this subsection to prescribe matters,—
 - (a) if a provision of this Act refers to regulations and supplementary notices (for example by requiring something to be done in accordance with regulations and any supplementary notice), to supplement those regulations; or

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- (b) if the regulations permit supplementary notices to be made to supplement provisions of the regulations, to supplement those provisions of the regulations.
- (3) The relevant chief executive must not issue a notice under **subsection (2)** unless satisfied that the notice—
 - (a) sets out matters of detail to elaborate on matters provided for in the regulations; or
 - (b) sets out procedures, methodologies, forms, or other matters of an administrative nature relating to matters provided for in the regulations; or
 - (c) sets out how requirements imposed by the regulations may or must be met; or
 - (d) otherwise supplements matters of general principle set out in the regulations.
- (4) If a provision of this Act requires the relevant Minister to be satisfied of any matter before recommending the making of regulations, the relevant chief executive must not issue a notice under **subsection (2)** to supplement those regulations unless the relevant chief executive is satisfied of that matter.
- (5) **Subsection (4)** does not apply to matters in the following provisions:
 - (a) **section 106(1)(a) or (b):**
 - (b) **section 104A**, in relation to notices referred to in **section 109(5)(b):**
 - (c) **section 104A**, in relation to notices referred to in **section 110(4A)(b).**
- (6) If a notice issued under this section is inconsistent with the regulations, the regulations prevail to the extent of the inconsistency.
- (7) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons.
- (8) A notice issued under this section that is not secondary legislation must be given to the persons to whom it applies.

111C Giving of notices, etc, by Minister, chief executive, or organic products officer

- (1) This section applies if this Act or secondary legislation made under it requires a relevant Minister, a relevant chief executive, or an organic products officer to give a notice to a person (other than a notice that is secondary legislation or an infringement notice under **subpart 2 of Part 5**, or as otherwise provided by this Act).
- (2) If this section applies, the Minister, the chief executive, or the organic products officer—
 - (a) must give the notice in writing to—

- (i) the person; or
 - (ii) a representative authorised to act on behalf of the person; and
- (b) may give notice by—
 - (i) personal delivery to a person that is not a body corporate;
 - (ii) personal delivery to a person that is a body corporate, if the personal delivery is made to the person’s office during working hours;
 - (iii) an electronic means of communication to the person, if the Minister, the chief executive, or the organic products officer complies with Part 4 of the Contract and Commercial Law Act 2017;
 - (iv) post to—
 - (A) the street address of the person’s usual or last known place of residence; or
 - (B) the street address of any of the person’s usual or last known places of business; or
 - (C) any other address, if the person has notified under this Act that the person accepts notices at the address.
- (3) A notice given by post under **subsection (2)(b)(iv)** is to be treated as having been given at the time the notice would have been delivered in the ordinary course of the post.

Notices: exemptions

112 Exemption for individual cases named person

- (1) The relevant chief executive may, by notice issued under **section 111B(1)**, grant a named person an exemption from a requirement of or an obligation under this Act ~~(other than the requirement to meet the relevant organic standard)~~, secondary legislation made under it, or directions given under it if the chief executive considers the criteria in **subsection (4)** are met.
- (2) A person ~~who wishes~~ wishing 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—
 - (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~~ issuing a notice under referred to in **subsection (1)**, the chief executive must be satisfied that—

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- (a) granting the exemption is consistent with the purpose of ~~the~~ this 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.
- (4A) Despite **subclause (1)**, a relevant chief executive must not grant an exemption under this section from a requirement of or an obligation under this Act to meet any relevant organic standard.
- (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.~~

112A Revocation of class exemption for named person

- (1) The relevant chief executive may, by notice issued under **section 111B(1)**, revoke an exemption for a class of persons made under **section 108(1)** in respect of a named member of that class.
- (2) Before issuing a notice referred to in **subsection (1)**, the chief executive must be satisfied in respect of that named member of the class that at least 1 of the following applies:
 - (a) continuing the exemption is not consistent with the purpose of this Act:
 - (b) continuing the exemption will—
 - (i) have an adverse impact on New Zealand’s reputation; or
 - (ii) result in consumers being misled.
- (3) A notice issued under this section must be given to the named person it applies to.

