

LEGISLATIVE STATEMENT
for the Organic Products and Production Bill

Presented to the House of Representatives
in accordance with Standing Order 272

This legislative statement supports the third reading of the Organic Products and Production Bill.

Introduction

1. Organic claims are credence claims that often attract premium prices which consumers cannot independently verify. Because of this difficulty, many of our key trading partners regulate organic claims and set production standards that must be used by businesses that wish to make those claims.

Background

2. The market for organic products is growing worldwide and New Zealand's market is no exception. New Zealand exports over half its organic production, which industry estimates at over \$600 million per year.
3. Under the current system, New Zealand businesses that make organic claims can choose to be certified to one of a range of private standards with different requirements, or to 'self-certify'. This can create inconsistency in organic claims, confusion for consumers and raise questions for international trading partners.
4. Regulation of organic claims is becoming more important to New Zealand's trading partners. The Organic Products and Production Bill will give New Zealand a basis for negotiating market access to maintain and grow our organics exports. New rules in the European Union will require New Zealand to have domestic regulation of organic products and a treaty-level agreement to prevent exporters from incurring increased costs to access those markets.
5. The government consulted organic sector stakeholders in 2018 on the need for mandatory organic standards. The majority of respondents agreed a mandatory, government-backed standard was desirable for businesses and consumers. The Government decided the most effective way to enable mandatory standards was through a standalone Act.

Objectives of the Bill

6. The Bill has three objectives: to increase consumer confidence; to increase business certainty; and to promote international trade in organic products.

Increased consumer confidence

7. The Bill will create consistency for organic claims and decrease consumer confusion by enabling mandatory requirements to be set for any product sold, labelled, or represented as 'organic'.
8. The Bill requires all businesses making organic claims for products covered by an organic standard to be approved by the relevant ministry. This will assure consumers and trading partners that government has oversight of businesses making organic claims to ensure the integrity of the system and has powers to enforce compliance.

9. The Bill also enables the creation of a public register of organic businesses that consumers can check to see if a business has been approved to make organic claims.

Increased business certainty

10. Under the current legislative framework (primarily the Fair Trading Act 1986) businesses are required to make sure claims about their products, such as their organic status, are not misleading. The Bill will increase certainty for businesses who make organic claims by specifying the requirements everyone must meet to make organic claims about their products.
11. The Bill does so by enabling requirements for organic production (organic standards) to be made in regulations and notices. Having a single set of standards to use will create a level playing field for businesses wanting to make organic claims. The Bill also enables administrative regulations to be set for demonstrating compliance and specifies the powers of organic products officers.
12. The Bill contains enforcement powers that specify penalties for non-compliance with the Bill. It also specifies which decisions of the relevant chief executives can be reviewed and how relevant chief executives should conduct reviews of those decisions.

Facilitating international trade

13. The Bill provides a regulatory framework for managing government assurances. It also establishes enforcement measures to protect New Zealand's trading reputation. The Bill empowers the government to set requirements for exported organic products and establishes mechanisms to recognise imports from countries whose regimes have equivalent outcomes. These measures are likely to:
 - a. increase trust with trading partners;
 - b. improve New Zealand's ability to negotiate better market access; and
 - c. state New Zealand's position on organics and allow us to defend it internationally.
14. Countries that regulate organic production are increasingly requesting that their trading partners also regulate organic claims. Currently, the Ministry for Primary Industries runs an administrative export programme, the Official Organic Assurance Programme, which enables exporters to access six key organic markets with a New Zealand government assurance.¹
15. The regulatory system the Bill establishes will facilitate international trade by establishing a basis for negotiating market access agreements. This will enable New Zealand businesses to keep making organic claims about their organic products when exporting to some of our major markets. It will also avoid businesses having to meet multiple and expensive compliance requirements imposed separately by each country they export to. This will enable businesses to reap the benefit of the premium prices that organic products attract and reduce regulatory compliance burden.

Special features of the Bill

16. While the Ministry for Primary Industries will administer the Bill, the Bill enables any ministry to regulate organic claims for products for which they are responsible. The Bill empowers ministries to develop organic production standards and to administer, monitor and enforce associated regulatory requirements.

¹ These are: The European Union, Switzerland, Taiwan, The United States, Taiwan, and Great Britain

17. The Ministry for Primary Industries will administer organic standards and regulations for food, beverages, and plant and animal products as these products fall within that ministry's operating mandate. The flexibility in the Bill will enable other ministries to make organic standards for products that are not covered by existing organic standards. This will make the Bill more enduring.

Changes introduced via Supplementary Order Paper

Supplementary Order Paper 262

18. Amendments have been made to the Organic Products and Production Bill via Supplementary Order Paper (SOP) that will provide greater transparency and clarity to the organic sector and make the Act a stronger and more robust piece of legislation. To do this, the SOP made five key areas of change.

Respects the principles of Te Tiriti o Waitangi and strengthens consultation requirements

19. The SOP introduces clause 3A to recognise and respect the Crown's responsibility to give effect to the principles of Te Tiriti o Waitangi. This will be achieved through consultation with Māori about regulations, notices, and three-yearly reviews of cost recovery, and through appropriate Māori membership on advisory councils.
20. The clause also lists all the locations within the Bill where the obligations to recognise and respect Te Tiriti o Waitangi are required. This approach aims to provide a sense of how the Bill gives effect to Te Tiriti o Waitangi obligations and collates them for clarity purposes.

Enhances the interoperability of the Bill with other acts

21. The SOP replaces clause 44A which was introduced by the Select Committee. Previously, clause 44A restricted the use of information collected or provided for the purposes of the organic products regime. The new clause 44A enables information to be shared when necessary for the purposes of the Bill between related overlapping regimes.
22. The change to clause 44A better reflects Cabinet's original intent to ensure interoperability with other acts (for example, food safety, animal welfare, or biosecurity). The clause will ensure that processes such as providing documents, registration, and compliance can be aligned under related regimes in order to reduce costs to businesses and ensure efficient administration of the regimes. This should create a more efficient regulatory system thereby reducing costs to businesses.

Clarifies transitional arrangements for exporting organic products

23. During the drafting of the SOP, it became apparent that additional arrangements were required to allow the export of organic products to continue while transitioning into the new regime.
24. The SOP allows existing requirements to be deemed as an alternative to the Bill's export requirements for the transition period. This change allows for the continuation of international trade in organic products.

Incorporates more robust enforcement mechanisms

25. The SOP requires recognised entities to follow corrective directions and gives recourse to the relevant government department if a regulated party ignores corrective directions, or otherwise breaches a requirement of the Organic Products and Production Act (when it comes into force).

Makes minor and technical changes

26. During the drafting process, minor and technical areas for improvement of the Bill were identified and amended.
27. Several changes were made to increase the clarity and transparency of the Bill and allow it to operate as originally intended. For example, changes were made to strengthen regulation-making powers and a clause was added to ensure that the relevant ministry or agency would be able to consolidate notices when statutory prerequisites have been met.
28. The passage of the Secondary Legislation Act 2021 has also meant changes were required to the making of notices and regulations of the Bill for consistency purposes.