



**CONSUMERS'  
FEDERATION  
OF AUSTRALIA**

Developing and promoting  
the consumer interest

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**By email:** [domesticfoodregulation@awe.gov.au](mailto:domesticfoodregulation@awe.gov.au)

Department of Agriculture, Water and the Environment  
GPO Box 858  
Canberra ACT 2601

Dear Madam/Sir

**Response to Domestic Organics Regulatory Framework Regulatory Impact Statement (RIS)**

Thank you for the opportunity to provide this submission on the RIS Domestic Organics Regulatory Framework.

**A. ABOUT CONSUMERS' FEDERATION OF AUSTRALIA (CFA)**

The CFA is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations. Our organisational members and their members represent or provide services to millions of Australian consumers.

CFA's member organisations include membership-based organisations, organisations that provide information, advice, counselling or assistance to consumers and organisations that identify regulations or market features that harm consumer interests and propose solutions. A list of CFA's organisational members is available at <http://consumersfederation.org.au/members/cfa-organisational-members/>.

CFA advocates in the interests of Australian consumers. CFA promotes and supports members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services.

CFA is a full member of Consumers International, the international peak body for the world's consumer organisations.

## **B. SUMMARY and RECOMMENDATIONS**

### **CFA considers:**

1. Australian consumers should be protected from misleading and misrepresentation in relation to produce and products claiming to be 'organic'.
2. Without clarity on what constitutes organic there is confusion about the 'organic' status of organic products and there is a lack of understanding about, and confidence in, products currently offered for sale as 'organic'.
3. The current lack of regulation in the organic domestic market provides a high risk of, and opportunity for, misleading, false or deceptive conduct and unsubstantiated claims.

### **CFA recommends:**

1. The introduction of regulations adopting a revised AS 6000<sup>1</sup> and MP 100<sup>2</sup> which deals with technical matters that do not appear in AS 6000 itself. A mandatory domestic organics standard was stated to be 'the main regulatory option identified' during DAWE's consultation.<sup>3</sup>
2. One standard and regulatory regime for the whole supply chain which would provide consistency across the sector. CFA's preferred option is for a regulation covering all businesses. There would also be considerable savings where one standard is used.
3. A requirement that one logo/certification mark is used to show the product is certified. The current use of different certification logos is confusing to consumers and one logo would facilitate the promotion of organically certified products and produce
4. The standard be developed by Standards Australia (SA) as the most appropriate organisation for developing an Australian standard for both domestic supply and export of organic produce because standards add more value to the community when developed through a balanced committee of stakeholders, consensus agreement and transparency than standards developed by organisations that represent a particular group or interests.

CFA does not support maintaining the status quo. Clearly maintaining the status quo does not solve any of the current problems experienced by consumers and industry.

While CFA is supportive of education campaigns and believes that purchasing information is beneficial to consumers in relation to organic produce and products, one of the biggest issues for consumers is the provision of accurate and reliable information and without a specific legal definition it is difficult to determine the focus of any education campaign

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<sup>1</sup> AS 6000-2015 Organic and biodynamic products, first published 2009 and amended 2015

<sup>2</sup> MP100 Procedures for certification of organic and biodynamic products

<sup>3</sup> Domestic Organic Regulatory Framework: Consultation Regulatory Impact statement (RIS) page 11

## **C. CURRENT POLICY PROBLEMS**

### **C.1 Consumer Confidence**

CFA agrees the statement in the RIS that that a major issue is 'A lack of clear and consistent information may impact consumer confidence and protections.'<sup>4</sup>

When consumers choose to buy organic products, they should be able to have confidence that the product is genuine and complies with strict nationally uniform rules. Currently in Australia there is confusion about the information and the 'organic' status of organic products available to consumers.

Consumers often look to information including logos on product packaging for an indication of country of origin, health benefit, nutrition etc., but in relation to organic products the information cannot always be relied on. Business names, brand names, words and logos are often used implying that the product is organic when it is not the case. Australian consumers are further confused by the different domestic certification logos and certifying organisations.

