



Organic Industries

The voice of Australia's organic industries



Organic export orders review

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Organic Industries of Australia

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Executive summary

The review of the Export Control (Organic Produce Certification) Orders provides an opportunity for Australia's organic and bio-dynamic industries to partner with the Australian Government to develop better and simpler regulations that act in the interests of organic operators and consumers—regulations that could underpin better domestic market integrity, improve prospects for export market access, reduce red tape and costs, and support a more prosperous and future-oriented organic industry.

There are two main standards for organics currently operating in Australia:

- the National Standard for Organic and Biodynamic Produce, which is the mandatory export standard under the *Export Control Act 1982*
- the Australian Standard for Organic and Biodynamic Products (AS 6000), which has been a voluntary standard in the domestic market since 2009

There is no mandatory requirement for certification of organic product sold domestically in Australia. In the absence of specific domestic regulation for organic production, the export regulation of organics became the *de facto* domestic regulation of the sector, through certification by one of Australia's six private certifiers which base their certification standards on the National Standard.

Critical to the success of Australia's organic industries, is the need to maintain trust in a credible system of standards—including standards development, enforcement, compliance and education—and ensuring that the regulatory system has appropriate levels of integrity—robust compliance, minimal fraud, and strong consumer recognition. Organic producers are concerned that, without these outcomes, there is an erosion of trust in organic products and pressure on prices from non-certified products.

Trust in organic produce is critically important for end-consumers as well as organic producers higher in the supply chain—for example, organic chicken meat producers require certified organic grains as the key input into their production process. Any weak link in the organic supply chain threatens the credibility of that whole sector.

Regulations pertaining to the production, import, export and sale of products claiming organic or bio-dynamic status are present in all three levels of Australia's governments, as well as in case law. The treatment of organic products under Australia's federal legislation is different depending on whether the organic products are destined for export or the domestic market; however, organic goods produced for the domestic market and imported organic goods are captured indirectly through overarching legislation and regulation for foodstuffs—the States play a key role in the regulation of these markets.

Consumers of organic produce are particularly vulnerable in this confusion of regulatory responsibilities, in that they must rely on product labelling for information pertaining to the nature and composition of the product.

- Such claims cannot be easily verified by the consumer independently, so they are at risk of being misled in their purchasing decisions.
- In addition, organic produce is commonly sold at a premium price, due to the perceived health and environmental benefits, so consumers are at risk of excessive payments for mistakenly purchasing non-certified products.

There is a confluence of interest between consumers and producers of certified organic produce, as these two detriments place Australia's organic consumers in a vulnerable position, where non-certified suppliers can readily take advantage of the financial benefits associated with such organic claims without due substantiation. This is particularly true with the labelling of organic products intended for the Australian domestic market, as such products can claim to be 'organic' without meeting the relevant standard to be 'certified organic'.¹

The future for Australia's organic industry could be more prosperous, leveraging off a growing consumer preference for premium products in Australia as well as key export markets. However, to achieve this, the industry's regulatory arrangements must be reformed in the best interests of organic growers, processors and traders, to promote domestic market integrity for producers and consumers, and to facilitate export market access.

There is clearly an opportunity for the industry, consumers and all governments to collaborate on better labelling of products and improved market integrity. As the new peak body for Australia's organic industries, Organic Industries of Australia welcomes the opportunity to work with the Australian and State Governments to:

- streamline regulatory complexities and reduce costs for exported organic produce
- move towards one standard for organic produce to apply or both domestic markets and export
- improve domestic market integrity for the purposes of:
 - enhanced consumer trust in organic products
 - higher margins received by organic producers
 - better export market access—as many export markets are bewildered as to whether Australia's confused domestic regulation of organic produce has implications for the quality of our organic exports
- underpin greater growth in organic production for both domestic consumption and export

¹ Christina Do (2015), Organic Food Labelling in Australia, *University of Queensland Law Journal*, Vol 34(1).

