

In Confidence

Office of the Minister of Agriculture  
Chair, Cabinet Legislation Committee

## **Organic Products Bill: Approval for Introduction**

### **Proposal**

1. I propose that the Organic Products Bill (the Bill) be approved for introduction to the House of Representatives.

### **Executive summary**

2. This paper outlines the policy rationale for proposing a Bill to regulate organic claims. It discusses that the Bill will:
  - 2.1. apply to businesses who describe their product as organic, either through labelling or advertising, and for any products that are described as organic and for which a standard exists;
  - 2.2. set a broad framework, and sets out key powers and duties for the relevant Chief Executive, recognised agencies and organic businesses. The Bill also enables detailed requirements to be set in regulations;
  - 2.3. place requirements on importers and exporters and allow the Chief Executive of the relevant ministry to facilitate trade by approving overseas schemes. The Bill also allows imported organic products to meet the terms of a trade arrangement;
  - 2.4. require some businesses to be approved, which will mean that they will have to undergo regular checks for compliance by a recognised agency;
  - 2.5. provide for a range of supporting measures, and also enable flexibility in administrative requirements to ensure that complying with obligations is not unreasonably burdensome and costly;
  - 2.6. provide powers and sanctions that are proportionate and commensurate with other consumer protection legislation.
3. This paper also discusses three proposed policy adjustments since Cabinet last considered the subject in December 2018:
  - 3.1. that while recognised agencies will check compliance (which could include, for example, carrying out evaluation of organic management plans and regular verification checks), only the relevant ministry will decide whether a business can make organic claims, rather than either the relevant ministry or a recognised agency;
  - 3.2. that the Bill will apply to businesses that describe a product as organic, rather than to businesses who perform specified activities;
  - 3.3. that the Bill allows for cost recovery from any organic business, rather than just those which require approval by the relevant ministry.

## Policy

### *Rationale*

4. Internationally, demand for organic goods has grown markedly in recent years. A similar trend can be observed in New Zealand where the size of the organic sector has reached approximately \$600 million in 2017 – an increase of 30 percent from 2015.
5. In response to this trend most countries have established a legislative regime to regulate the use of 'organic' claims, specifying what methods must be followed to be able to make such a claim.
6. However, New Zealand does not have an agreed or consistent definition for what 'organic' means.
7. In December 2018, Cabinet agreed that a Bill be developed in order to regulate organic claims [CAB-18-MIN-0592 refers]. 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.
8. The Bill achieves this by enabling the development of mandatory organic standards, as well as ways to check compliance for businesses which describe a product as organic.

### *Businesses and products covered by the Bill*

9. Under the Bill businesses which describe their product as organic, either through labelling or advertising, will need to seek approval from the relevant ministry, and will be responsible for ensuring that the regulations and the relevant organic standard are complied with. The requirements on businesses will be proportionate to the risk of undermining the objectives of the Bill. The Bill also enables regulations to be made that can further tailor requirements for businesses to ensure that they are proportionate to the risk the business presents to New Zealand's reputation and to consumers being misled.
10. The requirements of the Bill will not apply to retailers of final pre-packaged products, or businesses which are preparing or using the final product for the consumer (such as restaurants and hairdressers). This is because these businesses are considered low risk of compromising the organic status of the products they sell or use as these will have come from an approved organic business.
11. Businesses providing a service, such as transport or storage of organic products, on behalf of an organic business will not be required to be approved by the relevant ministry because they are not responsible for describing the product as organic. However, they would still need to meet the requirements of the organic standard indirectly through their contractual relationship with the organic business as their services can compromise the organic status of the products.