Some retailers and restaurants use the term 'organic' when only a small proportion of the products sold are organic. Products such as clothing and cosmetics are often sold as 'organic' with little or no substantiation. While the issues differ, it is important that non-food industries are included in any scheme or legislation.

### **C.2 Lack of legal Definition**

In addition to the lack of understanding and confidence that products are organic as described above, there is a lack of legal definition established over time by a strong regulatory regime based on a consensus-based standard.

Following the judgement in *ACCC v G O Drew Pty Ltd*<sup>5</sup> (see appendix 1), with its reference to the lack of legal definition, there appears to have been little or no enforcement action by regulatory authorities in relation to organic products.

### **C.3 Barrier to trade and market access**

While CFA is not able to specifically comment on potential barriers to trade and market access it is logical that a regulated domestic market would increase the level of confidence of international recipients of Australian organic products. While international consumers may not current be aware of the lack of domestic regulation, once in place an Australian domestic regulation could be promoted internationally and thereby enhance the reputation of Australian organic products

The CFA is not aware of any current barriers to certification but notes that some producers and retailers, not directly involved in export are certified particularly in relation to fresh fruit and vegetable produce. The main problem for consumers is that currently retail produce sellers are not required to be certified and those claiming to be organic and charging a premium price, do so while avoiding the costs of certification and, the additional cost of separation and specific record keeping.

### **C.4 Market failure**

Although CFA has anecdotal evidence of incidences of market failure such as a business using the word 'organics' in its title or business name where the majority of produce is non-organic, because

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<sup>4</sup> Ibid Page 3

<sup>5</sup> *Australian Competition and Consumer Commission v G O Drew Pty Ltd* [2007] FCA 1246

there is no domestic standard by which to measure market failure it is difficult to produce evidence to justify intervention as requested in the RIS.<sup>6</sup>

However, there are accounts of market failures:

- As mentioned above the ACCC acted seeking orders to prevent G O Drew Pty Ltd for supplying eggs that were labelled as 'organic'.
- In July 2013 the ACCC announced<sup>7</sup> that, following negotiations between the ACCC and the manufacturers, suppliers of bottled water would remove 'organic' claims from labelling and marketing material. An eighth supplier withdrew its product from sale. ACCC Deputy Chair, Delia Rickard said at the time 'organic standards acknowledge that water cannot be organic. Any claim that particular water is organic would therefore be misleading or deceptive'.
- In the development of AS 6000<sup>8</sup> market failure was instrumental for including a prohibition on the use of the word 'organic' or 'biodynamic' including on packaging, labelling, business names and logos where the term was false or may misled consumers.

Notwithstanding the lack concrete examples of market failure. CFA has a major concern that the current lack of regulation in the organic domestic market provides a high risk of, and opportunity for misleading, false or deceptive conduct and unsubstantiated claims

## **D. NON-REGULATORY APPROACHES**

### **D.1 Status Quo**

CFA does not support maintaining the status quo. Clearly maintaining the status quo does not solve any of the current problems experienced by consumers and industry. CFA is concerned that following the *ACCC v G O Drew Pty Ltd* judgment (mentioned above) it difficult to take regulatory action under ACL in relation to misleading and deceptive conduct.

### **D.2 Education campaign**

Australia is a member of the UN whose Guidelines for Consumer Protection principles state Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines and relevant international agreements.

The UN Guidelines include 'Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs'.

In Australia, the Harper Review<sup>9</sup> of Competition Policy acknowledged the contribution consumer information added to competition in the marketplace. The Harper Review recommended: 'Governments should work with industry, consumer groups and privacy experts to allow consumers to access information in an efficient format to improve informed consumer choice' and that '...governments, both in their own dealings with consumers and in any regulation of the information that businesses must provide to consumers, should draw on lessons from behavioural economics to present information and choices in ways that allow consumers to access, assess and act on them.'

