



Australian Government
Department of Agriculture,
Water and the Environment

Domestic Organic Regulatory Framework: Consultation regulation impact statement



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Acknowledgement of Country

We acknowledge the Traditional Custodians of Australia and their continuing connection to land and sea, waters, environment and community. We pay our respects to the Traditional Custodians of the lands we live and work on, their culture, and their Elders past and present.

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Executive summary

Purpose

The Department of Agriculture, Water and the Environment (the department) is releasing this Consultation Regulation Impact Statement (RIS) to seek comments on how Australia regulates organic products domestically, and supports industry growth and consumer confidence. It examines the policy problem with the current system, as well as potential regulatory and non-regulatory options for reform.

The Consultation RIS includes several questions designed to prompt thinking and inform submissions. You are welcome to use the questions when framing your submission, but they are not mandatory.

Together with other feedback received from stakeholders, submissions on the Consultation RIS will be used to prepare a recommended policy option for Australian Government consideration. Submissions will be accepted during the consultation period, running from 18 February to close of business 17 March 2022. Further information on the process to date and next steps is available at Appendix A: Process to date and next steps.

This RIS has been developed in accordance with *The Australian Government Guide to Regulation* and in consultation with the Office of Best Practice Regulation.

Scope and definitions

The department is aware there are a number of definitions and interpretations of the term 'organic'. Producers and processors who operate organically do not use artificial fertiliser or synthetic chemicals and may also choose to adopt practices that are complementary to not using synthetic chemicals, such as sustainable use of resources or conservation.

Australia's organic export standard, the National Standard for Organic and Bio-Dynamic Produce, defines the intent of organics as 'the application of practices that emphasise: the use of renewable resources; conservation of energy, soil and water; recognition of livestock welfare needs; and environmental maintenance and enhancement, while producing optimum quantities of produce without the use of artificial fertiliser or synthetic chemicals'.

This RIS covers the domestic regulation of organic agriculture (crops and livestock), aquaculture, textiles, skin and beauty products, seed, and livestock feed, and seeks views on the application or scope of any potential regulatory framework.

The department is also seeking views on the alignment of potential domestic regulation with export arrangements.

Introduction

Overview of the organics sector

Australia has the largest organic agricultural area in the world at 35.7 million hectares (Willer et al. 2021). According to IBIS World (2020), Australia's organic industry revenue is forecast to increase at an annualised 14.6 per cent over the 5 years through 2025-26, to \$3.9 billion.

Industry reporting indicates that Australian organic exporters reached 62 international markets during 2020, with North America, Asia, and Oceania the leading export destinations (AOL 2021). Industry reporting also suggests the number of certified organic operations in Australia has grown by 38 per cent since 2011 (AOL 2021).

These figures reflect the rise in consumer preferences for organic products over recent years. The COVID-19 health pandemic has catalysed this trend in consumer preferences, with 37 per cent of Australian organic shoppers increasing their household food allocation to organic in 2020 (AOL 2021).

This is also reflected internationally, with the global market for organic food and drink sales reaching more than 106 billion euros in 2019 (Willer et al. 2021). The largest single market was the United States with 42 per cent of the global market, followed by the European Union with 39 per cent (Willer et al. 2021). 2019 also saw a rise in organic producers with 3.1 million producers identified, 12.5 per cent more compared to 2018 (Willer et al. 2021).

Current state of domestic organics regulation

Businesses that make organic claims on goods in the Australian domestic market must be able to substantiate those claims, consistent with the whole-of-economy requirements under the Australian Consumer Law (ACL). There are protections against misleading, false and deceptive conduct, and consumers are able to make complaints to the Australian Competition and Consumer Commission (ACCC) and state and territory fair trading regulators.

There is no legislated, or government-endorsed definition of 'organic', no mandatory standard for domestic use, and no requirement for certification of organic products produced and sold domestically in Australia.

Organic businesses can choose to be certified by an organic certification body to underpin truth in labelling and promote consumer confidence. For example, those selling on the domestic market may choose to be certified against Australia's organic export standard *the National Standard for Organic and Biodynamic Produce* (National Standard), owned and managed by the department. Businesses can also be certified to the voluntary *AS6000:2015 - Organic and biodynamic products* (AS 6000) owned by Standards Australia. There are also a number of private standards that are similar to or based on the National Standard.

There are 6 Government-approved certifying bodies in Australia for export purposes and each body certifies to the National Standard. Some bodies have their own standard (equivalent to the National Standard) and all have their own organic certification labels. Industry reporting indicates there are around 4,000 certified organic operations in Australia. Further information on the different standards is at Appendix B: Organic Standards.

Products for export that make an organic claim must be certified by an Australian Government approved certifying body against the National Standard. The 6 approved certifying bodies are:

- Australian Certified Organic Certification Ltd
- AUS-QUAL Pty LTD
- Bio-Dynamic Research Institute
- NASAA Certified Organic
- Organic Food Chain
- Southern Cross Certified Australia Pty Ltd

Products certified to the National Standard can be sold anywhere in Australia and to non-regulated markets overseas. International markets which regulate the use of the word 'organic', such as the United States, China, and the European Union, require organic products that are imported to meet the requirements of their national regulatory system.