113 Exemption for certain operators or products

The relevant chief executive may, by notice issued under **section 111B(1)**, grant an operator, or a product, ~~whether restricted or not, that is~~ described as organic, an exemption from a requirement or an obligation that relates to exporters and exported products under this Act, secondary legislation made under it, or directions given under it (other than the requirement to meet ~~the~~ any relevant organic standard) if the chief executive is satisfied that the product is exported for 1 or more of the following purposes:

- (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:

- (d) for consumption during transit by a passenger or crew on a vessel or an aircraft leaving New Zealand.

Consolidation of certain secondary legislation or published instruments

113A Certain secondary legislation or published instruments may be consolidated

Secondary legislation made by relevant chief executive and with same publishing requirements

- (1) A relevant chief executive (the **maker**) may at any time apply this section to any secondary legislation that—
- (a) the maker has made, or may make, under a provision of this Act, or of regulations made under this Act, by satisfying the same requirements for publishing the secondary legislation; and
 - (b) is not drafted by the Parliamentary Counsel Office (see section 67 of the Legislation Act 2019).

Other instruments made by same maker with same publishing requirements

- (2) A relevant chief executive (the **maker**) may at any time apply this section to any instruments that—
- (a) the maker has made, or may make, under any provisions of this Act, or of regulations made under this Act, by satisfying the same requirements for publishing the instruments; and
 - (b) are not secondary legislation.

Once this section is applied to specific instruments

- (3) The powers of the maker to amend or replace the specific instruments (whether given by a specific empowering provision, section 48 of the Legislation Act 2019, or otherwise) authorise the maker to—
- (a) revoke any specific instruments that have been made (a **revoked instrument**); and
 - (b) make an instrument under any of the specific empowering provisions (the **new instrument**) that—
 - (i) has the same effect that all or part of the revoked instrument or instruments had immediately before being revoked; and
 - (ii) otherwise has any further effect (if any) authorised by the specific empowering provisions (the **new or amended parts**).
- (4) For each part of the new instrument (the **replacement part**) that has the same effect as part of a revoked instrument (the **revoked part**),—
- (a) the replacement part must be treated as being made under the specific empowering provision under which the revoked part was made; and

- (b) any requirements for making the replacement part or for revoking the revoked part, other than the requirements for publication, must be treated as being satisfied to the extent that the requirements for making the revoked part were satisfied when it was made.
- (5) To avoid doubt,—
- (a) the new or amended parts of the new instrument (if any) are made under the relevant specific empowering provisions; and
- (b) any requirements of the relevant specific empowering provisions must be satisfied in making those parts.
- (6) A revoked instrument continues to have effect, as if it had not been revoked, in relation to any matter in a period to which the revoked instrument applied.
- (7) In this section,—
- instrument** has the meaning given in section 5 of the Legislation Act 2019
- maker**, in relation to an instrument, means the person empowered to make it, as defined by **subsection (1) or (2)**
- specific empowering provisions** means the provisions of this Act, or of regulations, that—
- (a) empower the making of the specific instruments; and
- (b) are referred to in the subsection under which the maker applies this section to the specific instruments
- specific instruments** means the 1 or more instruments to which the maker applies this section, whether the instruments—
- (a) have been made (and are to be revoked); or
- (b) are able to be made.

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—~~
- (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.~~
- (3) ~~Sections 49(4), 51, 52, and 54 to 57 of the Legislation Act 2012 apply in relation to material incorporated by reference in the regulations or notice under **subsection (1)**.~~

- (4) ~~Section 53 of the Legislation Act 2012 (which prevents amendments made to the material by its originator from having legal effect unless specifically incorporated) applies to the material if—~~
- ~~(a) the material is not a standard work of reference; or~~
 - ~~(b) the amendment is to the part or whole of a standard work of reference that the regulations expressly specify, or the notice expressly specifies, is subject to that section.~~

114 Incorporation by reference of standard works of reference

- (1) This section applies if—
- (a) secondary legislation made under this Act or made under other secondary legislation made under this Act incorporates material by reference in reliance on section 64 of the Legislation Act 2019; and
 - (b) the material incorporated is all or part of—
 - (i) a standard work of reference; or
 - (ii) material expressly specified as subject to this section by secondary legislation referred to in **paragraph (a)**; and
 - (c) the material is amended (within the meaning of section 66(3) of the Legislation Act 2019) by the originator of the material after the secondary legislation is made.
- (2) If this section applies, the amendments referred to in **subsection (1)(c)** have immediate effect as part of the secondary legislation (despite section 66(2) of the Legislation Act 2019).

