

Domestic regulation of Australia's organics industry

Organics Industry Advisory Group

Interim report to Minister Littleproud

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1. Executive Summary

In late 2020, the Minister for Agriculture, Drought, and Emergency Management, the Hon David Littleproud MP (the Minister), requested the creation of an Organics Industry Advisory Group (the advisory group) to provide advice on whether Australia's domestic organic regulation framework is fit-for-purpose. The scope of the advisory group was limited to examining the suitability of the current domestic regulatory framework, whether changes to the framework would support industry development, and the potential costs and benefits of such changes to industry and consumers.

This report has been prepared to provide the advisory group's advice.

Is Australia's domestic regulatory framework fit-for-purpose?

The advisory group considers that with New Zealand currently progressing legislation to introduce a mandatory domestic organic standard, Australia will soon be the only major organic producing country to not have a mandatory regime in place. This gap in regulation:

- risks supply chain integrity, putting Australia's clean and green reputation at risk;
- inhibits the growth of the industry through the inefficiencies created by the existing fragmented regulatory system;
- is a key reason trading partners have provided for not negotiating equivalence arrangements;
- allows varying organic standards to be applied to organic food and products; and
- creates confusion amongst consumers on whether a product is truly organic and increases the likelihood of misleading label claims.

The advisory group considers it is vitally important the Australian Government improves organic regulation to ensure it is fit-for-purpose. The industry is estimated to be worth \$2.6 billion per year and is projected to grow strongly over the next five years, with revenue forecast to increase at an annualised rate of 14.6 per cent through to 2024-25. To secure and expedite this growth, the advisory group believes it is imperative that the government invests in industry development, including through the harmonisation of organic regulation.

The advisory group concluded that without improved regulation there is a risk there will be a loss in confidence in the sector, which will prevent industry from realising its potential. Growth of the industry to date, has been the result of the diligent use of the National Standard for Organic and Biodynamic Produce (National Standard) by parts of the industry and through responsible retailers requiring organic operators be certified to support consumer confidence and ensure customers are getting what they pay for. Future and continued growth of the sector is largely dependent on maintaining and growing consumer confidence, which can only be secured through appropriate regulation.

From an international perspective, the global demand for organic products is increasing, presenting a major commercial opportunity for Australian organic producers, manufacturers, exporters and other businesses along the supply chain. To support industry to maximise its potential in the USD\$97 billion global organic market, it is critical that Australia's domestic organics regulatory framework is fit-for-purpose and does not inhibit sector growth (Research Institute of Organic Agriculture (FiBL) and IFOAM – Organics International, 2020).

What should a regulatory framework look like?

The advisory group considered the key features required for an improved domestic regulatory framework and concluded that any framework should include:

- a mandatory domestic organic standard;
- a mandatory certification scheme; and
- proactive enforcement.

It is the advisory group's opinion that a mandatory domestic standard, underpinned by a robust certification and enforcement system, would allow Australia to capitalise on opportunities in the domestic and export markets and reduce the costs of exporting to key trading partners. This constitutes a significant opportunity for Australian organic operators, and for the Australian economy more generally. There is a clear opportunity for the government to provide a more effective and fit-for-purpose regulatory system that will allow the organics industry to take advantage of this growing demand for organic products in domestic and international markets.

What are the costs and benefits of implementing a mandatory domestic regulatory standard?

To inform the advisory group's discussions, it was agreed that the Department of Agriculture, Water and the Environment (DAWE) would engage a consultant to undertake a desktop cost benefit analysis (CBA) for the implementation of a mandatory domestic organic standard through three identified implementation pathways:

- Option 1 - An information standard under Australian Consumer Law
- Option 2 - A food standard under the Australia New Zealand Food Standards Code
- Option 3 - A mandatory standard via new standalone Commonwealth legislation.

The analysis showed that implementing a mandatory standard would deliver significant economic benefits to industry and consumers, a stance supported by the advisory group.

Despite this the group has a number of strong issues with the CBA report due to flaws in the methodology, assumptions, and underlying data (see 3.4.2). The advisory group views that the limitations from undertaking a rapid desktop assessment, with no access to robust data and inadequate quantitative methods, means the specific quantitative results of the report

are contrived, and that it would be a grave mistake to place any credence on such weak quantitative results for use in policy development.

After consideration of these issues and all the variables, the advisory group concluded that Option 3 is the best mechanism to implement a mandatory domestic organic standard. This is because Option 3 allows the regulatory framework to be tailored to the specific needs of the organic sector while providing a solid basis from which to negotiate export equivalence arrangements, improve market integrity, and enhance consumer confidence.

The group concluded that Options 1 and 2 were negatively impacted by their lack of proactive enforcement, and that the needs of the organic industry would less easily be met through an existing regulatory mechanism, constrained by existing priorities.

Based on the above, the advisory group recommends that a mandatory domestic organic standard be implemented through new standalone Commonwealth legislation.

2. Recommendations

The group agreed by majority that:

1. Government implement a mandatory domestic organic standard through Commonwealth standalone legislation which includes a mandatory certification scheme.
2. The Australian Consumer Law (ACL) and Food Standards Australia and New Zealand (FSANZ) models take the opportunity away from industry to help develop a standard which fits the needs of the industry and should not be considered.
3. The cost benefit analysis conducted by Deloitte should not be considered by the Minister, the Department or any other departments involved in developing the domestic standard.
4. DAWE recommends Commonwealth standalone legislation to other departments during the next phase of development.
5. DAWE work with the Minister to develop the preferred option of the Organic Industry Advisory Group.
6. DAWE work with industry to help draft standalone legislation which will work best across the organics industry.

3. Discussion questions

3.1. Summary of discussion questions

The advisory group discussed three key questions:

- 1) Is Australia's domestic regulatory framework for organics fit for purpose?
- 2) If not, what would a fit for purpose framework look like?
- 3) What would the likely costs and benefits of any recommended changes to the regulatory framework be to industry and consumers?

The advisory group's discussion on each of these questions is set out below.

3.2. Question 1: Is Australia's domestic regulatory framework for organics fit-for-purpose?

The advisory group considered Australia's domestic regulatory framework for organics and agreed by consensus that it was not fit-for-purpose.

Representatives raised concerns that the current regulatory framework did not adequately address issues relating to export equivalence, market integrity and consumer confidence.

3.2.1 Export equivalence

Representatives highlighted that the current regulatory framework creates impediments to, and increases costs of, market access. Key international markets for organic products, including the USA and South Korea, have advised they will not enter equivalence arrangements for organic products with Australia because of the lack of domestic regulation. Under current arrangements, operators can access these markets only through conformity assessments whereby an Australian certifying body enters an arrangement with an overseas government entity to allow the certifying organisation to certify goods for export to that market.

The costs to certification bodies of maintaining such overseas arrangements are significant and are passed onto businesses requesting this certification – typically as an add-on fee, charged per export market. This system creates significant barriers to organic businesses interested in exporting to markets under private arrangements due to the up front and ongoing costs associated with maintaining access. These costs are on top of other administrative costs attached to exporting organic products, such as the \$55 charged per Organic Goods Certificate required for every organic shipment.

It also results in significant cost duplication for industry because exporters need to comply with both Australia's export requirements and separately meet the costs to partake in conformity assessment arrangements. These duplicated costs could be eliminated through the establishment of government-to-government equivalence arrangements because exporters would only need to meet the cost of certification under the National Standard.

Trade opportunities for Australian organic producers would increase as the economic burden of exporting decreased.

Greater market access would also improve industry stability because businesses can target both domestic and export markets, allowing them to diversify their downstream customer bases, providing protection from a downturn in any one market.

3.2.2 Market integrity

The advisory group also raised concerns that the long-term security of Australia's organics industry is currently at risk due to the lack of a mandatory domestic organic standard and mandatory certification of organic products. The current regulations (ACL and FSANZ) which are relied upon by industry and consumers are not fit-for-purpose. They do not ensure that all ingredients or materials used to create an organic product are genuinely organic. This has resulted in a range of products making it to market with unsubstantiated organic claims, presenting a major risk to the integrity of Australia's organics sector and certified organic producers, which are reliant on consumer trust. Most members agreed that once the industry was required to comply with a single standard, this risk would be lessened, and the integrity of the industry strengthened.

Representatives noted that the current regulatory environment means products that are not certified organic can be marketed as organic. In most cases, these products attract a price premium to non-organic products (and similar to certified organic products) without undergoing the independent testing that verifies that the product is, in fact, organic. As a result, those businesses that do the right thing by becoming certified - that invest time and resources to maintain the integrity of organic products in the marketplace - are significantly disadvantaged. This situation also means that products claiming to be organic, without certification, have the potential to damage the reputation of the organics industry as a whole.

3.2.3 Consumer confidence

The advisory group noted that the current regulatory environment means that consumers are vulnerable to being misled, and operators can gain the financial benefits of selling products as 'organic' without substantiating their claims.

Some representatives felt that if consumers become aware that a 'notable proportion' of the products making it to market may not be genuinely 'organic' they may stop buying organic products altogether. The advisory group noted that this would impact producers, manufacturers, exporters, and other businesses throughout the organics supply chain. Some representatives stated that organic businesses face the ever-present threat of losing their consumer base due to the wrongdoing of other businesses. Importantly, this would also deny consumers access to products they do desire and would be prepared to pay a premium price.

The advisory group was also concerned that the existing domestic framework does not have clear product labelling requirements, which has led to the use of a variety of labels and terms on product packaging. They felt that this lack of consistency among organic product labels further undermines consumer trust in organic claims and the organics sector more broadly. It also hampers the ability of consumer law enforcement agencies to pursue

complaints relating to false and misleading organic claims. This was noted as a key failure of the existing system by members. Members wanted to provide government with a greater ability to prosecute those who are claimed to have misleading labelling.

Some representatives felt that the inconsistent domestic framework leaves Australia's organics sector vulnerable to market failure, should consumers stop buying organic products at scale. They feel that this is a real possibility due to the lack of regulation in place to ensure that products and their inputs are genuinely organic. These representatives also highlighted that although there are estimates that project consistent growth of the organic sector for the coming years, this can only be achieved through securing consumer trust. Most of the advisory group felt that the best way to support consumer trust is by introducing a mandatory domestic organic standard with mandatory certification.

3.3. Question 2: If not, what would a fit-for-purpose framework look like?

The advisory group reached consensus early in the consultation that the current regulatory system is not fit-for-purpose. The current regulatory framework does not provide adequate regulatory oversight for large parts of the organic industry. Consumer confidence and market integrity is at risk and opportunities for sales of organic products in export markets are unrealised. To better support industry development and integrity, the advisory group considered what a fit-for-purpose framework would look like.

3.3.1 Mandatory standard

Representatives were strongly in favour of introducing a mandatory domestic organic standard to provide consistency in the treatment of organic products intended for the domestic and export markets. Most members agreed that the implementation of the National Standard domestically is preferable because it is widely used and the standard that current equivalence arrangements have been negotiated under.