International regulation

Internationally, organic production is generally regulated through a specific regulatory system, which is often supported by a mandatory national standard and a certification scheme. The latest IFOAM survey on organic regulations found that 72 countries had fully implemented organics regulations as of 2020. 22 countries had regulations which were not fully implemented, and 14 unregulated countries were drafting legislation (Willer et al. 2021). New Zealand is in the process of introducing mandatory domestic organic regulation. More information on the regulatory systems of comparable trading partners is available at Appendix C: Regulatory systems of comparable trading partners.

1 What is the policy problem we are trying to solve?

We have heard feedback from the sector that there are several issues with the current system, including:

- 1) Confusion and costs for some businesses in navigating current regulations
- 2) Barriers to trade and market access may impede market growth
- 3) A lack of clear and consistent information may impact consumer confidence and protections.

A key focus for the department is to gather evidence in these areas, identify those impacted, and gauge the extent of any failure in the market.

There is potential for continued and accelerated growth in Australia's organics sector, but the right incentives, market signals, and information flows are required to facilitate this growth and remove potential barriers.

It is also important that Australia is competitive globally. Other countries are actively promoting growth in their organic sectors. For example, under the European Green Deal's Farm to Fork strategy, the European Commission has set a target of 'at least 25% of the EU's agricultural land under organic farming and a significant increase in organic aquaculture by 2030' (European Commission 2021).

1.1 Current regulation

No domestic equivalent to export regulation

At present, Australian organic businesses operate under different requirements for the domestic market and exports. While organic operators who export overseas are required to obtain certification from an approved certifying body under a mandatory standard, organic products intended for the domestic market (including imports) are not required to be certified or comply with a particular standard.

The department is responsible for managing biosecurity and food safety risks with imported food. Under the *Biosecurity Act 2015*, certain foods may be restricted from entry and other foods may require an import permit and compliance with specific conditions. Under the *Imported Food Control Act 1992*, imported food must be safe and compliant with requirements in the Australia New Zealand Food Standards Code and the Country of Origin Food Labelling information standard. Neither Act places any obligation under importers to substantiate claims of organic goods or produce.

Lack of a legal definition

The absence of a legislated definition of 'organic' in the Australian domestic market may add further uncertainty to businesses. The department has heard from stakeholders that without clarity on what constitutes organic, businesses can lack the understanding and confidence needed to make organic claims.

The lack of a single definition may also cause confusion, or transfer risk between parties when products move along the supply chain, i.e., from farmer to processor to distributor or transporter. For example, there may be confusion if operators or processors operate on different understandings about what constitutes 'organic', and where certified products become non-compliant with their standard, operators may be de-certified (even if the non-compliance was introduced further along in the supply chain) and this carries financial risk and burden.

Market integrity

While the ACL protects against misleading, false or deceptive conduct, products not verified as meeting an agreed standard can still be sold with the suggestion they are 'organic' and at similar price points to certified products, noting organic products tend to command a price premium. The current arrangements do not ensure all ingredients or materials used to create an organic product are genuinely organic.

As a result, a range of products can make it to market with unsubstantiated organic claims, which could risk the integrity of Australia's organics sector and organic producers. This may result in an uneven playing field, with businesses that invest time and resources maintaining the integrity of organic products disadvantaged by those who may not follow the same rigor.

A purpose of this consultation is to determine whether and how much this may be happening.

1.2 Barrier to trade and market access

Some of Australia's major trading partners, including the USA and South Korea, require a more robust domestic regulatory regime as a prerequisite to entering negotiations on preferential trade arrangements (equivalency). In the absence of greater assurance and integrity around the domestic production, imports and sale of organic goods, Australian producers face greater costs to access export markets as well as potential opportunity costs arounds limits to market access.

Equivalency arrangements can reduce the cost burden on Australian exporters, removing the need for additional certifications. While not all domestic producers will want to access international markets, greater consistency across domestic and export regulation could lower the cost of doing so and broaden options for future growth. It would also provide added protection from a downturn in either a domestic or international market.

For markets where there is organic regulation of imports, exports and their domestic market, and where Australia has not negotiated equivalence arrangements (e.g., the US and South Korea), operators can only access these markets through conformity assessments. This is where an approved certifying body enters an arrangement with an overseas government to certify goods to the overseas standards. The costs to certification bodies of maintaining such overseas arrangements add up and are passed onto businesses requesting this certification – typically as an add-on fee, charged per export market. This may create a disincentive to organic businesses interested in exporting to those markets under private arrangements due to the upfront and ongoing costs associated with maintaining export market access.

It also results in cost duplication for industry as exporters need to comply with both Australia's export requirements and separately meet the costs to partake in conformity assessment arrangements to meet the export market's requirements.