About Organic Industries Australia

At the recent **Love Organic** symposium, Australia's organic industries agreed to establish a new interim peak body that is the voice for Australia's organic industries in regard to policy and market access.

140 industry delegates attended the **Love Organic** symposium in Canberra on 14 & 15 February. The symposium considered issues around establishing a unified peak body and also celebrated the finest quality organic produce.

Organic Industries of Australia is an incorporated association that will now perform the functions of the Australia Organic Industry Working Group (AOIWG) as a forum for consulting with Government on policy matters. The AOIWG was a collaboration of industry leaders from across Australia collaborating on establishing a harmonised national voice for all organic producers, certifiers and the supply chain.

The AOIWG considered a consultants' report on this matter, *A proposed roadmap for Australia's organic industry: Considering options for the leadership of the industry*, which was publicly released on 13 November 2017².

Organic Industries of Australia will also work with all organic leaders to consider various options for the establishment of a permanent peak body. These options include merging functions with Australian Organic Ltd, merging with the Organic Federation of Australia, and considering other actions to demonstrate unity of purpose across all certified organic operators.

The common vision of all organic operators was:

To create a unified voice for Australia's organic industries to negotiate policy reforms with Governments and that helps the industry capitalise on the growing global demand for organic products.

² Available at <https://www.organicindustries.com.au/ConsultationPaper>

The purpose of the review

An Organic Orders Review is being undertaken by Deloitte for the Department of Agriculture and Water Resources (DAWR). The Review is aimed at “getting the regulatory settings right to support industry accessing the premium markets that organics represents”.

As part of a wider initiative to strengthen agricultural exports and market access, DAWR is updating the agricultural export legislative framework. This includes replacing the *Export Control Act 1982* (Cth) and updating and consolidating the Export Control Orders that support the Act.

The export of organic products is currently regulated under the Export Control (Organic Produce Certification) Orders and associated instruments, and these are the subject of the Review.

This review of the Export Control (Organic Produce Certification) Orders provides an opportunity for the industry to partner with the Australian Government to develop better and simpler regulations that act in the interests of organic operators—regulations that could underpin domestic market integrity, reduce red tape, and support a more prosperous and future-oriented organic industry.

Organic standards

There are two main standards for organic products which currently operate in Australia:

- the National Standard for Organic and Biodynamic Produce, which is the mandatory export standard under the *Export Control Act 1982*
- the Australian Standard for Organic and Biodynamic Products (AS 6000), which is a voluntary standard in the domestic market

The National Standard acted as a *de facto* domestic standard until 2009. Due to an increase in unsubstantiated organic claims and a lack of clear definition of the term 'organic', the AS 6000-2009 was created and implemented as another domestic standard for organic produce, which was also extended to include organic produce imported into Australia. The AS 6000-2009 was modelled on the National Standard and, as a result, the two standards are similar. However, the two standards have diverged since 2009 as amendments to the National Standard have not been incorporated into AS 6000-2009.

Until 2009, the Australian Government supported the application of the national standard for both exports and the domestic market. In fact, the original National Standard (1992) had as its first objective "to protect consumers against deception and fraud in the market place and unsubstantiated product claims".

Regulation of organic products

The Australian organic sector originally developed without state involvement over several decades. Governments largely ignored the organic sector as a fringe activity, although organic producers could take advantage of some mainstream government support, through research, development and extension programs.

Export regulations

Australian Government recognition of the industry first came with a 1989 discussion paper within the Australian Quarantine Inspection Service (AQIS) calling for a national approach to certification. This was considered necessary for Australia to gain access to export markets that existing private organic certification alone would not easily permit. The Australian Government became more fully involved in 1990, when it helped establish the Organic Produce Advisory Committee (OPAC), a body formed to develop a national export standard under the *Export Control Act*.