Some trading partners have indicated that they will not enter equivalence arrangements with Australia until there is consistent regulation across domestic, imported and exported organic products. Most members believe that using the National Standard is the simplest way to demonstrate consistency. The advisory group noted other benefits, for instance, each of the six approved certifying bodies (for export purposes) already certify operators to the National Standard. Therefore a significant portion of the industry is already compliant with the standard, which would reduce the regulatory impact on industry should a standard be mandated in the domestic market.

A couple of representatives were of the view that further analysis should be undertaken prior to the advisory group recommending the National Standard be applied domestically. They considered the AS6000 was a viable alternative to the National Standard. It was argued there is greater transparency in the development of the AS6000 compared to the opaque nature of the Organic Industry Standards and Certification Council (OISCC) which is responsible for managing and maintaining the National Standard. Other representatives refuted such claims and noted that the National Standard sub-Committee (NSsC) is an independent committee that has independent individuals appointed every 4 years, has a

Terms of Reference (TOR) approved by the DAWE, and has representatives of DAWE observing meetings of the NSsC.

3.3.2 Mandatory certification

Representatives of the advisory group reached consensus that mandatory certification is required to create a fit-for-purpose regulatory framework because certification provides evidence to trading partners and consumers that integrity underpins Australia's organic industry. The advisory group also considered mandatory certification to be essential to support the negotiation of new equivalence arrangements and could reduce costs for exporters by removing some certification and auditing processes required to meet international standards.

Two representatives noted that the cost of going through organic certification can be prohibitive for smaller producers entering the sector and that consideration should be given to supporting smaller producers to assist with transitioning to certified organic. Alternatively, a turnover ceiling or a three-year transition period could be applied to mandatory compliance to ensure small farmers and small artisan food producers are not forced out of the sector, deterred by compliance costs.

A single certification logo

As part of a mandatory certification system, most members agreed there should be a single certification logo used by operators. While all members agreed to recommending a single logo, some members noted that mandating the use of a single certification logo is likely to increase labelling costs for many operators. These members suggested that having a single certification logo available but not mandatory would simplify labelling requirements, which can be complicated and costly for operators, especially those exporting to multiple markets.

While consensus was not reached on whether the logo should be new or adopted from an existing organisation, there were three key options considered by the representatives:

- adopting an existing industry logo;
- creating a new government logo; or
- adopting the OISCC Certification Trademark.

Adopting an existing logo like Australian Organic Limited's 'bud' logo was discussed. In this scenario, it was considered likely that license fees (or similar arrangement) would need to be paid by operators. It was noted that it is unlikely that government would mandate an existing logo, whereby licence fees would be required.

The success of the USDA's organic seal was noted when considering the benefits of a government logo. It is argued that a government is likely to provide greater consumer confidence and better support the perception of integrity. It was noted that to capture these benefits, funding would be required to support a consumer education and marketing campaign to build brand awareness.

3.3.3 Enforcement

Most representatives of the advisory group strongly believe that the lack of enforcement under the existing regulatory framework is posing an unacceptable risk to the integrity of the entire organics supply chain.

The general sentiment of the advisory group is that adequate enforcement is required to support equivalence negotiations, market integrity and consumer confidence. Many members highlighted instances whereby 'fake' organic products are being allowed to trade off the goodwill of the rest of industry who voluntarily certify.

There was consensus amongst members that a lack of resourcing hampers the ACCC's and state and territories' ability to adequately enforce false, misleading, and deceptive 'organic' claims. While some members noted the introduction of a mandatory standard may better support the ACCC and state and territories to enforce the ACL, it was agreed that without additional, specific resources, this is unlikely to go far enough.

Co-regulatory model

Representatives were broadly supportive of a co-regulatory model whereby certifiers are responsible for monitoring and enforcing the compliance of operators they certify, and government is responsible for monitoring and enforcing compliance of operators who fall outside the certification system.

Complaints system

Representatives agreed there needs to be a complaints system built into any enforcement regime. While certifying bodies can investigate and respond to complaints on operators they certify, there is currently no single, effective avenue for consumers and operators to submit concerns relating to organic labelling claims.

Any complaints handling system should comply with best practice and complaints data should be transparent and publicly available. There should be interagency cooperation to ensure that complaints about false organics claims assist identification of any systemic issues.

It was noted that an existing reporting mechanism for the National Standard through the OISCC could be extended to domestic complaints. However, some members noted this avenue is not well known and would need to be sufficiently promoted to be adequate. Any complaints relating to certified operators would be dealt with by the relevant certifying body.

3.4. Question 3: What would the likely costs and benefits of any recommended changes to the regulatory framework be to industry and consumers?

The advisory group considered the impacts of implementing a mandatory domestic organic standard and determined that there will likely be a range of costs and benefits to industry and consumers.

3.4.1 Cost benefit analysis

To inform the advisory group's discussions, it was agreed that DAWE would engage Deloitte Access Economics to undertake a desktop CBA of currently available information for the implementation of a mandatory domestic organic standard through three identified implementation pathways:

- Option 1 - via an information standard incorporated in the ACL, enforced jointly by the ACCC and state and territory consumer affairs regulators (considered with and without mandatory certification).
- Option 2 - via the Code developed by Food Standards Australia New Zealand (FSANZ) and enforced by state and territory authorities (no mandatory certification possible).
- Option 3 - via new Commonwealth legislation, enforced through a new Commonwealth regime (considered with and without mandatory certification).

The analysis showed that implementing a mandatory standard has significant economic benefits to industry, regardless of the implementation pathway:

- Option 1 - \$75.6 million over ten years
- Option 2 - \$13.2 million over ten years
- Option 3 - \$69.3 million over ten years.

The CBA indicated that pursuing a mandatory domestic standard through:

- Option 1 would cost \$70.3 million over ten years, but would net \$75.6 million for industry and the economy over the same period.
- Option 2 would cost \$6.9 million over ten years and would net \$13.2 million over the same period, however, this option the least significant overall benefit to the industry and the economy.
- Option 3 provided an economic benefit to industry of \$69.3 million over 10 years but a net cost the economy of \$24.3 million over ten years, because of a \$93.6 million cost to government.

3.4.2 The advisory group's position on the cost benefit analysis

The advisory group has fundamental issues with the CBA including with the methodology, assumptions, and underlying data. The CBA misses the key point that robust domestic regulation is needed to underpin the industry.

The advisory group believes there are significant policy and regulatory problems that would benefit from any improvement in regulatory arrangements, including industry integrity, market access and consumer confidence. In particular, better domestic market regulation would give governments and industry the opportunity to implement measures to improve the professionalism with which those standards were applied, and improve industry conduct more generally.

The advisory group views that the limitations from undertaking a rapid desktop assessment, with no access to robust data and inadequate quantitative methods, means the quantitative results are contrived. It would be a grave mistake to place any credence on such weak quantitative results for use in policy development.

Any attempt to use the CBA to develop legislation risks stalling the growth of the industry and giving different Departments involved in the process of developing domestic legislation the belief that the best option is option 2 the option that has been near unanimously rejected by the group.

It should not be used to guide opinion on domestic regulation, if anything the lack of relevant information to the Australian Organic industry in the CBA is an indication that more needs to be done to build the research and development of the industry so any future discussions on regulation can be better served.

Data gaps and assumptions

The advisory group believes the CBA has been negatively impacted by data-gaps in the sector, which has led to questionable assumptions underpinning the analysis. The lack of available information is a significant limitation. This limitation is not balanced in the report by the views put forward by the Group, views, based on direct industry experience.

The most prominent data point that has relevance for the figures in the report is the number of certified and uncertified operators, and there were some issues raised with the figure. Correct operator data is significant because the benefits and costs noted in the report largely stem from the costs and benefits associated with uncertified operators. The advisory group believes this is a significant issue with the report because as the costs and benefits to certified operators are poorly substantiated and not well reflected in the overall analysis.

Further, the group notes the "cost" to uncertified organic producers is considered as a negative. This ignores the fact that a number of these producers contribute to issues in the domestic market while, taking benefits at a cost to consumers and certified producers. The advisory group believes imposing a cost on these producers is not a true cost, but should actually be seen as a benefit.

Costs and benefits not considered

Willingness to pay for certified products

The CBA only considers the costs and benefits to non-certified producers while assuming a zero benefit for existing certified producers. The advisory group believes this is incorrect, because the lack of a domestic standard also reduces confidence and 'willingness to pay' for certified producers by undermining existing claims (not all uncertified operators are compliant with organic standards). Under a fully regulated domestic standard, the advisory group believes consumer confidence would also rise in certified products.

Exports

The CBA notes the significant potential for export market access should export markets recognise our domestic regulations as equivalent to their own, and yet implicitly assumes the benefit to be zero. This assumption effectively writes-off the potential benefits for some of the options outlined in the CBA. The advisory group believes this seriously skews the CBA's overall findings. The advisory group notes the CBA does not consider costs associated with export regulations for existing organic operators beyond those directly connected with certification fees, and fails to clearly articulate the need and benefit of congruence between domestic and export standards and compliance. It is the advisory group's view that Australian certifiers likely have more regular and detailed audits because there is no domestic regulation in Australia to provide confidence to the auditor about our organic production systems. Exporting operators also must participate in these audit processes. The advisory group notes the costs to operators involved in these audits are magnitudes larger than those identified in the CBA, which undermines the reliability of the Benefit Cost Ratios (BCRs) in the analysis.

While the aforementioned additional audit costs are a large burden on exporters, they are insignificant when compared to the opportunity cost of lost exports which regularly arise due to stock on hand at the time of the given opportunity not holding the required international certification, hence that opportunity is lost.

Assumptions on the implementation options

'Status quo'

The CBA assumes the industry will continue to grow under the status quo option, but fails to consider the costs to industry of this scenario. The group notes the base case is not a steady state from which the other options can be adequately analysed. Certifying bodies and certified operators will continue to pay if the status quo remains. Lost export opportunities, costs to educate, depression in consumer confidence are all costs that have not been considered. At a minimum, the deficiencies in the current regulatory arrangements, and the quantitative effects over time of those deficiencies should have been recognised in the report to highlight the market failure that may result from doing nothing.

Issues with Option 2

The advisory group is strongly of the view Option 2 would not realistically deliver sufficient consumer protection and would not improve likelihood of trade or equivalence agreements,

because it does not provide for mandatory certification. The Group's view is that without mandatory certification there would not be robust protection for consumers in Australia, nor confidence in the system from the viewpoint of overseas trading partners.

While option 2 emerges as the preferred option within the limited considerations of the CBA, the Group's strong opinion is this option would not deliver the benefits sought by industry, and should be disregarded.

If this option were to be considered it was the groups opinion it would be more preferable to maintain the status quo than go with option 2.