1.3 Consumer confidence

A key challenge of 'organic' products is the products' credence characteristics – that is, you cannot necessarily look at a product and know if it is 'organic'. It is reasonable to expect businesses to disclose descriptive information about their product to consumers voluntarily and accurately (e.g., that they are providing an 'organic' product), particularly where organic products typically command a price premium. However, potential market failures may arise from:

- information asymmetries (i.e., producers have greater knowledge regarding the quality of goods or classes of goods than the consumer)
- possible negative social externalities (i.e., incorrect descriptors may cause 'harm' to the public interest, as well as to the reputation of Australian manufacturers of similar goods).

There may also be a perception of a market failure due to negative externalities where the actions of producers that make dubious claims are exposed, resulting in a general loss of confidence in the sector. A purpose of this consultation is to determine whether and how much this may be happening.

Consumer surveys suggest that the lack of a single legal definition of organic, along with the use of several standards, inconsistent labels, differing certifying body logos, and multiple terms on product packaging can cause consumer confusion and undermine shopper confidence.

The current domestic regulatory environment may also have drawbacks for Australian consumers - Australian consumers may be vulnerable to being misled, and operators could gain financial benefits from selling products as 'organic' without substantiating their claims (as organic products generally command a price premium). International consumers of Australian certified products are less likely to experience this concern as all products claiming organic that are exported into international markets are required by Commonwealth Export Rules to comply with the National Standard.

There is a risk that if consumer awareness of regulatory gaps were to grow, the incentive to buy organic products could diminish which has the potential to impact the organics supply chain. Organic businesses may face the threat of losing their consumer base due to the wrongdoing of other businesses. This could also deny consumers access to products they desire and for which they would be prepared to pay a premium.

A purpose of this consultation is to determine whether and how much this may be happening.

Questions

- Do you agree with the problems listed above?
- How do they impact you or your business, or you as a consumer?
- Do the current regulatory settings incur costs, or make it difficult on your business?
- If you export organic goods, how user friendly is the current process?
- Do you think the current process for certifying exports should be extended to organic products for sale within Australia?
- What are the current barriers to seeking certification (if any)?
- Do you think there is enough information for consumers to make informed purchases?

2 Why is government action needed?

The government's role in an open market is to correct market failures (including information asymmetries or anti-competitive behaviour along the supply chain) to ensure the market remains open.

Government also plays a role in working with industry to support growth, reduce regulatory burden, and facilitate trade. This includes the delivery of effective and efficient regulatory frameworks that are suitably tailored and proportionate to sector needs. It also includes removing barriers to trade, bolstering supply chains, and supporting product diversification.

A further role is in competition policy, aimed at ensuring competition is not restricted or undermined. For organics regulation, this may include an exploration of existing power dynamics between certifiers and producers and between certifiers themselves, how potential changes might impact this relationship, and any barriers to entry to the certification industry or the organics industry.

A key purpose of this Consultation RIS is to help identify the extent of any market failure, and to explore whether current settings are consistent with the above aims. Building from this premise, we have prepared the below policy objectives to measure options against, noting not all policy options will solve all problems to the same extent:

2.1 Overarching objective

- Correct market failures (to the extent this is identified)

What we're trying to achieve for businesses

- Mitigate barriers to trade and allow for market access
- Provide regulatory clarity around organic claims and certification
- Prevent operations from making false and misleading claims
- Ensure a level playing field

What we're trying to achieve for consumers

- Give consumers access to clear and transparent information
- Ensure consumers can choose from a range of quality organic products
- Protect against harmful behaviour such as false and misleading claims

With agriculture making up a substantial proportion of all organic output, this RIS is also linked to the government's commitment to help the agriculture industry reach its goal of \$100 billion in production by 2030 (Ag2030). This will not be achieved unless the government puts in place the right foundations for industry to harness emerging opportunities and increase efficiencies. This means listening to industry, ensuring our policy settings and frameworks adequately support them, and making it easy to do business.

COVID-19 has compounded these challenges, changing the way we live and work. The organics sector has a role to play in Australia's recovery, economic prosperity, and food security but needs the right settings in place to support this.

Questions

- Is there evidence of market failure with the current system that would justify government intervention?
- Are you aware of any precedent (domestic or overseas) with lessons around government intervention in similar markets?
- What should a domestic regulatory framework aim to achieve?

3 What policy options are we considering?

In addition to seeking further evidence about whether there is a problem, this Consultation RIS canvasses a range of potential regulatory and non-regulatory options for consideration. The options span from retaining the status quo through to implementing a mandatory domestic organics standard.

Each option needs to be considered within existing regulatory frameworks, including the food regulation system requirements, to avoid duplication and undue regulatory burden. All options also need to be consistent with Australia's international trade obligations under the World Trade Organization.

The options are intended to generate feedback on different ways to address the policy problem and objectives, with views on alternative approaches also encouraged. This will inform the final decision on whether the way organic products are regulated in Australia needs to change.

For the purposes of this document, the options are described at a high level, with more detailed design considerations to follow should any option be agreed by government.

3.1 Status quo

Under this option, the existing approach to domestic regulation would be maintained. The ACL would continue to provide general protections against false and misleading claims and certification of organic products for the domestic market would remain voluntary. Current settings and market forces would be left to determine any changes to business and consumer behaviour.

Questions

- Are there other factors to consider when describing the status quo?