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<sup>6</sup> Domestic Organic Regulatory Framework Consultation RIS page 8

<sup>7</sup> ACCC media release 16 July 2013

<sup>8</sup> Australian standard AS 6000 – 2015 Organic and biodynamic products

<sup>9</sup> Harper Review 2015 <http://competitionpolicyreview.gov.au/final-report>

CFA is supportive of education campaigns and considers that purchasing information should be included in any mix of policies supporting consumers in their purchasing decisions. However, in relation to organic produce and products one of the biggest issues for consumers is the lack of accurate and reliable information and without a specific legal definition it is difficult to determine the focus of any education campaign.

The Food Star initiative used as an example in the RIS<sup>10</sup> is a fairly simple system to assist consumers on recognising healthier products determined by the Health Star Rating Calculator. It would not be as easy to use a similar educative approach for the organic sector. Even the promotion of the use of certified products raises questions when there is more than one standard some of which are industry developed and controlled.

### **D.3 Industry led approach**

CFA accepts that serious attempts have been made by industry to refashion the industry with a unified single logo and an agreed domestic standard. However, certifiers continued to use their own logos and their own standards.

CFA believes industry has had ample opportunity to reach a common understanding where consumers, producers, retailers, certifiers and third-party auditors establish an agreed system, but an agreed system has not yet occurred. CFA believes that a mandatory domestic organic standard now the only way forward.

## **E. REGULATORY APPROACH**

### **E.1 Mandatory domestic organic standard**

CFA supports a mandatory domestic organic standard through new standalone Commonwealth legislation that the RIS<sup>11</sup> identified as ‘the main regulatory option identified’ during DAWE’s consultation’.

The UN Guidelines for Consumer Protection principles state Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines and relevant international agreements.

CFA supports the introduction of regulations designed to ensure that consumers have access to consistent, comparable information including the organic/biodynamic status and the organisation conducting the certification.

CFA considers that in matters pertaining to nationwide commerce the Australian Government is best placed to make, maintain, and enforce an adequate compliance system.

### **E.2 Domestic regulatory framework**

A domestic regulatory framework should aim to achieve as a minimum, a level of confidence to both consumers and industry that products and produce supplied as ‘organic’ have been subjected to a documented regime of management and farming practices that ensures the use of renewable resources and natural resource use without the use of artificial fertilisers or synthetic chemicals.

The framework should include a mandatory obligation for adherence to a recognised standard and include the ability for the inspection, enforcement, and regulatory sanctions in the event of alleged or recognised market failure.

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<sup>10</sup> RIS page 10

<sup>11</sup> Ibid page 11

The framework should also include a requirement that one logo/certification mark is used to show the product is certified. The current use of different certification logos is confusing to consumers and a one logo would facilitate the promotion of organically certified products and produce. The logo could be defined in MP-100 as part of the certification and a scheme could be introduced similar to the Regulatory Compliance Mark (RCM) for electrical products. The placement of the RCM on electrical and electronic equipment to indicate compliance with regulations. The RCM is defined in Australian Standard AS/NZS 4417<sup>12</sup>, incorporated into legislation and administered by Australian electrical regulatory authorities.

### **E.3 Organic products to be included**

CFA recommends that the organic products captured by the organic standard should be as wide as practically possible including all food products and fresh food; cosmetics (where there appears to be an overlap between use of 'organic' and 'natural' and often very little actual organ product) and pet food (now a major industry). Where products are not included there should be a qualification placed on the use of the word 'organic' to avoid the overuse of 'organic' with the effect of devaluing the term.

### **E.4 Which organic standard to be adopted**

It is important that standards are of maximum benefit to the community as a whole. Standards add more value to the community when developed through a balanced committee of stakeholders, consensus agreement and transparency than standards developed by organisations that represent a particular group or interests.

CFA considers Standards Australia (SA) is the most appropriate organisation for developing an Australian standard for both domestic supply and export of organic produce. SA is recognised as Australia's peak national standards body through a MoU held with the Commonwealth of Australia. As per the obligations set under the MoU with the Commonwealth, SA develops standards of net benefit to the Australian community through a process of consensus by:

- ensuring that project proposals to revise, adopt or create new standards demonstrate a positive impact on relevant communities,
- establishing an acceptable balance of all relevant interests in the technical committees that develop Australian Standards; and,
- making the standards development process accessible to the Australian public by providing opportunities for public comment and consultation.