Benefits of Option 3

The advisory group considers the benefits of a certified standard under proposals 1a and 3a err on the conservative side, and the rationale for this makes some sense, given the difficulty of quantifying some of the benefits. On the other side, the Group believes the costs are overstated and could be quite a bit lower given some tweaks to the implementation timeframe and process. While assumptions were made about the cost of these options, there was a failure to make any assumption about the benefit to the government. Consequently, the net present value and benefit cost ratios for options 1a and 3a appear poorly presented and distorted relative to the other options. The CBA assumes benefits are the same to the industry across all options. However, the advisory group considers mandatory certification under options 1a and 3a will deliver additional benefits including market access and equivalence and a reduction in regulatory burden. The advisory group considers these benefits have not been properly considered and this has skewed the BCRs towards options that will not meet industry needs.

3.4.3 Key benefits

Key benefits of implementing a domestic organic regulation identified by the advisory group, but not quantified in the CBA are:

- **Support supply chain integrity** by implementing regulations that provide certainty that ingredients within organic products meet specified and nationally consistent standards.
- **Support consumer confidence and market integrity** by implementing a clear and consistent domestic organics framework. This would provide consumers with clarity on that ingredients within an organic product meet a specified and nationally consistent standard, and ensure they received what they were intending to buy. This could include specific product labelling requirements for organic products to protect consumers from false and misleading claims.
- **Increase domestic organic sales and scope.** Increased consumer confidence in the authenticity of organic products and the overall supply chain could lead to increased sales (both volume and value) and scope of organic products in Australia.
- **Increase Australian organic exports** by facilitating the development of new equivalence arrangements. As outlined above, implementing a mandatory domestic organic standard could promote the development of new equivalence arrangements with key trade partners.

- **Reduce international certification costs.** Currently, Australian exporters must pay significant certification and auditing costs to become certified to international organic standards. This is a common condition for entry to international markets where Australia does not have an organic export equivalence arrangement. The high cost of international certification is an inhibitor for small organic operators to venture into exports. If new organic export equivalence arrangements were negotiated these costs could be removed, providing a financial benefit to operators paying for international certification and facilitating export opportunities for small operators.
- **Guarantee long-term security and profitability** of Australia's organics sector if a mandatory domestic organic standard includes mandatory certification. This will ensure that products labelled or marketed as organic are truly organic.

4. Opportunities to address key issues

4.1. Benefits of a single, mandatory standard for domestic organics

The introduction of a single, mandatory domestic standard for organic production and labelling will deliver significant benefits to industry, consumers and government.

Table 1 – Benefits of a single, mandatory domestic organic standard

What benefits are there for industry?	What benefits are there for consumers?	What benefits are there for government?
<ul style="list-style-type: none"> All organic businesses are required to adhere to the same standards Supply chain integrity – certainty that ingredients within organic products meet specific standards Market integrity – consumers will have greater confidence that organic products are made to a specific standard and will continue to buy organic Export market access to key markets including South Korea and the United States or America Consumer confidence resulting in growth in value and volume of organic sales 	<ul style="list-style-type: none"> Consumers are certain that they are receiving the product that they paid for Consumers have confidence that the products they are purchasing are produced in accordance with agreed standards. Consumers can independently verify organic claims Greater protection and enforcement under Australian Consumer Law 	<ul style="list-style-type: none"> Economic growth and increased tax revenue A robust and secure organics industry with diversified market access International reputation and credibility of Australia’s agricultural sector.

4.2. Options considered by the advisory group

Option 1 – An information standard under Australian Consumer Law

Under this option, the mandatory domestic organic standard would be implemented through the ACL through an information standard. The ACL is a principles-based law and provides general protections against false, misleading, and deceptive conduct. These protections can address misrepresentations about organic labels on goods supplied to consumers.

The ACL is administered and enforced jointly by the ACCC and state and territory consumer protection agencies.

Option 2 – A food standard under the Australia New Zealand Food Standards Code

Under this option, the mandatory domestic organic standard would be implemented through the Australia New Zealand Food Standards Code (the Code). The Code is regulated by FSANZ. The Code 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.

Option 3 – A mandatory standard via standalone Commonwealth 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 in order to do so. This option would need to be accompanied by a compliance framework also established in the legislation to ensure that businesses that fall within the scope of the standard are meeting the requirements of the standard. This option is the most flexible and would allow a new system to be tailored to the requirements of the organic industry.

Consideration of options

The group considered each of the implementation models against the desired design features and outcomes required from a domestic regulatory framework. Overall, while there were some differing views on how a mandatory standard should be implemented, option 3 emerged as the preferred implementation mechanism by the majority of the group. A table summarising the considerations of each implementation option is at **Attachment C**.

Some members noted that limited data within the industry hampered the group's ability to make an informed decision and that these data gaps should be addressed through further research before the group recommended a course of action.

Option 1 – An information standard under ACL

Some members preferred implementation through an information standard under the ACL. Advocates for this option noted that it would cover all organic products (including non-food products), make use of an existing regulatory mechanism, and would provide the legislative basis required to enable the ACCC to prosecute false and misleading labelling claims.

Other members noted that while an information standard would address labelling claims, it would not address production. A separate production standard would therefore need to be implemented in conjunction with the information standard.

Concerns were also raised that the ACCC has not been effective in proving misleading labelling claims in the past, and while an information standard may help to make these

claims more provable, false or misleading organic labelling claims are unlikely to be a high priority for the ACCC or for state and territory consumer affairs regulators.

The majority of the group rejected this implementation mechanism.

Option 2 - A food standard under the Australia New Zealand Food Standards Code

The primary view of the group was that Option 2 could not operate within a co-regulatory model, that there was no certification mechanism, and that the standard would be developed by FSANZ and therefore would not be aligned with the National Standard. There was general consensus that these combined features mean that export equivalence would be unlikely to be achieved, consumer confidence without certification would not improve, and limited enforcement mechanisms would not improve market integrity. The group noted that this option would not result in the outcomes desired by industry.

Specifically, representatives of the group noted that the Code could not support mandatory certification because all food producers and manufacturers are simply required to meet a standard under the Code but do not need to demonstrate that a standard has been met. Most members agreed this made the Code an unacceptable option.

The group further noted that this mechanism would limit the standard to food, which the majority viewed as too narrow in scope. This means that a separate scheme would be required to cover non-food products, which some members were opposed to and others supported. Additionally, concerns were raised about whether the Code could be applied to organic inputs, such as stockfeed to ensure integrity across the organic production and manufacturing supply chain.

Some members suggested that the focus of FSANZ was on food safety and that organic consumer issues such as organic production and labelling would not rate highly and that there would likely be limited interest from FSANZ in developing or implementing such a standard. In addition, these members felt that given enforcement of the Code is undertaken by states and territories independently of each other, there was no clear or consistent way to ensure that enforcing organic standards was a priority.

Two members of the group preferred this option. One member noted the low cost of the option and potential use of an existing mechanism, but was concerned about statements from the rest of the group that a lack of certification requirement would impact on market access negotiations.

The group overwhelmingly rejected this option.

Option 3 - A mandatory standard via standalone Commonwealth legislation

The group strongly prefers implementing a mandatory standard through standalone Commonwealth legislation. Members agreed that this option is the most flexible and meets the widest number of criteria, with the highest benefit for industry. The group felt that this option allows for the creation of a regulatory framework that can be tailored to the specific

needs of the organic sector, and provides the opportunity to incorporate almost all of the preferred design features.

The group felt that based on available information, this is the only option of the three options considered that could incorporate a co-regulatory model, allowing for the expansion of the existing, proven system for exports into the domestic space.

Most members agreed that implementing a mandatory standard through this option is also the best mechanism to improve integrity in Australia's domestic organics market because it will provide dedicated resources to enforce the mandatory standard. Some members emphasised that this option could provide the flexibility to incorporate penalties that revoke accreditation and withdraw non-compliant operators' ability to use the term 'organic'.

The group recognised there are some minor limitations to this option. The group is aware that that sale of products from NZ are likely exempt 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*. If necessary, this could be rectified by amending the treaty with New Zealand, however, given New Zealand is in the process of amending their legislation to implement a mandatory domestic organic standard, this may not be required.

The group is also aware that this option may not capture sales within a state between two unincorporated bodies. The volume and value of these sales are considered to be insignificant and it has been noted by some members that this is an advantage of this option because in effect this could provide an exception to smaller, micro producers to mandatory regulation. Despite these gaps, the group considers that this option is the best mechanism to improve integrity in Australia's domestic organics market and capitalise on opportunities in export markets for the sale of Australian organic products.

The group agreed by consensus that Option 3 would result in the highest benefit to industry through market growth, export opportunity and coverage of organic food and non-food products.

5. Background

5.1 Context

Australia has a diverse organics industry, producing a range of foods, textiles, cosmetics, and other products. The organics industry contributes approximately \$2.6 billion to the Australian economy each year with revenue projected to grow at 15.1% annually from 2020-2021 to 2024-2025 (IBIS World, 2019). The organics industry also creates jobs across the nation, particularly in regional and rural areas, and contributes toward the broader agriculture sector's goal to increase the value of Australian agriculture to \$100 billion by 2030.

5.2 Industry advisory group

In December 2020, after a thorough short-listing process of potential stakeholders, DAWE approached appropriate organisations and individuals to participate in the group. Careful consideration was undertaken to ensure that the group consisted of stakeholders from across the organics supply chain, including: producers, manufacturers, farmers' markets, retailers, certifiers, consumers, and importers and exporters.

DAWE procured an independent chair, Mr Stephen Copplin, to provide independent leadership to the group.

Group members

- *Independent Chair – Stephen Copplin*
- ACO Certification Ltd – Rick McDougal
- Angove Family Winemakers – Victoria Angove
- Arcadian Organic and Natural Meat Co. – Alister Ferguson
- AUS-QUAL – Ian King
- Australian Farmers' Markets Association – Jane Adams
- Australian Organic Limited – Niki Ford
- Bio-Dynamic Research Institute – Sue Armstrong
- Consumer Law Expert – Professor Gail Pearson
- Cullen Wines – Vanya Cullen
- Kialla Pure Foods and Aus Organic Feeds – Quentin Kennedy
- Mallee Organics & Wattle Organic Farms – Kelvin Free
- National Retail Association – David Stout
- Organic Industries of Australia – Dalene Wray

- Organic Systems and Solutions – Marg Will
- Pure Harvest – Pasquale Lazarro
- The Organic Milk Company – Ryan Reynolds

5.3 Objective

The objective of the advisory group was to consider whether Australia’s domestic regulatory framework for organics is fit-for-purpose and the investigate the costs and benefits of potential improvements to the current domestic regulatory framework.

5.4 Problem statement

The Department of Agriculture, Water and the Environment regulates the export of Australian organic produce to overseas markets, but there is no system in place to regulate the importation and production and sale of organic food and products within Australia.