3.2 Non-regulatory approaches

Education campaign

The first non-regulatory option identified in this RIS is an education and awareness raising campaign, noting the status quo could also be characterised as non/co-regulatory. The nature of the campaign would depend on the target problem (i.e., businesses not knowing how to claim, consumers confusion, or both).

If focused on consumers, this would involve united and consistent messaging to improve the general public's awareness and understanding of the term organic. This could extend to guidance around existing voluntary processes and branding, helping consumers to identify logos and distinguish between certified and non-certified goods.

If aimed at industry, the focus could be on industry benchmarks regarding what constitutes organic, how to achieve certification, or business responsibilities under the ACL.

Campaigns could be funded and delivered by industry (with standard messaging across representative bodies), government, or progressed as a joint effort.

The campaign could include multiple communication mechanisms. This could include a dedicated website platform, social media, television, radio, and newspapers as well as advertising on consumer and industry focused websites. In addition to general messaging, the industry and/or government could work with major retailers and industry associations to deliver more targeted messaging to consumers and industry. This could include, for example, working with major retailers to supply brochures or postcards with organic labelling information at the point-of-sale and direct mail-outs targeting relevant operators.

Industry-led approach

An alternative non-regulatory option is for organic industry representatives to take incremental steps towards more unified voluntary settings. Industry-led codes can help address specific market failures that cannot be addressed by individual industry participants.

Under this approach, industry would first come together to develop a common understanding of the term organic and agreement on a single, voluntary standard. Breaches of the voluntary standard would be enforceable only to the extent that the industry includes an enforcement or compliance mechanism.

This could be followed by further steps, such as agreement on unified branding around certified organic goods (transitioning from differing certifying body marks to a single logo). Depending on progress, the agreed upon standard and logo could also be endorsed by government, adding a further layer of assurance and confidence to businesses and consumers.

Any industry-led approach would need to incorporate the interests of consumers and involve consultation with consumer representatives.

Depending on the coverage or scope of an industry-led, voluntary standard, there could be fees for industry participants, or costs in establishing such a standard.

Any competition implications of an industry-led approach would also need to be considered. Where conduct may contravene competition laws, but is likely to have an overall public benefit, there may be exemptions or authorisations available from the ACCC.

Health Star Rating system case study

The Health Star Rating (HSR) system is a front-of-pack labelling system that rates the overall nutritional profile of packaged food and assigns it a rating from ½ a star to 5 stars. It is designed to provide consumers with a quick, easy, standard way to compare similar packaged foods.

The HSR system was developed by the Australian, state and territory governments in collaboration with industry, public health and consumer groups. The HSR system has been implemented on a voluntary basis by the food industry since June 2014, meaning that food manufacturers can choose to display or not to display a HSR on their product.

The number of stars that can be displayed on a product is determined by the Health Star Rating Calculator, underpinned by an algorithm that was developed in consultation with the HSR Technical Advisory Committee.

Food manufacturers that display HSRs on their products are responsible for the correct and accurate use of the Health Star Rating system. This includes correctly calculating the HSR, accurately displaying nutrient information, ensuring consistency of information between the HSR and the Nutrition Information Panel, and complying with all relevant legislation and regulations.

Responsibility for HSR policy, including monitoring and compliance sits with states and territories and the Australia and New Zealand governments through the Food Ministers' Meeting (FMM). While there is no specific enforcement legislation for the HSR system, Australian Consumer Law protects consumers from false or misleading product representations, including those made through the HSR system.

In May 2019 an independent review was conducted to examine its effectiveness of the HSR system in providing information to consumers to help them to make more informed food purchases and healthier eating choices. The review examined the system after five full years of implementation.

The review found that the HSR system was generally progressing well with uptake by food businesses increasing and consumer use and understanding improving. The review also found that there was evidence that the voluntary system was effective in changing consumer behaviour, and in some instances led to healthier product reformulation by food manufacturers. Compliance with the HSR system was also found to be high.

The review also recommended that the HSR System remain voluntary, but with clear uptake targets and a view to mandate if these are not achieved.

The findings of the review were supported or supported in-principle by the Australia and New Zealand Ministerial Forum on Food Regulation (now called the Food Ministers' Meeting) in December 2019.

Questions

- Are there other non-regulatory options which should be considered which address the policy problems?

3.3 Mandatory domestic organics standard

The main regulatory option identified is the introduction of a mandatory domestic organics standard through new standalone Commonwealth legislation. To understand the potential impacts of this approach, this sub-section covers several design issues for public consideration including:

- what products, processes, and businesses are within scope
- how the standard could be implemented
- how to check if businesses meet the standard
- how to fund the standard, and
- when/over what period it could be implemented.

3.3.1 Coverage and scope

Comprehensive coverage across the supply chain

Adopting a defined organics standard both exports and domestic systems could simplify the existing system by ensuring the same requirements apply to all exported, imported and domestically sold organic products. Consistent with existing standards, coverage would extend

to the production, processing, transportation, labelling and importation of all organic agriculture (crops and livestock), aquaculture, textiles, skin and beauty products, seed, and livestock feed.