A *National Standard for Organic and Bio-dynamic Produce* was compiled by OPAC³, under the auspices of AQIS, and was first implemented in 1992. It provided guidance for private certifiers who enforced private standards that needed to exceed the National Standard in

³ OPAC later developed into OPEC (Organic Production Export Committee) and later still into OIECC (Organic Industry Export Consultative Committee). For more information, see <http://www.elspl.com.au/OrgAg/4-OA-Pubs/4-OA-Publications/Pub-B-MktgTrade/OA-Mktg-B18-OrgStandards-JOS-2008.pdf>.

order that they could be recognised certifiers by AQIS—in essence, the state regulated certifiers who, in turn, certify farm-level producers and supply chain operators.

OIECC was disbanded in 2009, following a decision of the Australian Government to reduce its active involvement in industry regulation. In its place, the Organic Industry Standards and Certification Council (OISCC) formed to take responsibility for the National Standard and the National Standard Sub-Committee (which was previously administered by the Department). OISCC members include the six certification bodies, the OFA, the Australia National Retailers Association (represented by Woolworths) and the National Farmers Federation. DAWR acts as observer at OISCC meetings.

There are currently six certification bodies accredited for organic certification under the National Standard, administered by DAWR (previously AQIS). The Department conducts annual audits to verify that all organic certification issued by these bodies is in accordance with the requirements of the National Standard. Each of the six certifiers must also meet strict criteria with regards to certification procedures and provide transparent information regarding fee structures and service provision, in accordance with the International Standard (ISO 17065) and various administrative requirements under the *Export Control Act*.

The certifiers must also meet the requirements of the international organic regulations of the European Union, Taiwan and Japan, if they want to accredit product for export to these regions, under equivalency arrangements. Several of these Australian organic certification bodies also hold direct accreditation with overseas governments, such as the United States Department of Agriculture National Organic Program, to certify products for export into the individual country. To be directly accredited, these Australian organic certifiers must meet that country's legislative requirements and be audited by that Government.

The provision of organic certification in Australia gives market access for Australian producers, processors, wholesalers and retailers to export into those countries who possess organic regulation and strong labelling laws.

Domestic regulations

There is no mandatory requirement for certification of organic product sold domestically in Australia. In the absence of specific domestic regulation for organic production, the export regulation of organics became the *de facto* domestic regulation of the sector, through private certification standards aligned to the National Standard. Many organic businesses choose to be certified by an organic certification body to underpin truth in labelling requirements and promote consumer confidence.

Domestic organic standards used in Australia are generally owned and managed by these private certifiers. Domestically marketed organic products are commonly certified by one of the six private certifiers who base their certification standards on the national export standard.

The voluntary *Australian Standard for Organic and Biodynamic Products (AS 6000)* was released on 9 October 2009 and updated in 2015. Standards Australia developed AS 6000 through a representative committee comprising organic stakeholders, including certifiers,

retailers, manufacturers, consumer groups and government agencies. Only a small proportion of certified operators are certified to the AS 6000—most certifiers adopt the National Standard, even for domestic certification purposes. The AS 6000 must be applied in conjunction with the MP100, which is the document for outline certification requirements. The MP100 is currently incomplete and not released for use.

Import regulation

There is an extensive regulatory system in place which provides guarantees in food chain integrity. For example, the current arrangements for importing food products labelled as organic or bio-dynamic into Australia allow trade to occur freely, provided that:

- all quarantine requirements are met (*Biosecurity Act 2015*); and
- all imported food safety requirements are met (*Imported Food Control Act 1992*); and
- the goods are truthfully labelled (*Australian Competition and Consumer Act 2010*).

More detail is available in [Australian Legal Framework for the Import and Export of Organic Products](#).⁴

Imported organic products may be certified by overseas certifiers (who may apply standards consistent with those applying in the case of Australia’s certified exports), may not be certified at all (as long as they are still truthfully labelled), or may even be certified by an Australian certifier against their private domestic standards (which may align with the National Standard or AS 6000). However, these standards are not mandatory or necessarily consistent—and they are confusing for consumers.

