

# Supplementary Departmental Disclosure Statement

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Organic Products Bill
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The supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Organic Products Bill, dated 5 February 2020, which can be found [at this link](#).

This supplementary disclosure statement was prepared by the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

10 August 2022

## Significant Legislative Features

### Offences, penalties and court jurisdictions

<b>1. Do the proposed amendments create, amend, or remove:</b>	
a) <b>offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?</b>	<b>YES</b>
b) <b>the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>The proposed Supplementary Order Paper:</p> <ul style="list-style-type: none"> <li>clarifies that a search warrant can grant the power to search “a place, vehicle, or other thing” to clarify that access to both hard copy and electronic records is covered by a search warrant. This is to enable the relevant Ministry to fully carry out its enforcement duties for the organics regime and have access to relevant records and information where a search warrant has been issued;</li> <li>clarifies that, in the prosecution for certain offences, it is not necessary to prove that the defendant intended to commit the offence (clause 84B);</li> <li>creates a new strict liability offence of sale of non-compliant imported product that is described as organic (clause 86A). A defence to this offence has been provided which will allow the defendant to prove that the imported product complies with the relevant standard to the extent that is practicable, given that the product was not produced or processed in New Zealand (clause 89(1A)). Further information about this offence is provided under question 6;</li> <li>creates a new strict liability offence of breaching or failing to comply with a requirement (clause 88A). Further information about this offence is provided under question 6;</li> <li>amends the offence of exporting products when not approved to also include export-related notices (clause 87) to ensure that export notices are able to be enforced;</li> <li>clarifies the administration of charging offences (clause 97B);</li> <li>amends the statutory rights of review to increase the review mechanism for regulated parties to ensure review of compliance requirements, where appropriate (clause 116).</li> </ul> <p>The Supplementary Order Paper also proposes the following amendments to ensure the Bill aligns with the Primary and Secondary Legislation Acts or to make minor technical changes:</p> <ul style="list-style-type: none"> <li>clarifies that revoking an infringement notice before the fee is paid is not a bar to further action in respect of the same matter (clause 78);</li> <li>amends the descriptions of offences involving deception for benefit (clause 82);</li> <li>amends the offence provisions in clauses 85, 86 and 87 to make minor wording changes which improve clarity.</li> </ul>	

<b>1.1 Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice is comfortable with the approach taken towards all of the new offence provisions.</p> <p>The Ministry of Justice was consulted on the amendment to the search power under clause 64, which mirrors the wording in section 6 of the Search and Surveillance Act 2012. It was comfortable with the approach, provided that the need for this power is compelling and that appropriate safeguards are in place. This criteria has been met because this amendment clarifies that access to both hard copy and electronic records is covered, and many records are now held electronically. This clarification will enable the relevant Ministry to carry out its enforcement duties under the regime.</p> <p>The Ministry of Justice was consulted on the amendment to the search power under clause 64, which mirrors the wording in section 6 of the Search and Surveillance Act 2012. It was comfortable with the approach, provided that the need for this power is compelling and that appropriate safeguards are in place. This criteria has been met because this amendment clarifies that access to both hard copy and electronic records is covered, and many records are now held electronically. This clarification will enable the relevant Ministry to carry out its enforcement duties under the regime.</p> <p>Appropriate safeguards remain in place under the Bill. Further information on this is appended.</p>	

**Privacy issues**

<b>2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>The proposed Supplementary Order Paper amends clause 44A to enable information to be shared between approved agencies and other parties involved in the administration of the Bill. Clause 44A enables information to be shared if needed to promote the purpose of the Bill or to enable relevant parties to perform their functions or duties under the Bill. Sharing information in these situations does not require permission from the person that has provided the information.</p> <p>The changes made to clause 44A enable the relevant parties to share information for enforcement and traceability purposes. The relevant parties under the Act need to be able to share the information without seeking permission from the person who provided the information in order to, for example, investigate breaches of the standard and report and respond to significant incidences which may affect the organic nature of a product. This provision will allow non-compliance to be immediately addressed, instead of non-compliant product being sold or exported for some time until the operator’s next scheduled compliance check. Amendments to clause 44A will also allow relevant parties to trace products throughout the system to check their organic status. The ability to trace organic products throughout the system is key to increasing consumer confidence and meeting overseas traceability requirements.</p>	
<b>2.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner was consulted on clause 44A and is comfortable with this approach. The amended information sharing provisions support the objectives of the Bill by allowing for greater enforcement and increasing the traceability of organic products throughout the system. This in turn supports consumer confidence and assists with increasing our international trade of organics.</p>	

### Compulsory acquisition of private property

<b>3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the burden of proof for offences

<b>6. Do the proposed amendments:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?</b>	<b>NO</b>

Two new strict liability offences have been created. Clause 88A of the proposed Supplementary Order Paper creates a new strict liability offence of breaching or failing to comply with a requirement, and clause 86A creates a new strict liability offence of sale of non-compliant imported product that is described as organic.