Split coverage across the supply chain

An alternative option would be to split the production/manufacturing aspect of organics and the labelling aspect. For example, the production/manufacturing could be regulated by government, with the labelling aspect captured under existing ACL requirements.

Partial/incremental coverage

Another option is to limit or transition the kind of products the mandatory standard applies to. For example, it may be possible to start with fresh fruit and vegetables only or to exempt non-food products when the standard is first introduced. Coverage could then be adjusted over time, using the initial phase as a pilot.

Coverage by business size

A further consideration is whether to limit coverage by the size of a business. For example, the standard could be mandatory for larger businesses but voluntary or take a longer transition period for small or low risk businesses. Small businesses could also be exempt from certification (see below at section 3.3.3).

Questions

- What organic products should be captured by a mandatory domestic organic standard (for example, fresh food, all food products, fibre, pet food, cosmetics or other non-prescribed goods)?
- Which definition of organic (National Standard, AS 6000, or alternative) should be adopted as a suitable definition of organic?
- Do you support a domestic organic standard covering the whole supply chain process, or splitting production/manufacturing and labelling aspects?
- Are there parts of the sector (e.g., non-food, or small operators) that should be exempt from a new regulatory framework for domestic organics?

3.3.2 Implementation

The primary implementation option being considered is through new standalone Commonwealth legislation.

The Commonwealth would enact new legislation requiring organic operators to comply with a defined standard. This could proceed with or without a mandatory certification mechanism (refer sub section 3.3.3).

Using a co-regulatory model, this could see certifiers responsible for monitoring and enforcing compliance of operators they certify, and the Commonwealth government responsible for monitoring and enforcing compliance in the marketplace to prevent misleading or false labelling claims for uncertified projects.

3.3.3 Certification

Industry feedback indicates that being certified organic and displaying a certification label has a direct impact on the perceived benefits of organic food.

Mandatory certification

One option is to require all products that make an organic claim to be certified by an Australian Government approved certifying body against the mandatory standard. This could mirror the certification process currently used for organic exports under the National Standard, which includes regulating, investigating and enforcing compliance through regular checks, ongoing monitoring and enforcing compliance. Under this arrangement, approved certifying bodies approve, conduct routine auditing, issue certification and carry out enforcement against operators they certify. The department is responsible for approving, auditing, and investigating compliance of certifiers.

Mandatory certification could alternatively be enforced on a more risk-based model, with a sample of businesses audited periodically with frequency adjusted based on risk.

Voluntary certification

Independent certification could be voluntary for organic products intended for the domestic market. Businesses would still be subject to enforcement action if it was shown that they were not meeting the mandatory standard.

Exemptions

If all businesses are included within the scope of a mandatory standard (see section 3.3.1), small businesses could be exempt from mandatory certification but still required to comply with the definition of organic set out in a mandatory standard. This would account for business capacity to absorb associated compliance costs, noting all businesses would still be subject to enforcement action if they fail to meet the mandatory standard. This approach has overseas precedent, with the United States and European Union allowing exemptions from verification based on annual turnover and whether the business sells direct to consumers respectively.

Questions

- If a mandatory standard was to be progressed, how essential is certification?
- If exemptions were introduced, how might these work in practice?
- What exemptions should be in place for certification?

3.3.4 Timing

Experience with previous government reforms demonstrates the value of transition periods. For example, the Country of Origin Labelling reforms came into effect following a 2-year transition period, minimising implementation costs and allowing businesses to implement the reforms in an efficient manner.

Australian businesses have also experienced a multitude of hardships following recent bushfires, droughts, and the COVID-19 pandemic, making it impractical (and unaffordable) for some to consider additional costs in the near term.

Questions

- Is there value in a transition period for business?
- If so, how long?

3.3.5 Funding

Any regulatory option will be developed consistent with the requirements of the Australian Government Charging Framework, noting the beneficiaries are likely to be organic businesses and consumers. The Framework supports the government's role in delivering quality public programs to Australian citizens, communities, and the economy more broadly, by assisting to improve program funding decisions.

The Government's Charging Policy Statement notes:

Where specific demand for a government activity is created by identifiable individuals or groups, they should be charged for it unless the government has decided to fund that activity. Where it is appropriate for the Australian Government to participate in an activity, it should fully utilise and maintain public resources, through appropriate charging. The application of charging should not, however, adversely impact disadvantaged Australians.

The total cost of the regulation and method of charging would depend on the regulatory model chosen and which party is being regulated (certifiers or operators.)

4 What is the likely net benefit of each option?

In deciding final policy settings, the Australian Government will consider feedback and consultation findings to date, submissions to this Consultation RIS and a cost-benefit analysis, quantifying the potential impact of different options. For the purposes of the Consultation RIS, this section aims to identify key types of benefits, costs, and risks likely to arise along with who may be impacted.

At a high-level, the range of stakeholders most likely to be impacted include:

- government (including Commonwealth and state and territory regulators depending on the level and type of change from status quo, if any)
- businesses across the supply chain (including producers/farmers, transporters, storage operators, processors/manufacturers, wholesalers, retailers, farmers' markets, exporters, importers, and certifiers)
- consumers.