There is currently no legislated definition of ‘organic’ in the domestic market. This creates a significant impediment to the growth of the organic industry domestically, erodes consumer confidence and inhibits businesses’ ability to easily take up opportunities in key export markets like the USA and South Korea.

Equivalency arrangements in export markets are underpinned by regulatory arrangements in domestic markets. A lack of domestic regulation hampers our ability to negotiate preferential equivalency arrangements in many export markets. Equivalency reduces the cost burden on Australian organic exporters as there is no need for additional certifications.

6. Current regulation

6.1 Domestic

In Australia, there is no domestic regulation which provides a clear legislated definition of what constitutes 'organic'.

In the absence of fit-for-purpose domestic regulation, the production and sale of organic goods within Australia is governed by two key pieces of legislation:

- 1) For all organic goods - the **Competition and Consumer Act 2010** establishes the regulatory framework to protect consumers from false and misleading representation about products, including products labelled organic.

Under the ACL, businesses are prohibited from making statements that are incorrect or likely to create a false impression. This rule applies to advertising, product packaging and any information provided to consumers by staff, online shopping services, or on the business' website.

While the ACL is jointly enforced by the ACCC and state and territory consumer affairs regulators concerns have been raised by many members of the advisory group that a lack of resourcing and other priorities (such as product safety) mean current arrangements cannot adequately deal with organic labelling claims.

- 2) For food goods only - the **Australia New Zealand Food Standards Code (the Code)**, established under the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), sets legal requirements for the labelling, composition, safety, handling, and primary production and processing of food in Australia.

The standards within the Code are designed to ensure that food is safe and suitable for human consumption; prevent misleading conduct associated with the sale of food; provide adequate information to enable consumers to make an informed choice; and provide an effective regulatory framework for the effective operation of the food industry.

While there is no standard on organic production, processing, or labelling in the Code, organic food must meet all the same standards as conventionally farmed food.

States and territories adopt, without variation, the food standards established within the Code within their own legislation. Enforcement and interpretation of the Code is the responsibility of state and territory government departments and other food enforcement agencies. Enforcement programs are generally focussed on food safety matters and are influenced by a hierarchy of priorities ranging from food safety (highest priority) to consumer value issues (lowest priority).

The law requires those making claims to be able to substantiate their claims. Notwithstanding, the absence of a definition within a standard, has created problems in litigating false claims that a product is 'organic'.

6.2 Exports

There are specific regulatory requirements that products labelled as 'organic' must meet for export. DAWE regulates the export of organic produce from Australia—ensuring that products comply with export laws and meet importing country requirements.

The National Standard for Organic and Biodynamic Produce (the National Standard) is Australia's organic export standard, owned by the Commonwealth. The standard stipulates requirements for products with labelling which states or implies they have been produced under organic or biodynamic systems. The standard covers production, processing, storage, transportation, labelling and importation.

Organic or similarly labelled produce exported from Australia must be produced or processed by an organic operation certified by an Australian Government-approved organic certifier to the National Standard and accompanied by DAWE's 'Organic Goods Certificate' (OGC). This is a legal requirement set out in the *Export Control (Organic Goods) Rules 2020*.

6.3 Voluntary standards

Organic products intended for the Australian market are not required to comply with an organic specific standard, or to be certified, to be labelled 'organic'. However, many organic businesses choose to be certified by an organic certification body. They have various reasons for doing so, including but not limited to:

- Enabling ease of access to export opportunities. As the export of organic products is regulated, certification ensures that products comply with export laws and meet importing country requirements.
- To underpin integrity in labelling requirements.
- To promote consumer confidence.
- To market into specific retail stores.

There are two main standards in Australia that outline the production process and labelling requirements with respect to organic produce:

- the National Standard for Organic and Bio-Dynamic Produce (National Standard); and
- the Australian Standard 6000 Organic and Biodynamic Products (AS 6000).

There are six 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.

Businesses may elect to adhere to these standards and may become certified by an organic certification body. Certification demonstrates that the business's products meet the

relevant standard they are being certified to. Fees are charged by certifiers for certification services. Some certifying organisations also charge industry development fees.

6.4 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. With New Zealand in the process of introducing mandatory domestic organic regulation, Australia is about to become the only organic market out of the top 25 markets (by value) without mandatory domestic organic regulation.

6.4.1 New Zealand

Currently in New Zealand organic marketing claims and use of the term 'organic' on product labels is controlled through consumer law (*Fair Trading Act 1986*). This means that representations about products must be truthful and accurate, and they must not mislead a consumer. Operators must be able to demonstrate that products labelled as 'organic' are produced organically and if a product claims to be 'certified organic', operators must be able to back this claim up with a certificate.

New Zealand is in the process of introducing new legislation, the Organic Products Bill 2020 (the Bill), to mandate organic standards for organic products. The Bill proposes that:

- if there is an organic standard that relates to a product, a person must not describe the product as organic unless the product complies with the standard; and
- a person who describes a product to which an organic standard relates as an organic product must be approved as an operator by the relevant chief executive (i.e. an organic producer or manufacturer, not a retailer).

6.4.2 United States

In the United States the National Organic Program (NOP) is a federal regulatory program that develops and enforces uniform national standards for organically produced agricultural products sold in the United States. Operating as a public-private partnership, the NOP accredits third-party organisations to certify that farms and businesses meet the national organic standards. USDA and accredited certifiers also work together to enforce the standards, ensuring a level playing field for producers and protecting consumer confidence in the integrity of the USDA Organic Seal.

The NOP also authorises State Organic Programs, which provides the opportunity for a state to oversee organic production and handling operations within its state. An authorised State Organic Program must assume regulatory enforcement responsibility of the USDA organic regulations for all organic farms and businesses operating within its boundaries. Upon approval by the NOP, State Organic Programs may add more restrictive requirements due to specific environmental conditions or a need for specialised production and handling practices in that state. California is currently the only state in the U.S. with a State Organic Program (SOP). California's SOP does not provide organic certification. Instead, the

California State Organic Program oversees and enforces the USDA organic regulations within California.

6.4.3 Canada

In Canada any food, seed, or animal feed that is labelled organic is regulated by the Canadian Food Inspection Agency (CFIA). Producers of these products must be prepared to demonstrate that organic claims are truthful and not misleading, and that all commodity-specific requirements have been met. All food sold in Canada must comply with *Food and Drugs Act 1985* and the *Safe Food for Canadians Act 2012*.

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.

The Canada Organic Regime does not apply to organic products that are only sold within a province or territory and do not display the Canada organic logo. For these products, the CFIA would verify on complaint that organic claims are truthful and not misleading, as required under the Food and Drugs Act as well as the Safe Food for Canadians Act. For example, the CFIA inspector may verify the validity of the organic claim by:

- evaluating the production methods against the company's organic plan;
- checking the company's records; and/or
- identifying the areas where organic products could be contaminated with prohibited substances and/or come into contact with non-organic products.

Provincial organic requirements apply within British Columbia, New Brunswick, Nova Scotia, Manitoba and Quebec. For example, Nova Scotia has implemented a requirement that any product sold or labelled as organic must be certified through a third-party certification body to the federal Canadian Organic Standard.

6.4.4 European Union

In the European Union organic products are regulated through Council Regulation (EC) 834/2007, which sets out the principles, aims and overarching rules of organic production and defining how organic products should be labelled. This regulation is also complemented by several Commission implementing acts on the production, distribution, and marketing of organic goods.

These legislative acts are the legal basis that govern whether goods can be marketed as organic within the EU, including those that have been imported from non-EU countries. The regulations also define how and when the EU organic logo can be used (can only be used on products that have been certified as organic by an authorised control agency or body).

Every country in the European Union appoints a 'competent authority' which is ultimately responsible for making sure that EU organics rules are followed. Usually these are either a

department of agriculture or a department of public health. This competent authority can delegate its role to:

- one or more private control bodies
- one or more public control authorities
- a mixed system with both private control bodies and public control authorities.

Regardless of the system chosen, the competent authority is ultimately responsible for auditing the inspection system within its own area of responsibility. 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.

6.4.5 China

In China organic products must meet 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. It is applicable to both domestic and imported products. The standard consists of four different sections setting out, respectively, the rules for the production, processing, labelling and management system of organic products and certified facilities. The scope of the standard covers crops, mushrooms, wild plants, livestock and poultry, aquaculture products, textile products and their unprocessed products among others. Organic products to be sold in China must have the organic product certificate issued by an accredited certification body in China.

6.4.6 South Korea

In South Korea organic products are regulated by the *Promotion of Environment-friendly Agriculture and Fisheries and Management and Support for Organic Food Act 2012 (2015)*. All domestic and imported organic produce and processed products are required to be certified by an accredited certifying agent.

Attachment A - Implementation options considerations

Implementation options	Design features						Benefits	Issues
	Full coverage	Mandatory certification	Complaints system	Audit program for certifiers	Market Access	Enforcement		
1. Information standard through Australian Consumer Law (ACL)	✓	?	✓	?	×	?	<ul style="list-style-type: none"> - Covers all organic products. - Provides a mechanism for state and territory consumer affairs regulators to manage complaints and aid with resolving disputes 	<ul style="list-style-type: none"> - Labelling standard would need to be underpinned by a production standard. - Ineffective at proving misleading labelling claims in the past. - Inaccurate organic labelling is unlikely to be a high priority for ACCC. State and territory consumer affairs regulators also have limited resources and are unlikely to prioritise organic-labelling compliance. - No ability to have a co-regulatory model. - ACCC would not be an appropriate regulator for managing on-site inspections. - Would not support improved export market access.
2. A food standard through Food Standards Australia New Zealand (FSANZ)	x*	x	✓	x	x	?	<ul style="list-style-type: none"> - Least regulatory burden on industry and existing uncertified operators. - This option provides a mechanism to assess compliance of imports claiming to be organic with Australia’s organic requirements. 	<ul style="list-style-type: none"> - Does not cover non-food products - Focus on food safety rather than production and labelling - No possibility for co-regulatory model - Organics issues would not be enforced and no easy way to manage enforcement with states and territories - No mandatory certification would mean organic export market equivalency would be unlikely to be achieved in key export markets. - No appetite within FSANZ to implement an organic standard. - No control over the content of the standard as this is independently developed by FSANZ - No certification scheme so no increase in consumer confidence.
3. New standalone Commonwealth legislation	x	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> - Industry’s preferred option. - Highest benefit for industry - Allows for a mandatory certification scheme and a variety of design features, preferred by industry. - Could cover organic food and non-food products. - Dedicated enforcement resources. - Industry believes this option is the best mechanism to improve integrity in Australia’s domestic organics market, despite the gaps identified. 	<ul style="list-style-type: none"> - Minor limitations which are considered insignificant include: <ul style="list-style-type: none"> - The sale of organic products within states between non-corporate entities (e.g. a sole trader QLD farmer selling direct to the public at a farmers’ market in Queensland). - The sale of organic products from NZ which are likely exempt under the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System (the Treaty) and the <i>Trans-Tasman Mutual Recognition Act 1997</i>.

