WEBINAR:
Australian Mandatory Domestic Standard: How to Prepare for Public Consultation
8 December 2021

Frequently Asked Questions (FAQs)

Doesn't Australia already have domestic regulation of organic goods?

No. While the National Standard is used to regulate exported goods, it is only used on a voluntary basis for domestic sales. There are over 3,200 certified organic operators within Australia who demonstrate this through displaying a certification logo on their product/s. However, there are many examples of businesses using the term 'organic' in their brand name or marketing material that do not go through an annual audit and are simply claiming organic for marketing and price premium purposes.

What does this mean for domestic sales of organic goods?

Brands and businesses can currently claim their goods are organic with as little as 2% organic ingredients This can negatively impact consumer confidence in organic products. The 2021 Australian Organic Market Report found that 31% of shoppers who purchased an organic product in the past 12 months believe they had been misled by organic claims on product packaging.

What are equivalence agreements?

Australian organic operators exported to 62 different countries in 2020.

Equivalency agreements are made between two parties (countries or entities like the European Union) to allow organic goods to be accepted within each country. While they can be negotiated without consistent domestic regulation, they generally require both parties to have domestic regulations in place.

However, equivalency arrangements differ between different countries and require agreement between a certifying body and a comparative organisation in that country.

Because there is no consistent domestic regulation, exporters rely on the National Standard, however certifiers often rely on different arrangements for different products, meaning operators sometimes are required to have multiple agreements with different certifiers.

Who does Australia currently have equivalence arrangements with?

Australia's organic export system is recognised as having equivalence in government-to-government arrangements with the following countries and regions:

The European Union – for:

- Unprocessed plant products, excluding seaweed
- Processed agricultural products for use as food composed of essentially one or more ingredients of plant origin, excluding wine and yeast
- Vegetative propagating material and seeds for cultivation

Japan – for:

- Plant-based products
- Livestock products and processed foods, excluding fishery products and bee products

Switzerland – for:

- Unprocessed plant products, excluding seaweed
- Processed agricultural products for use as food composed of essentially one or more ingredients of plant origin, excluding wine and yeast
- Vegetative propagating material and seeds for cultivation

Taiwan – for:

- Crops & livestock
- Aquatic plants
- Processed foods, excluding bee products

United Kingdom – for:

- Unprocessed plant products, excluding seaweed
- Processed agricultural products for use as food composed essentially of one or more ingredients of plant origin, excluding wine and yeast.
- Vegetative propagating material and seeds for cultivation

For context there are over 80 countries with organic policies, and as mentioned, Australia exported to 62 of these countries in 2020. However, we have no international equivalence with our biggest market for Australian organics, the United States, where 33% of total organic exports went to in 2020. Alongside the United States, Australia does not have equivalence with key markets including:

- China (6% current organic market share)
- Canada* (5% current organic market share)
- South Korea (5% current organic market share)

*Currently, organic products are certified to the US National Organic Program and enter Canada through the US-Canada equivalency. This incurs additional shipping costs on top of certification costs for producers and exporters.

How does lack of equivalence affect operators looking to export?

Australia is the last country in the developed world not to have mandatory domestic regulation of its organic industry. Operators looking to export their products overseas are required to certify their products for each new country they export their product to.

For example, Australian organic operators exporting to the United States are required to pay to recertify their products to the USDA Organic standard. This is also the case for the certifying standards in the key markets highlighted previously.

The additional cost and time required can have impact on the ability of operators expanding to new export markets, leading to lost opportunities for them as well as the wider economy. Data provided by ACO Certification Limited and AUS-QUAL revealed the cost of export market access

was approximately AUD$2.5million for operators who had products certified to those two certifying bodies.

Considering there are four other Government approved certification bodies in Australia, this figure is likely to be far higher.

What is the Organics Industry Advisory Group (OIAG)?

The OIAG was announced by Minister David Littleproud in December 2020. Comprised of sixteen industry representatives – organic operators, certification bodies, small grower associations, consumers, industry and peak groups, including Australian Organic Limited (AOL) - with oversight from the Department of Agriculture. The OIAG met between January and June 2021 to discuss options for the regulation of Australia's domestic organic market.

What are different options being discussed for domestic regulation?

In June 2020, AOL presented a discussion paper to Minister Littleproud highlighting the potential pathways towards a consistent domestic regulatory framework, including:

- Legislation
- An Information Standard under Australian Consumer Law
- A Food Code under FSANZ.

What would these options do?

Legislation: Under this option, a mandatory domestic organic standard would be created through standalone Commonwealth legislation. Operators wanting to sell their products as 'organic' would be required to meet the standard. This option would need to be accompanied by a compliance framework also established in the legislation to ensure businesses that fall within the scope of the standard meet the requirements of the standard.

Information Standard: Under this option, a domestic organic standard would be implemented through Schedule 2 of the *Competition and Consumer Act 2010* (Cth), the Australian Consumer Law (ACL), by introduction of a new organic Information Standard. The ACL is a principles-based law and also provides general protections against false, misleading, and deceptive conduct. These protections can address misrepresentations about organic labels on goods supplied to consumers.

Food Standards Australia New Zealand (FSANZ) Food Code: Under this option the mandatory domestic standard would be implemented through the FSANZ Standards Code (the Code). The Code is regulated by FSANZ, and covers food safety standards, production standards and labelling standards.