Potential impacts will be felt differently across and within these groups. For example, within the business grouping, business size and certification status will have a major role in determining costs and benefits. For consumers, factors such as social-economic status are likely to influence potential changes in their purchasing behaviour. This will be subject to further consideration and analysis in the advice to government.

4.1 Status quo

The key benefit of this option is the absence of additional costs and regulatory burden that may arise from further government intervention. The organics sector may continue to grow under the status quo, with market forces left to address the policy problems. Operators looking to export to countries without equivalency agreements could continue to do so through conformity assessments (noting the regulatory burden involved). Depending on the extent of the problems, along with potential costs and benefits of other options, this may be an appropriate outcome.

A further consideration is that the current state is subject to change. Market forces and growing consumer awareness may see improvements over time and the market will correct the information asymmetry.

Conversely, as this option does not directly address the issues of regulatory fragmentation, impediments to trade, or consumer confidence, it may result in increased costs over time. This includes a possible decrease in consumer confidence, lost opportunities for market growth, and a reduction in the Australia's organic sector's competitive advantage as other countries look to grow their organic sectors.

4.2 Non-regulatory

Education campaign

Education and awareness raising could target the problems of consumer and business confusion, depending on the aim of the campaigns.

For consumers, this option could increase the awareness and understanding of the term 'organic', clarify some common misconceptions, and help them to make more informed purchasing decisions. Consumers would also be better positioned to identify and report misleading claims.

For businesses, an education campaign based on current settings may reduce confusion, highlight the benefits of voluntary certification, and increase their confidence in the certification process. As a result, operators may be more likely to make organic claims where they are substantiated, seek certification, and avoid non-compliance with general ACL protections. More informed consumers could also help improve the integrity of the market and weed out operators that are not as stringent or do not meet existing voluntary standards.

As with the status quo, an education campaign is unlikely to impose significant additional regulatory burden on business. Depending on the funding model (industry-led, government-led, or co-funded and delivered), this is also likely to be a lower cost option.

There are limitations on how this option will address the identified problems (particularly around impediments to trade). While the education campaign may clarify meanings and increase information flows, the overarching framework would remain fragmented. Depending on the magnitude of such problems, this non regulatory response may be appropriate, including as an initial step before regulation.

Industry-led approach

As with the education campaign, this option primarily targets the problems of consumer and business confusion. The key difference is that rather than educating consumer about the fragmented framework that currently exists, it would go some way to simplifying the fragmented regulatory system.

For consumers, the move towards a consistent and unified logo for certified organic goods may increase their awareness and understanding of what certified means and what to look for when shopping. They may have added confidence in their purchases should the logo have government backing.

For businesses, the shift to a single, voluntary standard may simplify the process, decreasing the time impost and regulatory burden of accessing and understanding different standards.

Like the education campaign, the main disadvantage of this option is its limitations and associated opportunity costs. For example, the continued absence of mandatory domestic requirements would prevent negotiations on equivalency arrangements with key trading partners. However, this option can be built on over time, with policy problems revisited once initial steps are complete.

Questions

- Do you think an education and awareness raising campaign would be a cost-effective solution to address consumer and business concerns?
- Do you think an industry-led, voluntary, single standard is achievable, and would it be a solution to address consumer and business concerns?
- Could the non-regulatory options presented be combined and implemented, either with each or other or a mandatory domestic organics standard? If so, which elements should be combined?

4.3 Mandatory domestic organics standard

Cross cutting considerations

There are upfront and ongoing costs to implement and maintain a mandatory standard, including additional resources for education, compliance and enforcement, making this a higher cost option than the alternatives considered in this paper. Funding arrangements will need to be considered, including cost recovery options that are consistent with the Australian Government charging framework.

Introducing a mandatory domestic organic standard could simplify the existing system by ensuring that the same requirements apply to all exported, imported and domestically sold organic products, creating a level playing field across the organics industry.

This approach would also limit the ability of unscrupulous operators to claim 'organic' status without adhering to industry agreed requirements, supporting informed decision making and consumer confidence.

A mandatory domestic organic standard could also be used to negotiate equivalence arrangements with key trading partners and improve market access, some trading partners have expressed Australia's lack of a mandatory regime as a key reason for not negotiating equivalence arrangements. Noting that equivalence arrangements cannot be guaranteed and may take several years to establish, such an outcome could reduce regulatory burden, with exporters no longer required to meet each country's individual standard and bear the associated cost.

Coverage and scope

The level of coverage has implications around the number of businesses likely to benefit and incur any regulatory costs.

A key benefit of comprehensive coverage is regulatory simplicity, with businesses and consumers better positioned to understand a single set of requirements and standardised scope. Limiting coverage by business size has the potential to mitigate disproportionate regulatory burdens but would need to be balanced against issues of operational complexity, consumer confusion, and limits on equivalency negotiations.

Separating production from labelling requirements could improve consistency in production requirements for the export and domestic markets and limit regulatory burden for producers and operators who no longer face a system with multiple requirements. Locating regulation of labelling requirements with a regulatory body with expertise in these matters, or regulated under the existing ACL could also lower costs for government. However, any distinct labelling

standard would need to refer back to the production/supply chain standard. In addition, having multiple regulators for different aspects of a single scheme may reduce the efficiency and effectiveness of that scheme.