12. A table summarising the requirements that different businesses will be subject to is included as Appendix One.
13. As agreed by Cabinet, the Bill enables organic standards to set requirements which apply to any product that is described as organic, whether that product is imported, produced and sold domestically, or exported [DEV18-MIN-0273, Rec 8]. Any product that falls within the scope of an organic standard will only be able to be labelled or advertised as organic if it has been produced, handled and described in accordance with that standard.
14. The Bill enables standards to be set for any product described as organic, for example food, plant and animal products, but also products such as cosmetics or textiles. However, until a standard is developed for particular products in accordance with the Bill, businesses may continue to describe a product as organic so long as they comply with the general requirements of the Fair Trading Act 1986. This means that until an organic standard for a product is developed, businesses producing that product will not have any requirements under the Bill.
15. The Bill requires that before recommending that a standard be developed, the relevant Minister must be satisfied that certain prerequisites have been met. Those prerequisites include:
  - there is demand from the sector;
  - the sector has the competence and capacity required to assist in the development of the standard;
  - making the standard will meet the purpose of the Act; and
  - that there has been appropriate consultation.

#### *Legislative framework and oversight*

16. The Bill gives effect to Cabinet decisions by setting a broad framework to regulate the use of 'organic' as a claim [DEV18-MIN-0273, Rec 7 refers], and sets out key powers and duties for the relevant Chief Executive, recognised agencies and organic businesses.
17. The Bill also enables detailed requirements of the regime to be set in regulations, including the content of organic standards that set rules for production, as well as assurance and compliance processes.
18. If passed, the Ministry for Primary Industries (MPI) would be the administering department for the Act. However, the Bill enables any relevant ministry to become responsible for organic standards relevant to products within their mandate, including the administration, monitoring and enforcement of associated regulatory requirements. This is an important feature of the Bill given that the diversity of organic production encompasses a wide range of products regulated by ministries other than MPI.

### *Requirements on businesses that import or export organic products*

19. In order to facilitate international trade of organic products, the Bill allows the Chief Executive of the relevant ministry ('relevant Chief Executive') to approve overseas schemes deemed as providing outcomes that are equivalent or similar to that proposed in the Bill. The Bill also allows imported organic products to meet the terms of a trade arrangement.
20. Where applicable, businesses exporting organic products may be subject to additional requirements in order to meet the importing country's production rules, and may also be exempt from the New Zealand standard if there is a conflict between these production rules. Administrative requirements may also be imposed by the relevant ministry to retain sufficient oversight of the sector. The purpose of this is to protect market access for New Zealand exports.
21. New Zealand and Australia are parties to the Trans-Tasman Mutual Recognition Arrangement, which means that products meeting the requirements for sale in Australia can be sold in New Zealand, and vice versa. Australia does not have mandatory organic standards, meaning that such products would not meet a government recognised standard. However, products imported from Australia would need to comply with Australia's Competition and Consumer Act 2010, which regulates false and deceptive claims. This arrangement would continue if the Bill is enacted.

### *Checking compliance*

22. Once a standard and regulations are in place for a specified product, a business describing a product as organic will be required to be approved by the relevant chief executive (i.e. of the relevant ministry) to do so. To obtain approval, a business will have to undergo regular checks for compliance by recognised agencies or persons, which could be desktop based or onsite. A public register of approved organic businesses will be maintained by the relevant ministry.
23. The voluntary Official Organic Assurance Programme currently administered by MPI relies on third party verifiers to assess the compliance of export businesses. Third party agencies and persons are an important feature provided for in the Bill and will be responsible for checking compliance of businesses seeking approval. This approach is also similar to how compliance is checked under the Food Act 2014, Wine Act 2003 and Animal Products Act 1993. This may help to minimise the impact on organic businesses already checked under one of these existing regimes. It may be possible for a single third party agency or person to check compliance with the organics regime at the same time as they check compliance under that other Act. The Bill requires third party agencies to meet applicable requirements and be recognised by the relevant ministry before they can check whether a business complies with organic requirements.

### *Other provisions*

24. While all businesses describing a product as organic must be approved, the Bill provides flexibility in administrative requirements. It enables classes of businesses, or individual businesses, to be exempt from specific administrative requirements (such

as approval by the relevant ministry or cost-recovery). This will ensure that complying with obligations is not unreasonably burdensome and costly.