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Realising opportunities in organic agriculture

'An opportunity to improve regulation of Australia's organics industry'

Final Report of the Organics Industry Advisory Group to Minister Littleproud on whether Australia's domestic regulation framework is fit-for-purpose and to investigate the costs and benefits of potential improvements to the current domestic regulatory system.

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1. Executive Summary

In late 2020, the Minister for Agriculture, Drought, and Emergency Management, the Hon David Littleproud MP (the Minister), requested the creation of an Organics Industry Advisory Group (the Advisory Group) to provide advice on whether Australia's domestic organic regulation framework is fit-for-purpose. The scope of the advisory group was limited to examining the suitability of the current domestic framework for organic industry participants, whether changes to the framework would support industry development, and the potential costs and benefits of such changes to industry and to our consumers. This report has been prepared to provide the Advisory Group's advice.

The global organic food & beverages market was estimated at \$220 billion in 2019 (Globenewswire 2021) with over 71.5 million hectares of farmland certified organic globally (IFOAM – Organics International, 2020). Australia has the largest organic agricultural area in the world (35.7 million hectares).

Australia has a diverse organics industry, producing a range of foods, textiles, cosmetics, and other products. The organics industry contributes approximately \$2.6 billion to the Australian economy each year with revenue projected to grow at 14.6% annually from 2020-2021 to 2024-2025 (IBIS World, 2020). The organics industry also creates jobs across the nation, particularly in regional and rural areas, and contributes to the broader agriculture sector's goal to increase the value of production to \$100 billion per annum by 2030.

The Department of Agriculture, Water and the Environment (DAWE) regulates the **export** of Australian organic produce to overseas markets, **but** there is no system in place to regulate the importation and production and sale of organic food and products within Australia.

There is a clear opportunity for the government to provide a more effective and fit-for-purpose regulatory system that will allow the organics industry to take advantage of the growing demand for organic products in domestic and international markets.

What's wrong with Australia's current framework for organics?

The advisory group concluded that without improved regulation, Australian businesses will continue to be **unable to capitalise on opportunities in domestic & export markets** and there is a risk there will be a loss in confidence in the sector, from consumers and trading partners alike, which will prevent industry from realising its potential.

Growth of the industry to date, has been the result of the use of an Australian Export Standard, the *National Standard for Organic and Biodynamic Produce* (National Standard) by an overwhelming majority of the industry and through responsible domestic retailers requiring organic operators be certified, to support consumer confidence and ensure customers are getting what they pay for (Department of Agriculture, Water and the

Environment 2019). Future and continued growth of the sector is largely dependent on maintaining and growing domestic consumer confidence and meeting the expectation of our export trading partners, which can only be secured through appropriate regulation.

There is currently no legislated definition of 'organic' in the domestic market. This creates a significant impediment to the growth of the organic industry domestically, erodes consumer confidence and inhibits businesses' ability to easily take up opportunities in key export markets like the USA and South Korea.

Equivalency arrangements in export markets are underpinned by regulatory arrangements in domestic markets. A lack of domestic regulation hampers our ability to negotiate preferential equivalency arrangements in many export markets. Equivalency reduces the cost burden on Australian organic exporters as there is no need for additional certifications.

The advisory group considers, with New Zealand currently progressing legislation to introduce a mandatory domestic organic standard, Australia will soon be the only major organic producing and developed country in the world without a mandatory regime. This gap in regulation:

- jeopardises supply chain integrity, putting Australia's organic industry's reputation at risk;
- inhibits the growth of the organics industry through the inefficiencies created by the existing fragmented regulatory system;
- is a barrier to international trade and a key reason export trading partners have provided for not being able to negotiate equivalence arrangements;
- allows varying and inconsistent organic standards to be applied to organic food and products in the marketplace; and
- creates confusion among consumers on whether a product is truly organic and increases the likelihood of misleading and deceptive label claims.

The advisory group considers it is vitally important the Australian Government improves organic regulation to ensure it is fit-for-purpose. To secure and expedite forecasted industry growth for the benefit of the Australian economy, the advisory group believes it is imperative the Government acts now to provide security to the industry and consumers through harmonisation of organic regulation and long-term industry development.

What should a regulatory framework look like?

The advisory group considered the key features required for an improved domestic regulatory framework and concluded any framework should include:

- a mandatory domestic organic standard;
- a mandatory certification scheme; and

- pro-active enforcement.

It is the advisory group's opinion a mandatory domestic standard, underpinned by a robust certification and enforcement system, would allow Australia to capitalise on opportunities in domestic and export markets and reduce the costs of exporting to key trading partners. This constitutes a significant opportunity for Australian organic operators, and for the Australian economy more generally. There is a clear opportunity for the Australian Government to provide a more effective regulatory system to allow the organics industry to take advantage of growing demand for organic products in domestic and international markets resulting in increased GDP.

A fit for purpose domestic framework will reduce the current regulatory and compliance burden for existing certified organic producers, processors and retailers.

By introducing the recommendations, the underlying objectives of de-regulatory policy will be achieved.

What are the costs and benefits of implementing a mandatory domestic regulatory standard?

To help inform the advisory group's discussions, it was agreed the Department of Agriculture, Water and the Environment (DAWE) would engage a consultant to undertake a desktop cost benefit analysis (CBA) of a mandatory domestic organic standard through three implementation pathways:

- Option 1 - An information standard under Australian Consumer Law;
- Option 2 - A food standard under the Australia New Zealand Food Standards Code; and
- Option 3 - A mandatory standard via new standalone Commonwealth legislation.

The analysis showed implementing a mandatory standard would deliver significant economic benefits to industry and consumers, a stance supported by the advisory group.

Despite this, the advisory group had a number of strong issues with the CBA report due to flaws in the methodology, assumptions, and underlying data (see 3.4.3). As highlighted in the interim report, the advisory group noted the limitations of a purely desktop assessment with no access to robust data and inadequate quantitative methods to diligently undertake such analysis. Consequently, this meant specific quantitative results of the report were unreliable and it would be detrimental for Government to develop policy impacting a \$2.6bn industry based on limited information. Instead of using the CBA, members of the Advisory Group agreed to investigate and use real industry examples to highlight the cost of not having mandatory regulation and to highlight which option was the best. These examples can be found under section 3.4.1 Key Benefits.

After consideration of these issues and all the variables, the advisory group concluded Option 3 (mandatory standard via new standalone Commonwealth legislation) was the most viable option as it would allow the regulatory framework to be tailored to the specific needs of the organic sector while providing a solid basis from which to negotiate export equivalence arrangements, improve market integrity, and enhance consumer confidence and protection, all of which are factors addressing the key issues impeding the industry domestically and internationally.

The advisory group concluded Options 1 and 2 were negatively impacted by their lack of proactive enforcement, and the needs of the organic industry would be less easily met through an existing regulatory mechanism, constrained by existing priorities.

Based on the above, the advisory group recommends a mandatory domestic organic standard be implemented through new standalone Commonwealth legislation.

2. Recommendations

The advisory group agreed by majority:

1. For the Government to implement a mandatory domestic organic standard through standalone Commonwealth legislation which includes a mandatory certification scheme (Domestic Standard).
2. The National Standard for Organic and Biodynamic Produce (National Standard) be used as the template to draft the new Domestic Standard.
3. As part of a Domestic Standard, it should also be mandatory for all products sold and marketed in Australia and claiming to be 'organic' to display the details of their organic certifier on their product labels as per the parameters outlined in the Domestic Standard.
4. An enforcement model be implemented which incorporates a complaints system, with Government and certification bodies sharing responsibility between certified operators, uncertified operators, de-certified operators, certification bodies and importers (see Figure 1 on page 15 titled 'Proposed Enforcement Model').
5. Industry and Government undertake a broad education campaign of consumers/retailers/producers/exporters/importers to ensure clear understanding of the overall benefits of a mandated domestic standard.
6. A national organics database be established to inform consumers, producers and retailers of organic products sold in the Australian marketplace and certification status.
7. Levies collected from organic producers be used for targeted research and development to support the organics industry. DAWE work with industry to commission sector research to better understand the participants, inhibitors to business and sector growth and profitability.
8. DAWE work with the Minister to implement standalone domestic legislation (the preferred option of the advisory group). As part of the development of the Domestic Standard, DAWE continues to work with industry to help draft the Bill and ensure it is fit for purpose for the organics industry.
9. DAWE to continue to engage with other State and Territory and Federal Government departments to promote the principles and justifications of a standalone Federal legislation as part of the next phase of the legislative process.
10. Develop a comprehensive plan to fix the data and knowledge gap by harvesting & digitising the information contained in Organic Goods Certificates.

3. Value of the Organic Market in Australia

Information and references included in this section are from the Australian Organic Market Report 2021 (The University of Melbourne et al., 2021). This report is based on verified research and market surveys, about certified organic industry, researched and authorised by NielsenIQ, Euromonitor International, Mobium Group, ACO Certification Limited, AUS-Qual, and University of Melbourne. Operator/ operation data represented in the AOMR21 has been taken from the six DAWE approved certification body websites (ACO Certification, AUS-QUAL, BDRI, NCO, OFC, SXC) at the time of research. This report does not include information about the farmers' market sector.

Context

The Australian organic industry is delivering significant market growth, at 7.9% per annum, despite the current regulatory barriers, economic fluctuations and changing climatic conditions being experienced in Australia. This exceeds the New Zealand market, which delivered 6.4% on average per annum (Organics Aotearoa New Zealand, 2021). However, it is yet to reach its full potential compared to mature international markets such as the USA at 12.4% (Organic Trade Association, 2021) and the UK at 12.6% (Soil Association, 2021).

IBISWorld's 'Organic Farming in Australia 2020' Report estimates organic farming to be worth \$2,354 million in the domestic market alone and is forecast to nearly double to over \$4,642 million by 2025. This growth is expected to be replicated across organic farming revenue, which is tipped to double from \$1,974 million to \$3,911 million during the same period.

Between 2019 and 2021, Homescan data from NielsenIQ (NielsenIQ, 2021) showed the value of sales of organic in grocery moved ahead by nearly 12% compared to the prior year. Underpinning this strong growth was an additional 565,000 Australian households buying organic for the first time.

The average annual spend by organic purchasing households grew sharply – now exceeding \$100 per household per annum (NielsenIQ, 2021). Shopping trips increased from 12.5 to 14 trips and household penetration increased from 88.8% to 92%, meaning over 9 million households bought organic products.

International Markets

While the pandemic impacted economies across the world, demand for organic food internationally continued to grow. Total value from sales of organic food grew by 13%.

Australian organic exporters continued to export to a total of 62 countries during 2020 with the United States our biggest trade market with 33% of total tonnage of exports.