Starting out with partial coverage, such as fresh produce only, could ensure steps in right direction but – like other approaches to limiting coverage – may reduce the short to medium term chances of new equivalency arrangements.

Implementation

Standalone legislation has the benefit of full coverage, flexibility, and being tailored to industry needs. For example, the legislation could initially cover food and/or other agricultural products (including livestock feed), with an option to cover textiles, skin care and other organic products later.

The existence of a mandatory standard may benefit some existing organics businesses over their competitors, or may lead some (good faith) organics businesses to exit the industry for a variety of reasons. The move to a single standard may also have an impact the business model of existing certified businesses.

As a new framework, this option would require new compliance and enforcement resources, with associated costs.

The particular terms and scope of a Commonwealth legislative framework would require further consideration.

However, the legislation would not apply to New Zealand imports. Under the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System (the Treaty) and the *Trans-Tasman Mutual Recognition Act 1997* (the Trans-Tasman Mutual Recognition Act) it is assumed that the Food Standards Australia New Zealand Act 1991 will be the sole piece of Commonwealth legislation providing standards governing the labelling of food, its production and its packaging. The objective of the Trans-Tasman Mutual Recognition Act is to harmonise food standards between Australia and New Zealand and to provide mutual recognition for each other's goods. If New Zealand were to implement its own standard (as is currently underway), this is unlikely to lead to additional costs.

Certification

Mandatory certification would provide evidence to consumers and trading partners that integrity underpins Australia's organic industry. This would come with added costs, as all businesses, including those currently not certified, would have to pay to be certified under a mandatory scheme.

Mandatory certification may also have competition implications (for example, certifiers may have a power imbalance over operators), create barriers to market entry, and put upward pressure on prices for consumers. For example, some operators may choose to exit the market rather than become certified while others looking to enter the sector may find certification cost prohibitive. This could also have flow-on effects to organic suppliers.

For consumers, mandatory certification may improve the transparency and consistency of information, increasing their trust in organic claims and supporting informed purchasing decisions. The impact on consumer choice is open to discussion. Under one scenario, mandatory certification could drive producers out of the market, reducing the range of products on offer. This could mean a trade-off, with less choice but a higher quality product. Conversely, the added regulatory certainty could attract new competition to the market, resulting in more choice for consumers.

Smaller uncertified operators may have limited capacity to absorb additional pressures should mandatory certification apply to them. While this can be reduced through possible exemptions, such approaches may decrease Australia's ability to negotiate equivalency arrangements, with trading partners looking for stringent domestic compliance requirements.

Timing

The key advantage of a transition period would be to give businesses time to understand new requirements and adjust their business models, potentially decreasing regulatory burden. This could be particularly beneficial to smaller producers, who may need added time understand any changes and incorporate them into their business model.

Funding

The total cost of the regulation will vary based on whatever regulatory model is picked. Higher effort regulatory models will require more financial commitment from the organics sector under a cost recovery mechanism.

Questions

- What would be the positive and/or negative impacts of a mandatory domestic organic standard on you or your business?
- What are the positive and/or negative impacts of a mandatory domestic organic standard for Australian consumers?
- Are there positive or negative impacts of any options that are not described?
- Is there any evidence you can provide to help quantify the impacts?

Appendix A: Process to date and next steps

Parts of the organics industry have long called for regulatory changes, raising concerns about the integrity of the domestic market.

When the National Standard was first implemented in 1992 as the Australian Export Standard, the sector pushed for regulation domestically as well, but this was not realised.

In 2006, discussions began around the development of an Australian Standard for organic products. After consultation throughout the organics industry an application was made to Standards Australia to create an organics standard. As a result, the AS 6000 was published in October 2009 as a voluntary domestic standard. A review of the Organic Orders in 2018 and the drafting of the Organic Rules 2021 did not recommend one standard over the other.

In late-2020, an Organics Industry Advisory Group was established to provide advice to the Minister for Agriculture and Northern Australia, the Hon David Littleproud MP, on options to improve the current domestic organics regulatory framework. The Group convened over the first half of 2021, providing a report to Minister Littleproud on 29 June 2021.

The Government determined that further work is required, and the department is now undertaking public consultation to better understand the sector, articulate the problem definition more clearly, and understand the impacts of any reform options on all parties along the organics supply chain, including Australian consumers. As part of this process, the department has received:

- over 100 submissions to an online business survey, used to gather industry insights on the organics sector
- over 500 responses to a targeted phone survey, used to gauge the number and nature of organic operators in Australia (including uncertified and smaller producers)
- over 1000 responses to the online consumer survey, used to collate existing consumer perspectives on organics, alongside their appetite towards changes to the framework
- and over 100 businesses invited to industry roundtables, with 6 industry roundtables completed, and ongoing 1:1 meetings continuing.

Results from these more recent consultation mechanisms are subject to further analysis and will be used to inform the advice to government. At a high-level, the culmination of all these processes informed the options detailed in this Consultation RIS.