25. The Bill also provides for a range of supporting measures. For example, this includes the ability to monitor and enforce compliance with the Bill, to recover the costs of administering the regime from relevant businesses, and to develop a national mark to identify organic products.

#### *Enforcement measures*

26. In accordance with Cabinet's December 2018 recommendations, MPI officials worked with the Ministry of Justice to develop suitable enforcement measures [DEV-18-MIN-0273, Rec 30 refers]. Powers and sanctions are proportionate and commensurate with other consumer protection legislation as the organics regime is concerned with consumer information rather than health or safety matters.
27. There are some sanctions and powers that are aligned with provisions of the Wine Act 2003 and how that legislation deals with accuracy of labelling and protecting New Zealand's reputation. Where relevant, enforcement measures are consistent with provisions of the Fair Trading Act 1986 that relate to misleading claims and unsubstantiated representations. Adjustments were made so that the Bill would:
  - 27.1. enable verification systems to check compliance. The relevant ministry should therefore have oversight of an operator's practices before a breach is suspected or occurs, or before a complaint is made;
  - 27.2. be administered by ministries, rather than an independent crown entity (e.g. the Commerce Commission for the Fair Trading Act). This resulted in some powers being given to the relevant chief executive, rather than providing an ability for the relevant chief executive to apply to the Court; and
  - 27.3. focus not only on the domestic market, but also apply to international trade of organic products, whether these are imported or exported.
28. Accordingly, the Bill creates a limited range of criminal offences, with sanctions that are aligned with those imposed under consumer law and similar verification regimes. Sanctions are financial penalties rather than imprisonment.
29. The Bill also creates powers for the relevant Chief Executive, and Organic Products Officers appointed by the Chief Executive, to investigate compliance and to enforce the requirements set under the Bill. Directions can be given to organic businesses, recognised agencies and other persons in order to prevent a breach, or to take actions if a breach is suspected or has occurred.
30. Because organics is about the authenticity of a production and processing system rather than safety, a number of powers that are common across other regulatory systems administered by MPI (such as food safety) have been scaled back. For example:
  - 30.1. powers to disrupt sales or direct a business to relabel non-compliant products, rather than powers to recall or destroy non-compliant products;

- 30.2. compliance tools to manage poor performance (by means of increased verification frequency or unannounced audits), rather than the ability to ban individuals from owning or managing an organic business; and
- 30.3. powers to allow the chief executive to direct that improvements be made, rather than enable an officer to interrupt operations, or seize, condemn or require disposal of products.

## **Policy adjustments**

- 31. I propose that three variations be made to the proposals agreed by Cabinet in December 2018, to ensure the Bill remains practical and achieves the objectives agreed by Cabinet.

### *Level of oversight*

- 32. In December 2018, Cabinet agreed to allow the relevant ministry and/or recognised agencies to decide whether a business is permitted to make organic claims [DEV18-MIN-0273, Rec 17 refers].
- 33. I propose that recognised agencies and persons continue to play a vital role in evaluating organic management plans and verifying organic businesses, but that they make recommendations to the relevant ministry on approval of businesses rather than making the final approval decision. Restricting the decision making power to the relevant ministry only will better secure consumer confidence and protect New Zealand's trading reputation.
- 34. While this approach departs from that used by organic regimes internationally and the way organic businesses are currently being certified in New Zealand, I consider it to be suitable to our small domestic market and necessary to ensure impartial and consistent decision making. Officials will develop appropriate regulatory and implementation options to mitigate any potential negative impacts on businesses.