Part 7
General provisions

Advisory council

114A Relevant Minister may establish advisory council

- (1) A relevant Minister may establish, from time to time, an advisory council of organic sector stakeholders to provide advice and recommendations to the relevant chief executive on relevant issues specified by the Minister, including, but not limited to, any of the following matters:
- (a) consultation on proposed organic standards:
 - (b) the content of proposed organic standards:
 - (c) the interpretation of organic standards:
 - (d) the implementation of regulations:
 - (e) trade in organic products.

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- (2) If a relevant Minister establishes an advisory council under **subsection (1)**, the Minister must specify—
- (a) the purpose of the council, which may be amended from time to time if the Minister considers appropriate; and
 - (b) the duration of the council, which must be no longer than 4 years after it is established, but which may expire before that time, if—
 - (i) the Minister considers its purpose has concluded; or
 - (ii) the Minister considers it is no longer fulfilling its purpose.
- ~~(3) The relevant Minister must appoint the chairperson and members of the advisory council as the Minister considers to be broadly representative of the sector.~~
- (3) The relevant Minister must appoint a chairperson and members of the advisory council who the Minister considers—
- (a) are broadly representative of the sector; and
 - (b) include appropriate and suitably representative Māori membership.
- (4) Members of an advisory council are entitled, in accordance with the fees framework,—
- (a) to receive remuneration for services as a member at a rate and of a kind determined by the relevant Minister; and
 - (b) to be reimbursed for actual and reasonable travelling expenses incurred in carrying out their services as a member.
- (5) For the purposes of **subsection (4)**, **fees framework** has the meaning given in section 10(1) of the Crown Entities Act 2004.
- (6) The relevant Ministry must recover costs in **subsection (4)** in accordance with **Part 4**.

Register of inputs

114B Register of inputs

- (1) A relevant chief executive must establish a register of acceptable and unacceptable inputs that are specified by notice under **section 111A(b)** in relation to ~~an organic standard~~ organic standards for the production and processing of a product or class of products.
- (2) The relevant chief executive must 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.

Commodity levies

115 Application of Commodity Levies Act 1990 to organic products

- (1) The provisions of the Commodity Levies Act 1990 apply to a product in relation to which an organic standard ~~is made~~ can be voluntarily complied with as referred to in **section 7D(c)**, or which is restricted by an organic standard, 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.

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.
- (2) This section ~~applies and~~ **sections 117 and 118** apply to any of the following decisions made under this Act:
 - (a) ~~specifying an expiry date of approval or refusing approval under **section 13**:~~
 - (aa) imposing or varying a condition of approval under **section 13 or 13C**:
 - (b) suspending approval under **section 16**:
 - (c) withdrawing approval under **section 17**:
 - (d) refusing recognition under **section 24**:
 - (e) ~~making recognition conditional under **section 25(1)(d) or (2)(b)(iii)**:~~
 - (f) ~~varying conditions of recognition under **section 26**:~~
 - (e) imposing or varying a condition of recognition under **section 25 or 26A**:
 - (g) suspending recognition under **section 33**:
 - (h) withdrawing recognition under **section 34**:
 - (ha) determining to not disclose, or determining to disclose, despite a person's application, the person's address under **section 41**:
 - (i) withdrawing an official assurance under **section 47(3)**:
 - (j) withdrawing a statement of compliance under **section 49(3)**:
 - (ja) withdrawing or no longer providing a service to a debtor under **section 59**:
 - (k) issuing an improvement notice under **section 67**:
 - (l) publishing a statement under **section 69**:

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- (m) directing a recognised entity, in relation to the entity's functions, duties or powers, under **section 71(b)**:
 - (n) directing a person on preventive or corrective actions under **section 72(2)**:
 - (o) directing a person to publish a statement under **section 73(2)(b)**:
 - (p) directing a person in certain circumstances under **section 74**:
 - (q) arranging for the use of an automated electronic system under **section 121**.
- (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
 - (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 decision being reviewed must—
- (a) conduct the review; or
 - (b) designate a person who was not involved in the ~~original decision~~ being reviewed to conduct the review.
- (2) If the chief executive was involved in the ~~original decision to conduct the review~~ decision being reviewed, the chief executive must designate a person who was not involved in the ~~original~~ that decision to conduct the review.
- (3) The decision ~~sought to be~~ being 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.
- (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

- (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.

- (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)**.

Time limits

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

- (1) A relevant chief executive who suspects that ~~the~~ a person has breached this Act, ~~regulations, or a notice under this Act~~ secondary legislation made under it, or directions given under it may, in writing, request the person to provide information or material relating to the person's compliance with ~~the Act, regulations, or or notice~~ this Act, the secondary legislation, or the directions.
- (2) The request must specify that the information must be provided within—
- 10 working days of the request; or
 - any further time period that the chief executive allows by notice in writing.

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—

- 3 months of the request; or
- any further time period 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.
- (2) The actions are—
- exercising a power:
 - carrying out a function:
 - carrying out a duty:
 - making a decision:
 - doing an action for the purpose of exercising a power, carrying out a function or duty, or making a decision:

- (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.
- (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.
- (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

- (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.
- (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
 - (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)**.

Part 8

Amendments to other enactments

Amendment to Animal Products Act 1999

122A Amendment to Animal Products Act 1999

- (1) This section amends the Animal Products Act 1999.

- (2) After section 161(5)(a)(xie), insert:

(xif) Organic Products and Production Act 2019:

Amendments to Dairy Industry Restructuring Act 2001

123 Amendments to Dairy Industry Restructuring Act 2001

- (1) This section amends the Dairy Industry Restructuring Act 2001.
(2) In section 5(1), insert in their appropriate alphabetical order:

~~organic product~~ has the meaning given in ~~section 5~~ of the ~~Organic Products and Production Act 2019~~

~~organic standard~~ has the meaning given in ~~section 5~~ of the ~~Organic Products and Production Act 2019~~

~~described as organic~~ has the meaning given in ~~section 7A~~ of the Organic Products and Production Act 2019

~~operator~~ has the meaning given in ~~section 5~~ of the Organic Products and Production Act 2019

~~organic standard~~ has the meaning given in ~~section 5~~ of the Organic Products and Production Act 2019

~~restricted by an organic standard~~ has the meaning given in ~~section 7B~~ of the Organic Products and Production Act 2019.

- (3) In section 5(1), replace the definition of **organic milk** with:

organic milk—

- (a) ~~means milk that is an organic product described as organic and restricted by an organic standard; or~~
(b) ~~if there is no organic standard in force applying to milk, means raw milk certified as organic milk by a certifying entity or person prescribed by regulations made under section 115~~
(b) ~~if milk is not restricted by an organic standard, means raw milk—~~
(i) ~~produced by an operator complying voluntarily with a relevant organic standard (as referred to in **section 7D(c)** of the Organic Products and Production Act 2019); or~~
(ii) ~~certified as organic milk by a certifying entity or person prescribed by regulations made under section 115(1)(fa).~~

Amendment to Food Act 2014

123A Amendment to Food Act 2014

- (1) This section amends the Food Act 2014.
(2) After section 368(3)(x), insert:

(xa) the Organic Products and Production Act 2019; or

*Amendment to Legislation Act 2019***123B Amendment to Legislation Act 2019**

- (1) This section amends the Legislation Act 2019.
- (2) In Schedule 3, insert in its appropriate alphabetical order:

<u>Organic Products and Production Act 2019</u>			
Section 111B (for the purpose of section 46)	The relevant chief executive considers that compliance would result in 1 or more of the following:	<u>Exemption applies if exemption ground is met</u>	<u>Exemption applies</u>
	(a) <u>disclosure of commercially sensitive information:</u>		
	(b) <u>disclosure of a trade secret:</u>		
	(c) <u>prejudice to New Zealand's position in current or future negotiations for overseas market access:</u>		
	(d) <u>prejudice to the international relations of New Zealand.</u>		

*Amendment to Legislation (Publication) Regulations 2021***123C Amendment to Legislation (Publication) Regulations 2021**

- (1) This section amends the Legislation (Publication) Regulations 2021.
- (2) In Schedule 4, Part 2, replace the table with:

<u>Empowering legislation</u>	<u>Empowering provision(s)</u>	<u>Qualifying criteria</u> <u>The minimum requirements do not apply if</u>
<u>Organic Products and Production Act 2019</u>	Section 111B (for the purposes of section 46)	The relevant chief executive considers that compliance with the requirements would result in 1 or more of the following:
		(a) <u>disclosure of commercially sensitive information:</u>
		(b) <u>disclosure of a trade secret:</u>
		(c) <u>prejudice to New Zealand's position in current or future negotiations for overseas market access:</u>
		(d) <u>prejudice to the international relations of New Zealand.</u>

Amendment to Search and Surveillance Act 2012

124 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.

Amendment to Summary Proceedings Act 1957

125 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 (jg), insert:
(jh) **section 77 of the Organic Products and Production Act 2019; or**

Schedule 1

Transitional, savings, and related provisions

s 6

Part 1

Provisions relating to this Act as enacted

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

Transitional schemes for international trade programmes

1 Interpretation

In this Part,—

5-year expiry date means the date that is 5 years after the commencement date

commencement date means the date on which this Act comes into force

new expiry date means the date specified by Order in Council made under **clause 2(2)**

transitional scheme—

- (a) means an administrative programme, established or administered by or under the New Zealand Government for the purpose of facilitating international trade in organic products, that exists immediately before the commencement date; and
- (b) includes any similar programme that replaces that programme.

2 Transitional scheme continuing in effect

- (1) Despite **section 46**, a transitional scheme continues to have effect in relation to overseas market access requirements and official assurances until the earliest of the following:
 - (a) the new expiry date, if any;
 - (b) if there is no new expiry date, the 5-year expiry date;
 - (c) the date specified in a relevant Order in Council made under **clause 4**.
- (2) The Governor-General may extend the 5-year expiry date by Order in Council, made under the recommendation of the Minister, for a period not exceeding 5 years.
- (3) The Governor-General may make further Orders in Council under **subclause (2)** extending the new expiry date, in each case for a period not exceeding 5 years.
- (4) The Minister must not recommend the making of an Order in Council under this clause unless satisfied that continuing the transitional scheme is necessary to promote the purpose of this Act.

- (5) An Order in Council made under this clause is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

3 Transitional scheme, etc, and section 44A information disclosure

For the purposes of **section 44A**, information supplied or obtained under or for the purposes of the transitional scheme is to be treated as information supplied or obtained under this Act, as referred to in **section 44A(2)** and, in relation to that information,—

- (a) the Minister and the Ministry are to be treated as approved agencies as referred to in **section 44A(4)(a) and (b)**; and
- (b) the chief executive is to be treated as an approved agency as referred to in **section 44A(4)(e)**; and
- (c) persons involved in the transitional scheme are to be treated as approved agencies, as if they had been declared by Order in Council under **section 107A(1)(b)** to be approved agencies as referred to in **section 44A(4)(i)**.

4 Orders in Council declaring overseas market access requirement to be extinguished

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare an overseas market access requirement, or a class of overseas market access requirements, to be extinguished.
- (2) The Minister must not recommend the making of an Order in Council under this clause unless satisfied that all relevant overseas market access requirements are, or the class of overseas market access requirements is,—
 - (a) subject to a relevant notice issued under **section 46**; or
 - (b) no longer needed for the purpose of facilitating international trade in organic products; or
 - (c) have, or has, otherwise ceased.
- (3) An Order in Council made under this clause is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Schedule 2
Amendment to Search and Surveillance Act 2012

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Organic Products and Production 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