The Bill contains several strict liability offences and appropriate defences. Clause 88A has been added to enhance the enforcement of the requirements and duties set out in the Bill. Clause 88A is also intended to incentivise those who opt into the organics regime to adopt appropriate precautions to prevent breaches of the requirements in the Bill. Further information on clause 88A is appended.

The new offence of sale of non-compliant imported product that is described as organic in clause 86A mirrors the existing offence of sale of product described as organic by person not approved as operator in clause 86.

A defence to clause 86A has been supplied in clause 89(1A) which will allow the defendant to prove that the imported product complies with the relevant standard to the extent that is practicable, given that the product was not produced or processed in New Zealand (clause 89(1A)). This acknowledges that it may not be possible for all imported products to strictly meet New Zealand's National Organic Standard, which is yet to be drafted.

The Supplementary Order Paper also clarifies that, in the prosecution of certain offences, it is not necessary to prove that the defendant intended to commit the offence (clause 84B).

The Ministry of Justice was consulted on the creation of these new offences and agreed that the new strict liability offences are justified.

## Civil or criminal immunity

<b>7. Do the proposed amendments create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>The Bill provides that the Crown is 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. The Bill provides that the Crown would be immune even if the chief executive has given a statement of compliance.</p> <p>Clause 49A of the proposed Supplementary Order Paper extends the Crown's immunity to also include situations where the chief executive has issued an official assurance. The immunity is necessary as the Crown has no control over what is done to a product after a statement of compliance or official assurance is made and cannot control the actions of another government.</p>	

## Significant decision-making powers

<b>8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p>A person that provides a final consumer service does not need to be approved as an operator under the Bill. For clarity, the proposed Supplementary Order Paper adds new clause 10A to clarify the definition of 'final consumer service.'</p> <p>Clause 10A also enables the Governor-General, by Order in Council, to declare that a service is or is not a 'final consumer service.' Clause 10A is intended to provide clarity to businesses as to whether or not they would fall under the definition of 'final consumer service' but also provides flexibility for situations where a business has been unintentionally included or excluded from the definition. Clause 107(1)(aaa) has been added to the Governor-General's regulation-making power to reflect the new definition in clause 10A.</p> <p>The proposed Supplementary Order Paper adds clauses 44A(4) and 107A to allow the Governor-General, by Order in Council, to declare that a person is an 'approved agency.' These clauses ensure that the information sharing provisions in Clause 44A are workable and to ensure the relevant ministry can identify all parties who may hold information necessary to meet traceability requirements, including overseas market requirements for organic exports.</p> <p>The proposed Supplementary Order Paper adds definitions in clause 5 for verification, verifier, and verifying agency. The definitions provide clarity with regard to the proposed regulation making powers in new clauses 14AAB and 107AAB, which allow the Governor - General, by Order in Council, to make regulations prescribing requirements and processes, that apply to operators, persons, and classes of persons in relation to verification, tracing and recall. Further information is provided in Section 10.</p> <p>The proposed Supplementary Order Paper amends the following clauses to make technical drafting changes to correct inconsistencies or consequential changes arising from other amendments:</p> <ul style="list-style-type: none"><li>• clause 38, which outlines the chief executive's power to consider exemptions, waivers, or refunds of fees, charges, or levies;</li></ul>	

- clause 50, which sets out the regulation-making power to exempt exported products from specific requirements of the organics standards;
- clause 111, which sets out the regulation-making power to provide for exemptions, waivers, or refunds of fees, charges, or levies;
- clause 116, which sets out the rights of review for decisions made under the Act.

Typographical or definitional amendments are made to clauses 108, 112 and 113.

**10. Do the proposed amendments create or amend any other powers to make delegated legislation?**

**YES**

A number of changes were made to increase the clarity and transparency of the Bill and allow it to operate as initially intended. A summary of these changes is appended.

The proposed Supplementary Order Paper amends the following clauses to make technical drafting changes to correct inconsistencies or consequential changes arising from other amendments: clause 45, 46, 104B, 105, 106, 107, 109 and 110.