### *Scope of businesses covered by the Bill*

- 35. In December 2018, Cabinet agreed that any business that only handles packaged organically produced products but does not process, change or repackage them would be out of scope of the Act [DEV18-MIN-0273, Rec 13 refers]. I propose Cabinet amend this agreement to clarify that requirements depend on whether the business describes the product as organic.<sup>1</sup> This supports the policy intent by helping protect organic integrity throughout the supply chain, and ensures that costs to businesses are proportionate to the risk of undermining the objectives of the regime. The Bill enables regulations to be made that can further tailor requirements for businesses relative to the risk the business presents.
- 36. In practice, the refinement does not alter the intended outcome of Cabinet's 2018 decision, or have a significant impact on which businesses would be in or out of scope

---

<sup>1</sup> Clause 9 of the Bill states that 'a product is described as an organic product if its labelling or advertising uses words such as "organic", "organically grown", "organically produced", "organic standards" that would suggest to a reasonable person that it is an organic product.



of the Bill. It would mean that businesses which provide a service for organic products but who do not describe those products as organic, such as transport or storage services, would not have to be approved by the relevant ministry. However, these businesses would still need to indirectly meet the requirements of the organic standards through their contractual arrangement with an approved organic business, because of that approved business's obligations to ensure compliance with the standard.

37. Businesses providing such a service may also choose to seek approval as an organic business if they wish to, for example, because they see commercial benefit to marketing themselves as approved to handle organic products. Businesses which opt in would need to follow the same approval process, and meet the same requirements, as organic businesses.
38. Retailers which handle product that is not pre-packaged (such as bulk products) and sell these as 'organic' are subject to the requirements of the Bill.

#### *Cost-recovery*

39. The Bill provides the ability for the relevant Ministry to cost-recover the direct and indirect costs resulting from the administration of the regime. Cabinet had agreed to enable cost-recovery from organic businesses that are approved [DEV18-MIN-0273, Rec 33 refers]. However, it has since been identified that this is not sufficient to enable costs to be recovered in a way that is fair and proportionate, as businesses that may be exempt from approval through regulations or through an individual exemption would not pay for the services they benefit from.
40. I propose that the Bill enables cost-recovery from any organic business, recognised agency, recognised person or recognised class. This is necessary to ensure that fees and levies can be charged to the business or person who is benefiting from the service, whether they are approved or not. Costs to the relevant Ministry would be recovered by fees for specific services. Other activities benefiting the whole sector, such as monitoring and standards development, are proposed to be recovered through a levy on the sector. The Bill provides the ability to exempt some businesses from cost-recovery or to waive fees, for example if such costs are disproportionate to the benefits. This could include businesses like dairies and other small retailers.
41. The regulations may allow some businesses (such as very small producers) to be exempt from the approval process. In such a case, the Bill still requires them to notify the relevant ministry of their operation as an organic business. This information would not be proactively made public, but enables the relevant ministry to cost-recover from these businesses that would still benefit from the organic regulatory regime (e.g. through the national standard, education material, etc.).
42. This approach aligns with Treasury's guidance on cost recovery.

## Publicity

43. Should the Bill be introduced, I will issue a press release to notify the public. MPI will also update its website and contact stakeholders who responded to the 2018 consultation.

## Costs associated with introducing the Bill

44. Under active consideration
45. Other ministries would need to seek funding as appropriate in future should they identify the need for an organic standard for products within their mandate. Costs for this would vary depending on if that ministry has the appropriate functions, such as enforcement, or needs to develop new ones.
46. As noted above, the Bill provides the ability to cost-recover direct and indirect costs from businesses.

## Regulatory impact analysis

47. An initial regulatory impact analysis (RIA) was considered by Cabinet in 2018 when it approved the policy proposals that the Bill gives effect to [DEV18-MIN-0273]. An updated RIA was prepared to reflect the possible impact of the above policy modifications and is attached for Cabinet's consideration.
48. The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement "Organic production and processes", produced by MPI. The review panel considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the quality assurance criteria. The Panel considers that as the options presented in the RIA have not been fully consulted with those affected by this proposal the full impacts may not have been drawn out in this RIA. In particular, the preferred implementation option is different to current practice and could be a surprise to stakeholders. Not consulting on this implementation option also risks issues with making the regime operational. Additionally, the decision not to create a regime that provides certification will be unfamiliar and unexpected to those impacted as it was not part of the formal consultation. The RIA does not fully outline the impacts that domestic, export, and import business will experience. However, stakeholders will have an opportunity to comment on these changes through the Select Committee process, and the authors should ensure stakeholders are aware of what is proposed and the potential to comment further.
49. The Panel also notes that during the development of any new legislation it will be good legislative practice to consider different options to achieve verification, compliance, enforcement, etc. The panel expects further detail on at least some of



these aspects will be included in subsequent Regulatory Impact Statements that support the regulations developed under the proposed legislation.