In addition, SA is required to act in a way that is consistent with Australia's international obligations under the World Trade Organisation (WTO) Agreement on Technical Barriers to Trade (TBT).

CFA strongly supports AS 6000 which was modelled on the National Standard but provides more protection for Australian consumers than the National Standard particularly in the labelling and marketing areas. For example, under AS 6000 suppliers are not permitted to include 'organic' in their business name and/or logo when they are not organic or use the same logo on both certified organic and non-certified 'approved' non-organic products. In addition, AS 6000 refers training, restaurants and cafés and specific requirements for ingredient labelling.

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<sup>12</sup> AS/NZS 4417.2 Marking of electrical products to indicate compliance with regulations – General rules for use of the mark

CFA also supports the AS 6000 associated control document, MP100 which deals with technical matters that do not appear in the standard itself, such as equivalence, conformity assessment, competent authorities, and other systems for determining what is an acceptable standards and certification system, and whether the products of that system can be included in AS 6000 compliant operations.

SA Committee FT-032 which developed AS 6000 and MP 100 took the Codex Alimentarius Commission (Codex), the international food standards code into account when developing and revising AS 6000. A good export market for Australian products is also important for Australian consumers.

Relevant parts of AS 6000 could also be used as the export standard. At a 2020 SA Forum<sup>13</sup> ACCC stated that although not directly referenced in regulation, AS 6000 can be a more useful way to demonstrate an organic claim for sale within Australia.

AS 6000 was published in October 2009 and substantially amended in 2015 to facilitate practical and realistic management within the organic industry. SA developed the standard through a representative committee comprising organic certifiers and producers, retailers, manufacturers, consumer groups and government agencies. CFA accepts that AS 6000 needs revising but believes that because of the sound structure behind its development and its broad coverage (including retail, restaurants, and labelling) AS 6000 is the logical standard to use as a domestic mandatory standard

Organic standards used in Australia are generally owned and managed by private organisations and the National Standard was not developed by a balanced and transparent committee. Many consumers (and non-associated businesses) do not generally know who the stakeholders represent, or the process involved in amending the National Standard or certifiers' industrial standards based on the National Standard.

#### **E.5 One standard and regulatory regime for sector.**

CFA supports one standard and regulatory regime for the whole supply chain which would provide consistency across the sector. CFA also supports a standard that included both the domestic and export market. A good export market for Australian products is also important for Australian consumers. There would also be considerable savings where one standard is used. CFA's preferred option is for a regulation covering all businesses.

#### **E.6 Certification**

CFA's preferred option is for a certification process as it ensures that appropriate management practices are used including documentation and product labelling and segregation.

#### **E.7 Funding**

CFA would expect that any regulatory scheme would be considered in the same light as the administration of the ACL or the National Measurement Act and would be adequately funded by the Commonwealth Government.

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<sup>13</sup> <sup>13</sup> Standards Australia Organic Standards virtual Forum November 2020

Should you have further questions about this submission, please contact CFA via [info@consumersfederation.org.au](mailto:info@consumersfederation.org.au)

Contact Person: John Furbank, CFA Representative Standards Australia Committee FT- 032 *Organic and biodynamic products*.

#### **APPENDIX 1**

ACCC sought restraining orders by consent under the Trade Practices Act in relation to an alleged misleading or deceptive misrepresentation that the eggs were organic because eggs labelled as organic were different to eggs not so labelled, having regard to chemicals, feed and other substances used in production.

The orders would prevent the respondent, G O Drew Pty Ltd from supplying eggs that were labelled as 'organic'. Justice Gray stated, 'attempts to overcome the lack of clear criteria by which it can be said eggs are, or are not, organic have been unsuccessful'.

The court found, in effect, the meaning of the description 'organic' was imprecise and there was no general agreement on precisely what inputs may be regarded as artificial or chemical and to be avoided in the production of organic foods.

*Australian Competition and Consumer Commission v G O Drew Pty Ltd* [2007] FCA 1246