Exports over a 5-year average are expected to increase by 17.4%, even during the height of the pandemic they increased by 9.5%.

The three biggest regions for organic exports are North America, Asia and Oceania. An indication of the growth of markets geographically close to Australia as well as the already established North American market.

The maturity of these international markets and the current lack of Australian regulatory import requirements has seen imports increase by 12.5% over the past five years, including an increase of 9% during the pandemic.

Domestic consumers

During 2020, 56% of Australians bought organic products. Over 80% of consumers surveyed either buy organic products or would be interested in buying organic products.

The importance of labelling and authenticity is becoming more important reliance on retailer assurance that a product is organic decreases (down 15% in 2021).

According to the survey data, 97% of organic shoppers referred to product labelling/shelf information to gain greater understanding of the product. Additionally, three quarters of organic shoppers say they reference product labels to identify organic products, with 74% saying they check the product has the word 'organic' written on the label.

Data from the same survey also indicates that certification marks are providing a meaningful differentiator for consumers when choosing organic products. The survey identified that 75% of food shoppers would be positively influenced by a certification mark if two products were otherwise identical including price, but only one carried an organic certification mark. This indicates that certification is viewed as beneficial by consumers, which suggests mandatory certification would increase confidence in organic products.

Consumer Concerns

The data shows that new and existing shoppers are seeking (and expect) reliable information to help them make an informed choice about buying organic food. The current lack of unified legal definition, and weak requirements to call a product 'organic' have the potential to cause confusion and undermine shopper confidence.

The uncertainty consumers have about organic products is heightened by the lack of a legal definition for organic in Australia, when asked whether they knew there was no legal definition of organic in Australia, 88% of respondents said they did not.

Survey data shows that many shoppers want to feel more certain about their product choices, with 27% highlighting concerns over the authenticity of products claiming to be organic. Out of the respondents who consider themselves to be organic shoppers, 31% stated that they had purchased a product labelled "organic" only to find out it was not.

Introducing a mandatory domestic standard, underpinned by mandatory certification, will enhance consumer confidence and ensure that consumers are getting what they are intending to buy.

Operators

Data represented in the Market Report has been taken from the six DAWE approved certification body websites at the time of the research. According to the data collected at the time of research there are a total of 3,232 certified organic operators in Australia.

Each certification body categorises certified organic operation types and operators may carry multiple certified operation certifications, for example Processor and Producer, or Processor, Handler and Wholesaler. When this is taken into account, the number of organic operations is estimated to be at 4,233.

Most operators are based in the eastern states with 30% of operators based in Victoria, 26% of operators based in New South Wales and 20% of operators based in Queensland.

There are eight major sectors within the organic industry:

- Horticulture – 33%
- Manufacturing – 23%
- Livestock – 17%
- Grain & Broad acre – 13%
- Allowed Input – 5%
- Vignerons – 4%
- Dairy – 3%
- Cosmetics & Personal Care – 2%

Australia continues to hold the largest amount of certified organic farming land in the world. Highlighting the potential for operators and the organics industry to keep growing.

The organic industry in Australia is a positive contributor to GDP, estimated to be over \$800 million during FY2020-21 and forecast to more than double by 2025-26.

On average the organic industry has delivered 25% growth in GDP each year over the previous 8 years.

Value Chain Response

In a survey conducted of organic industry participants there was a strong view that the demand for organic products is growing steadily. Industry participants reported a significant upturn in sales values during 2020, which they attributed to the COVID-19 pandemic.

These respondents shared the view that establishing domestic regulations for organic products would benefit the industry and allow it to further capitalise on the growth seen during the pandemic.

Industry respondents also highlighted that the lack of a domestic standard continues to impose restraints on operators looking to export to international markets. Implementing a mandatory domestic standard is viewed as a pre-requisite to achieving equivalence with key trading partners. The lack of an equivalence standard between Australia and countries to which organic producers could export was cited as a significant problem: finding ways to obtain accreditation and access to export markets represents a considerable cost burden to exporters.

In addition, respondents noted that the number of standards in use within Australia creates confusion and makes false and misleading organic claims difficult to enforce. A significant majority of respondents articulated concerns that products not certified as organic, and not verified as meeting the National Standard, can still be sold with the suggestion they are 'organic' and at similar price points to equivalent certified products. While consumer protection laws exist through the ACCC (even with the ACCC prioritising false claims in food marketing), incentives to use the label 'organic' without certification remain high and the resources of the ACCC are limited to deal with these cases. A single, legal definition of 'organic' would benefit industry by enhancing market integrity and ensuring that false and misleading claims could be more readily proven.

4. Discussion questions

4.1 Summary of discussion questions

The advisory group considered three key questions:

- 1) Is Australia's domestic regulatory framework for organics fit for purpose?
- 2) If not, what would a fit for purpose framework look like?
- 3) What would the likely costs and benefits of any recommended changes to the regulatory framework be to industry and consumers?

The advisory group's deliberations on each of these questions is set out below.

4.2 Question 1: Is Australia's domestic regulatory framework for organics fit-for-purpose?

The advisory group considered Australia's domestic regulatory framework for organics and agreed unanimously it was **not** fit-for-purpose.

Representatives raised concerns that the current regulatory framework did not adequately address issues relating to export equivalence, market integrity and consumer confidence.

4.2.1 Export Equivalence

Representatives highlighted the current regulatory framework creates impediments to, and increases costs of, market access. Key international markets for organic products, including the USA and South Korea, have advised they will not enter equivalence arrangements for organic products with Australia because of the lack of domestic regulation. Under current arrangements, operators can access these markets only through conformity assessments whereby an Australian certifying body enters an arrangement with an overseas government entity to allow the certifying organisation to certify goods for export to that market.

The costs to certification bodies of maintaining such overseas arrangements are significant and are passed onto businesses requesting this certification – typically as an add-on fee, charged per export market. This system creates significant barriers to organic businesses interested in exporting to markets under private arrangements due to the up front and ongoing costs associated with maintaining export market access. These costs are in addition to other administrative costs attached to exporting organic products, such as the amount charged per Organic Goods Certificate required for every organic shipment (currently \$55 per certificate).

It also results in significant cost duplication for industry because 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. These duplicated costs could be eliminated through government-to-government equivalence arrangements because exporters would only need to meet the cost of certification under a

uniform National Domestic Standard. Trade opportunities for Australian organic producers would increase as the economic burden of exporting decreased.

Greater market access would also improve industry stability because businesses can target both domestic and export markets, allowing them to diversify their downstream customer bases, providing protection from a downturn in any one market.

4.2.2 Market integrity

The advisory group also raised concerns that the long-term security of Australia's organics industry was currently at risk due to the lack of a mandatory domestic organic standard and mandatory certification of organic products. The current regulations (ACL and FSANZ) which are relied upon by industry and consumers are not fit-for-purpose because they do not address the question of what is organic. They do not ensure all ingredients or materials used to create an organic product are genuinely organic. This has resulted in a range of products making it to market with unsubstantiated organic claims, presenting a major risk to the integrity of Australia's organics sector and certified organic producers, which rely on consumer trust. Most members agreed if the industry complied with a single standard, this risk would be lessened, and industry integrity strengthened.

Members noted the current regulatory environment mean products not certified can be marketed as organic with consumers often left to interpret misleading packaging at the point of purchase. In most cases, these products attract a price premium to non-organic products (and similar to certified organic products) without undergoing independent testing to verify the product is, in fact, organic. As a result, those businesses that do the right thing by becoming certified - investing time and resources maintaining the integrity of organic products in the marketplace - are significantly disadvantaged. This situation also means products claiming to be organic, without certification, have the potential to damage the reputation of the organics industry.

There is a significant gap in the current regulatory framework allowing non-organic products to be incorrectly marketed as organic, when in fact, it is inconsistent with organic accreditation requirements in Australia (such as the National Standard) and other jurisdictions.

4.2.3 Consumer confidence

The advisory group noted the current domestic regulatory environment means Australian consumers are vulnerable to being misled and deceived, and operators could gain financial benefits of selling products as 'organic' without substantiating their claims. International consumers of Australian certified products are not experiencing 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.

Some representatives felt if consumers become aware a 'notable proportion' of products making it to market may not be genuinely 'organic' they may stop buying organic products altogether. The advisory group noted this would impact producers, manufacturers, exporters, and other businesses throughout the organics supply chain. Some representatives stated organic businesses face the ever-present threat of losing their consumer base due to the wrongdoing of other businesses. Importantly, this would also

deny consumers access to products they desire and for which they would be prepared to pay a premium.

The advisory group was also concerned the existing domestic framework does not have clear product labelling requirements, which has led to the use of a variety of labels and terms on product packaging. Members felt this lack of consistency among organic product labels further undermined consumer trust in organic claims and the organics sector more broadly. It also hampers the ability of consumer law enforcement agencies to pursue complaints relating to false and misleading organic claims due to gaps in the existing regulatory framework. This was noted as a key failure of the existing system by members. Members wanted to provide Government with a greater ability to prosecute those engaging in misleading and deceptive labelling of organics.

Some Members felt the inconsistent regulatory framework left Australia's organics sector vulnerable to market failure, should consumers stop buying organic products at scale. They felt this was a real possibility due to the lack of regulation in place to ensure products and their inputs were genuinely organic. These Members stressed the estimates for consistent growth of the organic sector in Australia would only be achieved through securing consumer trust and a clear accountability regime. Most Members felt the best way to support consumer trust was through a mandatory domestic organic standard with mandatory certification.

4.3 Question 2: If not, what would a fit-for-purpose framework look like?

The advisory group quickly reached consensus the current regulatory system is **not** fit-for-purpose because it does not provide adequate regulatory oversight for the organic industry. Consumer confidence and market integrity is at risk, and opportunities for sales of organic products in export markets continue to be unrealised. To better support industry development and integrity, the advisory group considered what a fit-for-purpose framework would look like.

4.3.1 Mandatory standard

Members strongly favoured introducing a mandatory domestic organic standard to provide consistency in the treatment of organic products intended for the domestic and export markets. Most Members agreed implementing the National Standard domestically was preferable because it is already widely used and the standard which current equivalence arrangements have been negotiated under.

Some key international trading partners including the United States and South Korea, indicated they will not enter equivalence arrangements with Australia until there is consistent regulation within Australia across domestic, imported and exported organic products. Most Members believe using the National Standard is the simplest way to demonstrate such consistency. The advisory group noted other benefits specifically, that each of the six approved certifying bodies (for export purposes) in Australia already certify operators to the National Standard. Therefore, a significant portion of the industry is already

compliant with the Standard, which would reduce the regulatory impact on industry should a standard be mandated via legislation.