In late-2021, the department reconvened the Organics Industry Advisory Group to act as a sounding board for this project and facilitate broad consultation. Membership reflects a broad range of views across industry bodies, producers, manufacturers, farmers' markets, retailers, certifiers, consumers, importers and exporters.

Next steps on this project are dependent on consultation feedback, outcomes of the CBA, and government consideration.

Appendix B: Organic Standards

Table 1 Organic standards

National Standard for Organic and Bio-Dynamic Produce (National Standard)	AS6000:2015 - Organic and biodynamic products
<ul style="list-style-type: none"> • Owned and managed by DAWE and with the National Standards Sub Committee (NSsC), an independent technical subcommittee. • Organic exporters must comply with the National Standard. • Provides the basis for equivalence arrangements with trading partners. • There are currently 6 approved certifying bodies. • The maintenance of the National Standard and oversight of the NSsC will be funded by DAWE issued certifier accreditation fees from FY 2022-23. 	<ul style="list-style-type: none"> • Owned by Standards Australia. • Voluntary for domestic use. • Only one approved certifying body certifies to this standard. • Maintenance is funded through licence fees to access the standard. • Uses an associated control document (MP100). • Copyrighted, with a fee required to purchase it.

Note: Some of the larger certifying bodies maintain private standards based on the national standard. Some approved certifying bodies are also authorised to certify to the EU, US, Japanese, Korean and Chinese organic standards under a conformity assessment arrangement with those governments.

Appendix C: Regulatory systems of comparable trading partners

United States

The United States National Organic Program (NOP) is a federal regulatory program that develops and enforces national standards for organically produced agricultural products sold in the United States. Third-party organisations are accredited to certify businesses meet the standard. The USDA and certifiers work together to enforce the standards. The NOP also authorises State Organic Programs, which provides the opportunity for a state to oversee organic production and handling operations within its state. California is currently the only state in the U.S. with a State Organic Program (SOP).

Canada

The Canadian Food and Inspection Agency (CFIA) regulates any food, seed, or animal feed that is labelled organic in Canada. All food sold in Canada must comply with Food and Drugs Act and Regulations and the Safe Food for Canadians Act and Regulations. Under the Safe Food for Canadians Regulations, products must be certified organic according to the Canadian Organic Standards. The CFIA oversees, monitors and enforces the requirements of the Canada Organic Regime using a third-party service delivery model that includes conformity verification bodies, certification bodies and organic operators.

European Union

EU Council Regulation 834/2007 previously set out the principles, aims and overarching rules of organic production and defined how organic products should be labelled. This regulation has recently been superseded by Regulation (EU) 2018/848 which came into effect on 1 January 2022. Every country in the European Union appoints a 'competent authority' who is ultimately responsible for making sure that EU organics rules are followed. This competent authority can then chose whether this is managed ether publicly, privately or through a joint system. Each year EU countries report to the European Commission on the results of the controls carried out on organic operators and on the measures taken in case of non-compliance.

China

China's Organic Product Certification is a governmental program carried out according to the National Organic Standard GB/T19630-2019. The standard is aimed at regulating the production and trade of organic products intended for the Chinese market. China classifies this standard and the accompanying certification regulations as voluntary. However, if products are to be marketed in China as organic, compliance with this standard and accompanying regulations is mandatory.

New Zealand

New Zealand is in the process of introducing new legislation, Organic Products Bill 2020 (the Bill), to mandate organic standards for organic products. The Bill enables any relevant ministries to become responsible for the regulation of organic products relevant to their mandate,

including the development of organic production standards and the administration, monitoring, and enforcement of associated regulatory requirements.

Appendix D: Comparison of options

Table 2 Comparison of options

Objectives	Regulation		Non-regulatory approaches	
	Status Quo	New mandatory legislation scheme	Education campaign	Industry-led, voluntary single standard
Correct market failures (if any)	Potentially	Yes	Potentially	Partially
Regulatory clarity	No	Yes	No	Partially
Prevent false and misleading claims	No	Yes	Yes – Potentially, through better informed consumers	Partially
Level playing field	No	Yes	No	No
Mitigate barriers to trade	No	Yes	No	No – trading partners may continue to expect government, mandatory system
Consumers access to better information	Potentially	Yes	Yes	Yes
Consumer choice	No	–	No	No
Consumer protection	No	Yes	No	No
Cost	Low	High	Low	Medium

References

AOL 2021, [The Australian Organic Market Report 2021](#), Australian Organic Limited, Nundah, accessed 17 January 2022.

European Commission 2021, [Organic action plan](#), Brussels, accessed 20 January 2022.

IBISWorld 2020, [Organic Farming in Australia](#), X0013, Accessed 17 January 2022

Willer, H, Meier, C, Schlatter, B, Dietemann, L, Kemper, L & Trávníček, J 2021, 'The World of Organic Agriculture 2021: Summary' in H Willer, J Trávníček, C Meier & B Schlatter (eds), [The World of Organic Agriculture Statistics and Emerging Trends 2021](#). Research Institute of Organic Agriculture FiBL, Frick, and IFOAM, Organics International, Bonn, accessed 19 January 2022.