The food standards within the Code generally apply to all foods produced or imported for sale in Australia and New Zealand (with regards to composition and labelling standards). The Code is enforced by state and territory food regulators, and DAWE enforces the Code for imported food. The Code does not extend to non-food products (e.g. fibres, cosmetic and other non-consumables) and there is an absence of data to demonstrate the distribution between food, food inputs and non-food products. It is unclear how much of the organics sector would not be covered under this option.

What about small operators?

AOL is aware of small operators who may claim their goods as organic and sell them in local settings such as farmers markets or from the farmgate who may be impacted by the proposed changes.

While it may seem there is potentially a burden to be placed on small operators, AOL currently has nearly 400 small operators who are licensed to the Australian Certified Organic Standard (ACOS) and undergo annual audits. These operators choose to certify their business annually in order to provide verification for their rigorous organic management. With education around proposed changes to domestic regulation supported by AOL, there is no reason this number would drop or stay the same when consistent domestic regulation is introduced.

What is a Regulatory Impact Statement (RIS)?

A Regulatory Impact Statement or RIS is a document, similar to a cost-benefit analysis, designed to assist government officials to move towards 'best practice' regulatory design and implementation.

Preparation of a RIS formalises and documents the steps required for making regulation. It provides a consistent, systematic, and transparent process for assessing alternative approaches to regulatory problems. A RIS will assess the impact of proposed regulation, the pros, the cons and their effects on stakeholders in the community.

As operators, you will have the opportunity to become involved and provide submissions on the proposed domestic regulation options. The firsthand experience of our community will go a long way to help provide insight into the need for consistent domestic regulation.

What does the RIS process entail?

As highlighted by The Office of Best Practice Regulation (OBPR), there are seven questions which need to be answered as part of any RIS process, these questions are:

- What is the policy problem you are trying to solve?
- Why is government action needed?
- What policy options are you considering?
- What is the likely net benefit of each option?
- Who will be consulted, and how will they be consulted?
- What is the best option from those considered?
- How will the chosen option be implemented and evaluated?

To help answer these questions there are five stages needed to be undertaken to help finalise a RIS. The five stages are:

1. Preliminary Assessment: This stage determines whether a RIS is required and assesses the scale of the policy problem, the options being proposed, how many stakeholders are affected, impacts, cost burdens/savings and who is ultimately the decision maker.

2. Early Assessment (Optional): An early assessment can be undertaken when you have completed the first four of seven RIS Questions and planned your consultation process.

The Early Assessment will consider whether the information provided is proportionate to the scale and scope of the proposal, the information is sufficient for consultation or major non-final decision, and you have considered all policy options available.

3. Final Assessment: The final assessment addresses the seven RIS questions and is signed off by a Department's Deputy Secretary. This assessment must be completed before the final decision point or public announcement. At which point there are four different tiers a RIS can be assessed at:
    - Exemplary practice – Regulation highly recommended.
    - Good practice – Regulation recommended.
    - Adequate – Regulation can be done, though there could be some issues.
    - Insufficient – Too many issues to overcome, RIS will have to be redone to address issues.

4. Publication: The RIS is published along with the final assessment.

5. Post-Implementation Review: (Subject to additional requirement) Certain circumstances triggers Post Implementation Review, which will help you evaluate whether the implemented policy is operating as intended. This is based on the following criteria:
    - Proposal has a substantial or widespread economic impact;
    - A RIS was required and one was not done or was assessed as not meeting the Government's impact analysis framework; or
    - A Prime Minister's exemption was granted from the requirement to complete a RIS.

For more information on the questions and the process please see the following links for more detail.

https://obpr.pmc.gov.au/impact-analysis-process
https://obpr.pmc.gov.au/sites/default/files/2021-06/7-ris-questions.pdf

What are regulatory and non-regulatory options?

As part of the consultation, the Minister has asked for consideration of regulatory and non-regulatory options:

Examples of regulatory options include:

- Legislation – Domestic regulation legislated through parliament.
- Delegated Legislation – Legislated powers delegated to a government body/agency who will be responsible for enforcing regulations, e.g. the ACCC and FSANZ.
- Co-Regulation – Regulatory role is shared between government and industry. Usually affected through legislative reference or endorsement of a code of consultation with the government.
- Self-regulation – Industry written rules and codes of conduct enforced by the industry itself.

Examples of non-regulatory options include:

- Status Quo - Letting market forces prevail

- Reducing information barriers through consultative mechanisms (whereby industry-government forums provide an avenue for government to work collaboratively with industry on a number of issues including harmonisation of industry regulations and standards); and
- Providing education programmes and information e.g. programs/seminars run by peak bodies, short-term courses run in conjunction with universities and TAFEs.
- Quasi-Regulations – cover a wide range of rules or arrangements that are not part of explicit government regulation, but nevertheless seek to influence the behaviour of businesses, community organisations and individuals. Examples include industry guidelines, codes of practice, standards, anything which requires compliance.

These are the types of regulatory and non-regulatory options which may be discussed throughout the consultation process and can be raised as part of any submission you may wish to provide.

If I write a submission, am I required to provide personal/private information?

When you write a submission and are prepared to send it there are generally options available to allow you to remain anonymous. Options which are normally given to you include:

- Having your submission published but your name withheld. This option will allow your submission to be published but all references to your name and/or business will be removed.
- Submissions to be submitted but not published. This will allow you to write a submission which will only be seen by people associated with the committee.

If you are concerned, AOL will also be writing a submission and any examples you would like to provide can be included in our submission with discretion.

More information will be provided during the webinar on 8 December 2021, see more here.