It is noted that two Members held the view further analysis should be undertaken prior to the advisory group recommending the National Standard be mandated domestically. They considered the AS6000 was a viable alternative to the National Standard. It was argued there is greater transparency in the development of the AS6000 compared with the opaque nature of the Organic Industry Standards and Certification Council (OISCC) which is responsible for managing and maintaining the National Standard. Other representatives refuted the claims, noting the National Standard sub-Committee (NSsC) was an independent committee with independent members appointed every four years, with a clear Terms of Reference (TOR) approved by DAWE, and DAWE representatives observing meetings. The consensus was therefore a majority of the advisory group members favoured the National Standard due to the reasons outlines above.

Scope of the standard

The representative group considered whether the mandatory domestic organic standard should include food products, non-food products or both. Members discussed the existing complexities around regulating cosmetics and noted most complaints arose from cosmetic products claiming to be organic but using ingredients or production methods not compliant with the National Standard. Although some Members advocated including all organic products, a majority agreed only food products should be covered initially, with the legislative framework flexible enough to include non-food products at a future time.

Members noted most global standards only prescribe requirements for food products. Some Members stressed it was important to ensure the 'food products' category covered animal feeds and supplements, as well as natural and biological products essential for organic production, such as seeds and plants.

4.3.2 Mandatory certification

The advisory group reached consensus mandatory certification is required to create a fit-for-purpose regulatory framework because certification provides evidence to trading partners and consumers the integrity that underpins Australia's organic industry. The advisory group also considered mandatory certification essential to support negotiation of new equivalence arrangements which will reduce costs for exporters by removing operating burdens such as additional certification and auditing processes required to meet international standards.

A minority of the advisory group (two Members) noted organic certification could be cost-prohibitive for smaller producers entering the sector and consideration should be given to helping smaller producers transition to certified organic. Alternatively, a three-year transition period could be applied to mandatory compliance to ensure small farmers and small artisan food producers were not forced out of the sector, deterred by compliance costs. The advisory group noted that some certification bodies would be open to implementing subsidised certification programs for small operators.

A single certification logo

As part of a mandatory certification system, most Members agreed there should be a single certification logo used by operators. Members noted that having a single mandatory logo eliminates consumer confusion. While all Members agreed to recommend a single logo, some noted mandating the use of a single certification logo was likely to increase labelling costs for many operators. These Members suggested having a single certification logo, but not mandatory, would simplify labelling requirements, which can be complicated and costly for operators, especially those exporting to multiple markets.

Consensus was not reached on whether the logo should be new or adopted from an existing organisation. In the scenario of an existing logo being adopted, it was considered that any licence fees (or a similar arrangement) would need to be paid by operators. Members noted it might be unlikely that Government would mandate an existing logo, whereby licence fees would be required.

The success of the USDA's organic seal was noted when considering the benefits of a government logo. It was argued that a single logo representing that a product is compliant with the organic Domestic Standards initiated by Government will likely provide greater consumer confidence and continue to build the integrity of organics. It was noted that to capture these benefits, funding would be required to support a consumer education and marketing campaign to build brand awareness.

4.3.3 Labelling requirements

The majority of the group agreed the National Standard should be mandated domestically, including labelling requirements. Under the National Standard there is a range of organic labels used depending on the organic composition of the product:

- **100% Organic or 100% Bio-dynamic:** must contain 100% raw or processed agricultural product that fulfills the production and handling/processing requirements of the National Standard.
- **Organic or Bio-dynamic:** must contain at least 95% ingredients from organic or bio-dynamic production and the remaining ingredients of agricultural origin and cannot be sourced in sufficient quantities in accordance with the requirements of the National Standard or comply with specific lists within the National Standard.
- **Made with Organic or Bio-Dynamic Ingredients:** at least 70% of the ingredients are from organic or bio-dynamic production; specified ingredients are from organic or bio-dynamic production; and the remaining ingredients of agricultural origin and cannot be sourced in sufficient quantities in accordance with the requirements of the National Standard or comply with specific lists within the National Standard.
- **Specified organic ingredients:** products containing less than 70% organic or bio-dynamic ingredients can only be included in the ingredient list, in conjunction with the name of the ingredient/s that satisfy the Standard.
- **In-conversion:** the conditions indicated above apply for any products to be sold, labelled, or represented as in-conversion, with the exception that the ingredients used are sourced from farms in-conversion to organic or bio-dynamic production.

While some Members suggested simplifying the labelling requirements, the majority agreed existing labelling categories are fit-for-purpose. These labelling requirements are also consistent with other international jurisdictions including the USDA NOP.

A majority of the group agreed it should be mandatory for organic products to display the details of the organic certifier on their product labels.

It was also agreed that farm-gates and farmers' market fresh produce would not require individual item stickers, but that signage should signify organic status of produce on offer.

4.3.4 Enforcement

Most Members of the advisory group strongly believe the lack of enforcement under the existing regulatory framework poses an unacceptable risk to the integrity of the entire organics supply chain. The lack of a specific framework for organics regulation and a mandatory domestic organic standard creates problems when attempting to enforce false claims of organic.

The general sentiment of Members is adequate enforcement is required to support equivalence negotiations, market integrity and consumer confidence. Many Members highlighted instances whereby unverified organic products were allowed to trade off the goodwill of the rest of industry which voluntarily certifies.

Members agreed a lack of resourcing hampers States and Territories', and the ACCC's ability to adequately enforce false, misleading, and deceptive organic claims under the current regulatory framework. While some Members noted the introduction of a mandatory standard may better support the ACCC to enforce the ACL, it was agreed that without additional, specific resources and a clear enforcement focus, this is unlikely to go far enough to address the existing issues impeding the sustainability and growth of the industry.

Co-regulatory model

Members supported a co-regulatory model whereby certifiers were responsible for monitoring and enforcing the compliance of operators they certify, and government responsible for monitoring and enforcing compliance of operators who fall outside the certification system. This would include uncertified operators, de-certified operators, and importers. Additionally, the department would continue to regulate certification bodies and, through these bodies, exporters.

Under a co-regulatory model, the advisory group envisions the current functions and powers of certification bodies in the export space will be extended to the domestic organic framework. These functions and powers could be built upon by:

- incorporating powers for certification bodies to investigate and resolve complaints relating to certified operators
- establishing a mechanism for certification bodies to provide real-time updates on the status of certified operators and products (through a new national database)
- supporting industry to lead an education campaign on any changes to the domestic organic framework.

The advisory group also envisions the government would expand its responsibilities under the domestic co-regulatory model to include:

- establishing and maintaining a complaints mechanism including triaging and investigating complaints related to certification bodies, non-certified operators, de-certified operators and importers;
- publishing a database listing certified operators and products;
- additional compliance powers ranging from light-touch responses (for example issuing letters of non-compliance) to stronger responses including product recalls, financial penalties, or prosecution.

Complaints system

Members agreed there needs to be a complaints system built into any enforcement regime. While certifying bodies can investigate and respond to complaints on operators they certify, there is currently no single, effective avenue for consumers and operators to submit concerns relating to organic labelling claims.

Members agreed a complaints mechanism should comply with best practice and complaints data should be transparent and publicly available. There should be interagency cooperation so complaints about false organics claims assist identification of any systemic issues.

It was noted an existing reporting mechanism for the National Standard through the OISCC could be extended to domestic complaints. However, some Members noted this avenue was not well known and would need to be sufficiently promoted to be adequate. Any complaints relating to certified operators would be dealt with by the relevant certifying body.

Import control

Members noted Australia currently has no requirement for importers (companies or individuals) to hold an import licence to import goods into Australia. The National Standard's Chapter 6 - Imported Products - outlines clearly the process required for imported organic products. Currently there is not enforcement according to these requirements and all imported food products must meet biosecurity and food safety requirements to be sold in Australia.

Members acknowledged the existing border inspection mechanism for imported food was established through the *Imported Food Control Act 1992* and does not apply to non-food products. If non-foods were to be included in the domestic organic legislation, a new mechanism would need to be created to cover inspection of non-food products.

Australia's key trading partners generally require imported organic products be certified to the relevant organic standard, in addition to general import requirements. Members noted it would be important products claiming to be organic imported into Australia met the requirements of the domestic organic standard. This would align Australia's regulatory regime with the regulatory frameworks of our key trading partners and ensure organic supply chains did not become contaminated by non-organic inputs.

Members agreed businesses throughout the organic import supply chain, such as wholesalers, should be required to become certified to support organic products' integrity. Members also suggested Australia's legislation would need to incorporate provisions recognising foreign certification bodies and permit these bodies to certify to the Australian organic standard subject to the other jurisdiction having a uniform approach.

National database

The advisory group discussed the need for a national database, published on a Government website, to allow consumers and other stakeholders to search for certified operators and products. While a majority of the advisory group agreed a national database would be a valuable component of an enforcement mechanism, some Members noted it had the potential to cause confusion for consumers.

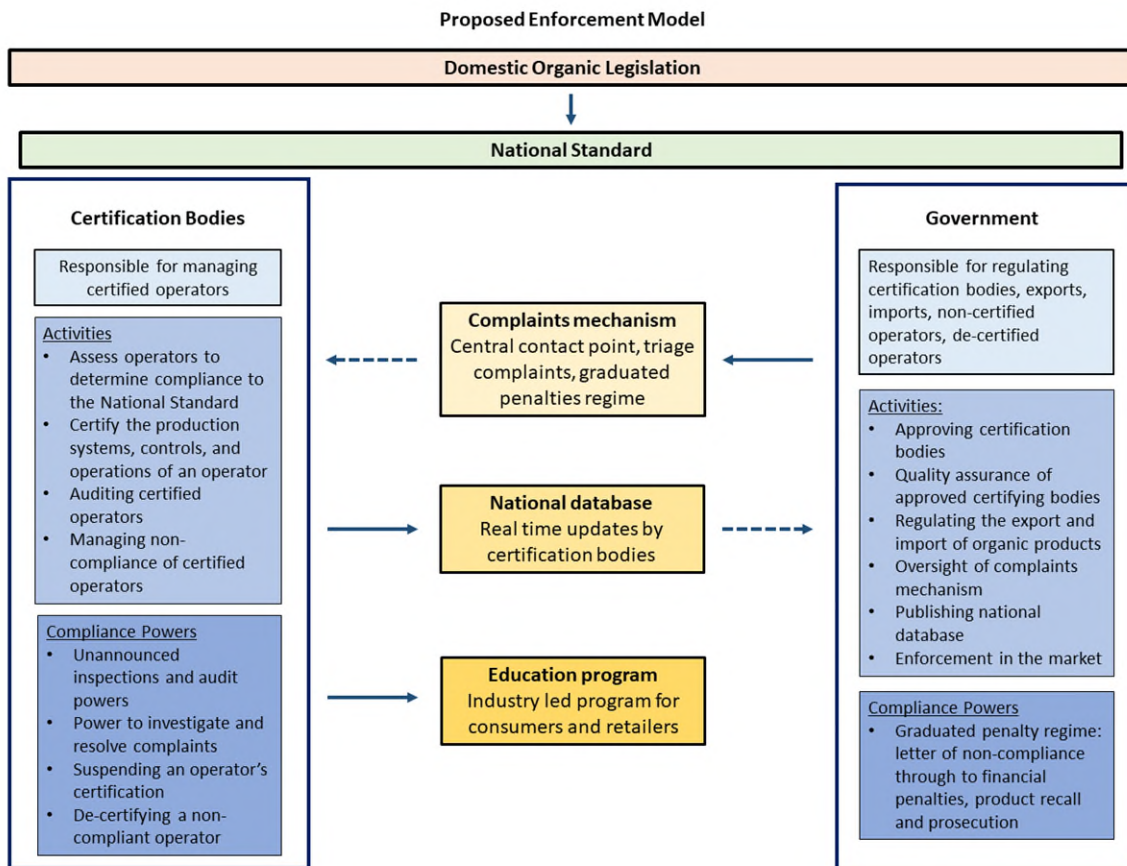
Some Members also noted a national database would only be useful if it was updated regularly and suggested legislative requirements for certification bodies to maintain the accuracy of the database in real- or near-real time.