Standards and integrity

Most organic stakeholders identify issues around the integrity of Australian organic standards as being critically important to the future of the industry and want these matters to be given consideration in this review.

Central to the success of Australia’s organic industry, is the need to maintain trust in a credible system of standards—including standards development, enforcement, compliance and education—and the ways to ensure that there is a system with high levels of integrity—high compliance, minimal fraud, strong consumer recognition. Organic producers are concerned that, without these outcomes, there is an erosion of trust in organic products and pressure on prices from non-certified products.

Regulations pertaining to the production, import, export and sale of products claiming “organic or bio-dynamic” status are present in all three levels of Australia’s governments, as well as in case law. The treatment of organic products under Australia’s federal legislation is different depending on whether the organic products are destined for export or the domestic market. While the export of organic products is captured directly under Australia’s export

⁴ Authored by MA Will (OISCC) in conjunction with the Department of Agriculture and Water Resources (2016).

legislation, organic goods produced for the domestic market and imported organic goods are captured indirectly through overarching legislation and regulation for foodstuffs.

Numerous attempts to have organic products recognised under food labelling laws or other forms of domestic regulation have been denied.

Poor domestic market integrity is a direct result of confused standards for organic certification, which do little to promote integrity and may even undermine it.

Protecting consumers

Consumers of organic produce are particularly vulnerable, in that they must rely on product labelling for information pertaining to the nature and composition of the product.

- Such claims cannot be easily verified by the consumer independently.
- In addition, organic produce is commonly sold at a premium price, due to the perceived health and environmental benefits.

These two factors place Australian organic consumers in a vulnerable position, as suppliers can easily take advantage of the financial benefits associated with such organic claims without due substantiation. This is particularly true with the labelling of organic products intended for the Australian domestic market, as such products can claim to be 'organic' without meeting the relevant standards, namely the AS 6000.⁵

A survey in 2014 of how consumers determine whether a product is organic was published in that year's *Australian Organic Market Report*. Of 1001 Australian consumers that were surveyed, 64 per cent believed that an item was organic if the term 'organic' appeared on the produce label, whereas 34 per cent of consumers surveyed believed the item was organic if an organic certification symbol appeared on the product label. The variation in results demonstrates that there is a lack of understanding among Australian organic consumers about the organic industry and organic certification processes.⁶

Despite the stringent food labelling requirements enforced by Food Standards Australia and New Zealand, inconsistent organic labelling requirements undermine the rationale for the strict code in labelling requirements—FSANZ's goals of ensuring consumer confidence, protection, informed decision making and the facilitation of an efficiently regulated food market.

The ACCC stipulates that consumers purchasing organic products should be able to feel confident that the ingredients are in fact organic. While truth in advertising is consistently on the ACCC's *Compliance and Enforcement Policy* priority list, given the vulnerability of consumers of premium and credence produce (including but not limited to organic produce),

⁵ Christina Do (2015), Organic Food Labelling in Australia, *University of Queensland Law Journal*, Vol 34(1).

⁶ Ibid.

it is questionable whether the current organic co-regulatory framework within Australia adequately protects consumers.⁷

There is clearly an opportunity for the industry, consumers and government to collaborate on better labelling of organic products and improved market integrity.

⁷ Ibid.

Regulatory options

In order to assess the Organic Orders and make recommendations to DAWR on the net benefit of changing Australia's approach to regulation and standards applied to the export of organic products, the Review is assessing four regulatory options for their costs and benefits including:

Option 1: Keeping the status quo

Under the status quo, all products exported and marketed as organic must be certified to the National Standard, via certification by one of the third-party certifiers recognised by the DAWR.

The organic industry views this option as being the very minimum level for future regulations and a baseline for improvement. While the status quo facilitates *some* market access, progress has been slow. Improvements in market access would flow from greater country-to-country equivalences of regulatory regimes. Currently, the largest destination marketplaces for Australian organic produce require destination country certification in addition to Australian Certification, which adds significantly to the cost of organic exports.