## **Compliance**

50. The Bill complies with the following:

- principles of the Treaty of Waitangi;
- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- the principles and guidelines set out in the Privacy Act 1993 ;
- relevant international obligations; and
- the Legislative Guidelines (2018 edition) maintained by the Legislation Design and Advisory Committee.

51. A departmental disclosure statement and an updated regulatory impact analysis have been prepared and are attached to this paper.

## **Consultation**

### *Government departments*

52. The following departments and agencies have been consulted on the policy proposal: the Ministry for Business, Innovation and Employment; Ministry of Foreign Affairs and Trade; Ministry of Health; Ministry for the Environment; Ministry of Justice; the Office of the Privacy Commissioner; Te Puni Kōkiri and the Treasury.
53. The Department of the Prime Minister and Cabinet and State Services Commission have been informed.

### *Public consultation*

54. Public consultation on initial policy proposals was undertaken from May to June 2018. The majority of submitters supported a mandatory organic standard (76 percent of submissions) and ongoing verification of compliance (62 percent). The Bill takes account of feedback provided, and a summary of submissions is available on MPI's website [DEV18-MIN273, Rec 2]. The Select Committee's consultation on the Bill would allow public feedback on the modified proposals presented here.

### *Caucus consultation*

55. I consulted with caucus and the Government's support parties.

### *Other consultation*

56. Officials discussed policy proposals with the Legislative Design and Advisory Committee.

## **Binding on the Crown**

57. The Bill states that the Act will bind the Crown.

## **Creating new agencies or amending law relating to existing agencies**

58. The Bill does not create agencies and does not amend laws relating to existing agencies.

## **Allocation of decision making powers**

59. The Bill sets out which Court has jurisdiction to hear specific penalties and orders. The Bill does not establish any tribunal nor commission, nor does it allocate decision making powers to Ministers.

## **Associated regulations**

60. Regulations are needed to bring the Bill into operation. The Bill provides regulation-making powers for:

- the prescribing of organic standards in relation to a product or class of products;
- approval and recognition;
- use of a national mark;
- a public register, information and records;
- imports and exports;
- infringement offences;
- review of proposed decisions;
- exemptions of class of persons;
- imposing fees and charges;
- imposing levies;
- exemptions, waivers or refunds of a fee, charge or levy; and
- other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

61. The making of regulations will be subject to appropriate consultation and comply with the principles proposed in the Bill.

## **Other instruments**

62. The Bill empowers the making of notices which will be used for technical requirements that may need to be regularly updated. For example, notices will be used to set export requirements and promptly respond to changes initiated by trading partners.

63. The Bill also enables material to be incorporated by reference. This provision will enable the incorporation of technical standards, to set requirements for organic businesses or independent agencies carrying out compliance checks.

64. The Bill takes into account the principles identified in the Deemed Regulations Report of the Regulations Review Committee and the explanatory note to the Bill also sets out the reasons for enabling notices and incorporation by reference.

### **Definitions of Minister and Chief Executive**

65. The Bill contains definitions of the relevant Minister and the relevant Chief Executive. The Cabinet Office was consulted and our approach to the proposed definitions and the empowerment of several ministries to administer the requirements relevant to their usual scope of activity is consistent with their advice.

### **Commencement of legislation**

66. The Bill will come into force on the day after Royal assent.

### **Parliamentary stages**


67. The Bill is recommended to have a priority 3 on the 2020 Legislation Programme (to be passed if possible in the year). The Bill could be introduced in February 2020, and could be passed by August 2020.
68. I propose that the Bill is referred to the Primary Production Select Committee.