### Any other unusual provisions or features

**11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?**

**YES**

The proposed Supplementary Order Paper introduces a clause (clause 3A) that sets out how the Bill provides for recognising and respecting the Crown's responsibility to give effect to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). Specifically, proposed clause 3A details consultation requirements with respect to the 3-yearly cost-recovery reviews (clause 55) and various powers to make regulations and issue notices across the Bill. Further, with respect to clause 114A (power to establish advisory councils), clause 3A requires the relevant Minister must ensure that any advisory council includes appropriate and suitably representative Māori membership.

## Appendix: Further Information Relating to Significant Legislative Features

### Offences, penalties, and court jurisdictions – questions 1.1

Appropriate safeguards remain in place under the Bill:

- to issue a search warrant the issuing officer reasonably believes that there is, in or on a place, vehicle, or other thing, anything in relation to which an offence against the provisions of the Bill has been or is being committed; or that there is evidence of the commission of an offence against the provisions of the Bill (clause 64);
- the power of entry under a search warrant is subject to part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8, and sections 118 and 119). This places reasonableness and lawfulness requirements on these powers conferred by the Bill (clause 65); and
- where a warrant is executed at a marae or building associated with a marae, it must be exercised in way that takes account of the kawa of the marae (clause 65).

### Strict liability or reversal of the burden of proof for offences – question 6

The purpose of the Bill is to increase consumer confidence in purchasing organic products, increase certainty for businesses making organic claims, and facilitate international trade in organic products. Strong incentives to comply with the organic product standards are needed to achieve these goals. The new strict liability offence is considered justified because those who choose to participate in the organics regulatory regime and reap the benefits of being able to describe their product as organic, should need to meet the requirements and standard of behaviour expected of them.

### Powers to make delegated legislation – question 10

*Consultation requirements when making regulations:*

- Clause 104A consolidates the requirement for the Minister to be satisfied that there has been appropriate consultation before making a final decision on a review or recommending the making of regulations. Clause 104A also strengthens consultation requirements by extending this requirement to the relevant chief executive, who must be satisfied that appropriate consultation has taken place before issuing notices under clause 111A. Clause 104A also expands the consultation requirements to require consultation with Māori when appropriate.
- Clause 104A(7) clarifies that the consultation requirements for regulation-making do not apply if it is deemed necessary in the public interest.

*Regulation-making powers:*

- Clause 105(2)(ba) broadens regulation-making power to enable regulations to be made that relate to identification and labelling.
- Clause 105(2)(da) broadens the regulation-making power to enable regulations to be made that relate to any periods in which the standards may be complied with voluntarily. This will allow operators to be pre-approved to make organic claims, reducing approval wait times and increasing administrative efficiency when the Act comes into force.
- Clause 106A enables the relevant Minister may issue emergency organic standards by way of secondary legislation
- Various changes made to clause 107 clarifying that regulations may be made:
  - specifying operator duties;
  - identifying an infringement offence as an offence for failing to comply with requirements of the Act or secondary legislation;
  - specifying infringement fees;
  - prescribing the processes and requirements for obtaining official assurances and statements of compliance.
- Clauses 109(1) and 110(1) clarify that fees, levies and charges may exist on an ongoing basis.

- Clause 14AA requires operators comply with tracing and recall requirements specified in regulations. Proposed clause 107AA enables the Governor-General to make regulations, by Order in Council, prescribing requirements for operators and persons referred to in clause 14AA(2) regarding tracing and recalling products described as organic. The regulations may specify who is required to have procedures for tracing and recalling products described as organic, in addition to the content of the requirements, implementation procedures, and matters regarding documentation.
- Clauses 14AAB and 107AAB enable the Governor-General to make regulations, by Order in Council, that prescribe requirements and processes in relation to verification. For clarity, the Supplementary Order Paper proposes definitions for verification, verifier, and verifying agency in clause 5.

*Notice making powers:*

- Clause 111A sets up the framework to enable the relevant chief executive to issue notices to supplement the organic standards. It gives the relevant ministry the flexibility to directly set the technical details and production requirements in the standard.
- Clauses 111B set up the framework to enable the relevant chief executive to issue notices. These amendments are proposed to align this regime with other regulatory regimes that MPI administers and create greater consistency across the regimes for the regulated party.
- Clause 113A allows notices to be consolidated. This clause has been added to address an issue that has been identified in relation to similar statutory schemes.