Option 2: Selected recognition of other countries' standards

Under this option, all products exported and marketed as organic would be certified to the National Standard or another standard recognised by the Australian Government.

The regulation of organic exports would be modified so that, instead of requiring all products exported and marketed as organic to be certified to the National Standard, the regulations would also allow products to be exported and marketed as organic if they meet certain other defined standards.

This change would, however, potentially reduce the regulatory burden experienced by Australian businesses by not requiring them to hold multiple organic certifications to access any given market. Australian businesses would, of course, be free to hold certification to the National Standard, but it would not be mandatory for export to all foreign markets.

Importing country requirements must always be adhered to when exporting. The removal of compulsory OPCs for those countries that don't require them would provide a cost saving to the industry.

This option would benefit greatly from improved MiCOR database capabilities to include organic regulations and ensure the most current information is available to exporters.

Option 3: Removing certification requirements for organic exports

This option involves a complete relaxation of regulation of the export and marketing of products as Australian and organic. Under this option, the only constraint to the export and marketing of products as organic would be the need to meet importing requirements, including organic certification requirements, where they exist. This would reduce the regulatory costs on Australian businesses, but also involve losing legislative control of the standards under which products exported and marketed as organic are produced.

This option would place Australian exporters of organic produce at a competitive disadvantage in a global trading marketplace. It would also threaten existing equivalence recognition of organic regulations and undermine the negotiation of further equivalence

arrangements. The organic industry views this option as untenable. Among the concerns, this option would mean that Australian produce would need to be marketed overseas with other country logos.

Option 4: Replacing the National Standard with AS 6000-2009

This option aims to address the problem of confusion in the market due to the co-existence of multiple certification systems. This would not address the issue of regulation in the domestic market, but would align the standards that products must meet whether exported or certified to AS 6000-2009. Though the standards are similar (AS 6000-2009 was modelled off the National Standard), there are advantages and disadvantages to the ongoing use (and modification) of each. These factors would be considered.

This option needs to be considered further. It does not recognise that both standards are almost identical in compliance requirements; however, the systems that potentially underpin each standard are substantially different.

There needs to be review of each standard's processes—the current National Standard, its administration, including the competent authority, versus the Standards Australia framework for standards setting, and whether DAWR will remain as the competent authority.

Further considerations for this option include:

- industry administration of the AS 6000 (through OISCC or another body)
- importing country requirements (such as transfer certificates and/or OPCs under the AS 6000 system)
- importing country preference for dealing with an organisation such as Australian Standards versus a committee of industry volunteers
- review arrangements for the AS 6000
- enforcement of AS 6000

The MP100 document, which provides the requirements for certification to the AS 6000, would also need to be completed, in order for organic operators to become certified to the AS 6000 and to meet the requirements of the Codex Alimentarius Commission⁸—as set out in the *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods*⁹.

⁸ The Codex Alimentarius Commission is an intergovernmental body with over 170 members, within the framework of the Joint FAO/WHO Food Standards Programme established by the Food and Agriculture Organization (FAO) of the United Nations and the World Health Organization (WHO). The main result of the Commissions' work is the Codex Alimentarius, a collection of internationally adopted food standards, guidelines, codes of practice and other recommendations, with the objective of protecting the health of consumers and ensuring fair practices in the food trade.

⁹ <http://www.fao.org/docrep/010/a1385e/a1385e00.htm>

Review of both standards, and the possible systems for each, must include an adequate cost-benefit analysis.

Other considerations, while not in the scope of the Deloitte consultation paper, include domestic regulation of the term “organic”—for example, this may positively impact on the ability of Australia to gain equivalency with the USA—the interaction between the organic standard and the Office of Gene Technology Regulator, and the proposed compensation for GMO contamination by the WA Government.