### **Proactive Release**

69. I intend to proactively release this paper with appropriate redactions.

## Recommendations

The Minister of Agriculture recommends that the Committee:

1. Note that 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.
2. Note that the Ministry for Primary Industries has worked with the Ministry of Justice to develop a suitable enforcement regime;
3. Agree that the Act will bind the Crown;
4. Agree that the relevant ministry will make the decision on whether a business is suitable to be approved so they can describe their products as organic;
5. Agree to amend Cabinet's December 2018 decision [DEV18-MIN-0273, rec 13] to clarify that instead of the Bill setting requirements on businesses which process, change or repackage organic products, requirements are placed on businesses which describe a product as organic;
6. Agree to amend Cabinet's December 2018 decision [DEV18-MIN-0273, rec 33] to enable cost recovery for administration of the Bill from all organic businesses subject to requirements;
7. Under active consideration  

8. Note that the Organic Products Bill is recommended to hold a category 3 priority on the 2020 Legislation Programme;
9. Agree to approve the Organic Products Bill for introduction;
10. Agree that the Bill be introduced as soon as possible once Cabinet agrees;
11. Agree that the Government propose that the Bill:
  - 11.1. be referred to the Primary Production Select Committee for consideration;
  - 11.2. be enacted in 2020.

Authorised for lodgement

Hon Damien O'Connor  
Minister of Agriculture

## Appendix One: Summary table of coverage of the proposed Organic Products Bill and associated regulations

The table below is intended as a simplified overview only of businesses potentially impacted by the proposed organic products regime. It should not be used as the sole basis for decision making or assessment purposes. For more information about the requirements and impact on different categories of businesses, please refer to the main body of this paper.

Type of business	Describing a product as organic (by advertising or labelling)?	Baseline requirements to meet (in Bill or regulations)	Flexibility provided (in Bill or regulations)
Very small producers and processors (less than \$10,000 annual turnover)	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Keep records to demonstrate how they are meeting the standard (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Do not have to be approved to operate (regulations).</li> </ul>
Producers and processors (less than \$200,000)	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Be approved (Bill).</li> <li>Maintain an organic plan and keep records (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Can be part of group approval (regulations).</li> <li>On-site visit by recognised agency not required at every verification (regulations).</li> </ul>
Large producers and processors	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Be approved (Bill).</li> <li>Maintain an organic plan and keep records (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Verification requirements vary based on risk, complexity and compliance (regulations).</li> </ul>
Retailers selling only pre-packaged organic products	Yes	<ul style="list-style-type: none"> <li>n/a – the Bill does not apply.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
Retailers selling other than pre-packaged organic products (e.g. bulk or re-packaged products)	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Maintain an organic plan and keep records (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Do not have to be approved to operate (regulations).</li> </ul>
Importers and exporters who on-sell organic products	Yes	<ul style="list-style-type: none"> <li>Meet the standard (Bill).</li> <li>Be approved (Bill).</li> <li>Maintain an organic plan and keep records (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Verification requirements vary based on risk, complexity and compliance (regulations).</li> </ul>



Type of business	Describing a product as organic (by advertising or labelling)?	Baseline requirements to meet (in Bill or regulations)	Flexibility provided (in Bill or regulations)
Importers and exporters who only provide logistical services	No	<ul style="list-style-type: none"> <li>Meet the standard via contract with organic businesses (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Can choose to opt-in to become an organic business (Bill).</li> </ul>
Transporters, storage providers and other similar service providers	No	<ul style="list-style-type: none"> <li>Meet the standard via contract with organic businesses (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Can choose to opt-in to become an approved organic business (Bill).</li> </ul>
Businesses preparing or using the final product for the consumer (e.g. restaurants, hairdressers)	No	<ul style="list-style-type: none"> <li>n/a – the Bill does not apply.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
Recognised agencies and persons	No	<ul style="list-style-type: none"> <li>Must be recognised to carry out functions and duties relating to organic compliance (Bill).</li> </ul>	<ul style="list-style-type: none"> <li>Can choose one of two ISO standards to be accredited to (regulations).</li> <li>Flexibility for recognising persons within agencies (regulations).</li> </ul>