Resourcing

The advisory group noted one of the most significant opportunities afforded by implementing a mandatory domestic organic standard through standalone legislation was the ability to direct sufficient resourcing to organic enforcement. The advisory group noted existing regulatory mechanisms such as the ACCC and FSANZ had broader compliance programs less easily directed to the needs of the organic industry due to existing priorities, hierarchies of importance and limited resourcing.

The advisory group stressed the need for any enforcement mechanism to be appropriately resourced to ensure the framework could operate effectively and meet industry's goals of growing the organics sector through ensuring market integrity, enhancing consumer confidence, and expanding export equivalence.

Figure 1 – proposed enforcement model



4.4 Question 3: What would the likely costs and benefits of any recommended changes to the regulatory framework be to industry and consumers?

The advisory group considered the impacts of implementing a mandatory domestic organic standard and determined there would likely be a range of costs and benefits to industry and consumers.

4.4.1 Key Benefits

Given the inaccuracies of the CBA's assumptions and flawed data the group agreed to provide a range of real industry examples for consideration. The range of benefits for consumers and industry stems from the introduction of a mandatory domestic standard. These benefits include:

- Export equivalence
- Reduction in sunk costs
- Market integrity and growth
- Greater market access and
- Consumer confidence and protection.

To highlight these benefits, industry stakeholders were asked to provide examples of lost opportunities and the benefits of having a Domestic Standard. These lost opportunities and benefits are examined in the case studies below.

Export equivalence

Direct costs

Members have expressed export equivalence is integral to enhancing industry growth and improving Australia's position as a world leader in organic products. The group has noted the negotiation of equivalence arrangements with key trading partners requires Australia to have a mandatory domestic organic standard in place.

Industry stakeholders have advised there are a number of direct costs that would be saved by the broader industry if additional equivalence arrangements were negotiated. These costs are explored in the case study below.

Case Study 1 – audit and certification costs

One certifying body provides certification against both the National Standard and the National Organic Program (NOP). This certifying body charges its clients an annual fee for certification against each separate standard (between \$285 and \$530 per standard). Clients must also cover the additional audit costs each year to maintain certification. By achieving equivalence with the United States, the certifying body estimates there would be a reduction of approximately 270 audit hours per year. This would collectively save its clients \$60,750 per annum or approximately \$303,750 over 5 years.

A different certifying body estimates that their clients would save approximately \$334,950 per annum or approximately \$1.67 million over 5 years.

These figures only represent the savings for clients from two of the six certification bodies.

Indirect costs

In addition to the direct costs charged by certifying bodies, members have highlighted the indirect costs resulting from a lack of equivalence between Australia and key trading partners. These indirect costs include time spent reading and understanding the requirements for each export country and the time spent attempting to establish export arrangements to additional markets where there are no equivalence arrangements in place.

Case Study 2 – additional workload

One producer exports product to China, the US, Canada and the European Union and must meet the requirements of each country's standard. Not considering the direct costs of certification, auditing, and compliance, the producer estimates this process adds approximately 15 days additional work for senior executives of their company.

A survey of certified organic operators conducted in May 2020 collected information on the indirect costs associated with certification, including labour and consulting fees. Such indirect costs vary greatly depending on the operator, but the range of these costs was \$900 - \$6000, with the average costs being \$2,167.

Another exporter detailed their attempts to access markets where Australia does not have equivalence arrangements, and where Australian certifying bodies do not have existing conformity assessment arrangements in place.

Case Study 3 – accessing export markets

One exporter noted the lack of domestic regulation, and therefore the ability to seek equivalency arrangements, is inhibiting export market access into a number of markets that do not recognise Australian certified organic products including South Korea, China and the USA. This creates risk for industry and businesses that there are significant forward costs to achieving additional certifications prior to being able to engage and build relationships with new customers in these markets. The exporter noted in most instances, having the certification is required to be able to engage deeply to assess whether there is a valid commercial opportunity, with sunk costs that cannot be recovered where no viable opportunity is identified.

The group considers that achieving equivalence would significantly reduce the burden of accessing new markets.

The following case study highlights the time spent by exporters attempting to access markets where there is no equivalence arrangement between Australia and the relevant country.

Case Study 4 – sunk costs

The exporter works with Austrade to identify potential partner organisations. The exporter, Austrade, and the Department of Agriculture, Water and the Environment devote time and resources toward researching Chile's organic sector, and the exporter works to identify and liaise with potential trade partners. The exporter then learns Australia does not have an organic export equivalence arrangement with Chile and must spend additional time and resources learning Chile's organic regulatory system to identify whether their products can enter Chile as organic. At the end of this process, it is possible Chile will not accept the exporter's products despite there being a partner organisation wishing to import them because there is no equivalence arrangement between Australia and Chile in place.

Another company noted that the current model also created barriers to businesses expanding to more than one export market where there is no equivalence arrangement in place. While the company is not currently looking to expand its exporting into different markets, they have experience with the complexity of accessing the United States market under the current system, noting it took eight months to complete the paperwork to enter the US market.

The group considers that achieving equivalence would reduce the sunk costs of trying to expand market access.

Opportunity costs

Members have highlighted that implementing a mandatory domestic standard would have material impacts for both the domestic organic industry and for exporters of organic products. Regulating the organic industry will give buyers of organic produce both in Australia and in countries wanting to import Australian organic products the confidence to develop long-term strategies leading to more investment and development of the organic

industry. Conversely, maintaining the status quo creates significant opportunity costs and inhibits industry growth.

Under existing arrangements organic producers must meet the organic production standards of each individual country they export to. Where these standards differ between countries, there are barriers to producers exporting their products. This issue is explored in the case study below.

Case Study 5 – use of unrecognised substances

Under the National Standard for Organic and Bio-dynamic Produce, Australian organic producers are permitted to use modern pain relief products within their livestock without compromising their organic status. However, under the United States Department of Agriculture's National Organic Program (USDA NOP) only substances listed in the legislation are permitted. Industry-recommended pain relief products are not listed on the NOP list, primarily because when the legislation was drafted the substances did not exist. As a result, Australian organic livestock producers who export to the United States are unable to use these pain relief products in their animals. If Australia were to establish an equivalence arrangement with the United States, the National Standard would be recognised as 'equivalent' with the NOP, allowing exporters to meet the requirements of the National Standard but still export to the US.

One exporter is a global leader in producing high-purity seaweed extracts for human health products. As the global leader in this area, the company is the supplier of choice to world renowned research institutions and some of the most recognised companies in the nutraceutical and pharmaceutical sectors. However, the company notes that a lack of equivalency between Australia and the EU has resulted in lost export revenue in the order of hundreds of thousands of dollars a year.

Another operator is developing a range of certified organic bread mixes to launch domestically and internationally. The product is certified under Australian Certified Organic (ACO) and Japanese Agricultural Standard (JAS) but cannot be exported to the Korean market because some of the ingredients are not available as Korean certified. These products therefore cannot be exported to Korea. On several occasions, the operator has been approached by Korean traders wanting to source products but without Korean certification the operator cannot progress with the order. If you assume in these circumstances that the operator would win the business at its asking price, the operator could more than double its business in Korea and would put the opportunity cost of lack of equivalence at \$500,000 per year.

The group considers that achieving equivalence would be a significant boost for market growth.

Market integrity

In addition to the costs associated with a lack of equivalence with key trading partners, members have consistently expressed concern that because organic certification is a voluntary process in Australia there is no requirement for products labelled as organic in the domestic market to meet a specific standard. Members have expressed concern this creates an anti-competitive market where certified organic products are having prices undercut by uncertified and fraudulent operators.

Case Study 6 – price undercutting

One producer used to supply a business with certified organic chickens. The producer cut off supply to the business due to lack of payment, yet the business continued to use the producer's name on its products. The producer noted Melbourne was its strongest market for organic chickens, but distributors cannot compete with the unethical operator. The producer estimates its lost sales to be at least \$400,000 per annum.

Another producer also noted the lack of a domestic standard costs the company \$2 million per annum. The producer places the blame for this on the lack of a mandatory domestic organic standard because genuine, certified organic products are under price pressures from fraudulent operators.

The group considers the business losses of certified organic producers to uncertified operators are very significant when applied across all products.

While Australian Consumer Law has provisions against false and misleading claims, the lack of a legal definition of 'organic' or a mandatory domestic organic standard make it difficult to successfully prosecute cases of misleading organic claims.

Case Study 7 – prosecuting misleading organic claims

Very few false organic claims have been successfully proven or addressed. The Australian Competition and Consumer Commission most recently issued three infringement notices to Dreamz Pty Ltd in mid-2018. As noted by ACCC Deputy Chair, Mick Keogh in 2019 at the International Farm Management Association Congress:

Allegations of false claims about organic status, for example, are quite difficult to take action on, as even very detailed analytical testing may not provide conclusive proof, and there is a multiplicity of different standards for organic farming. It is also the case that a farm does not need to have organic certification in order to be able to claim organic status in domestic markets.

In addition to the case above, one producer noted labels on organic steaks sold in retail outlets in Australia must comply with Australian Consumer Law. Because there is no clear legal definition of what constitutes organic, the steak may be sold as organic regardless of its certification credentials. In organic beef supply chains, organic livestock may be fed supplements such as licks and hay. As neither lick nor hay is a consumer good or food, the two key pieces of legislation which the industry currently relies upon are not applicable, leaving no avenue to prosecute false organic claims.

In addition to the price undercutting and prosecution issues discussed above, the existing regulatory framework does not impose requirements on importers of products claimed as organic. This further undermines the integrity of Australia's organic industry and would be redressed by a mandatory domestic organic standard. Members believe proper import controls would enhance Australia's ability to negotiate equivalence arrangements with our key trading partners, as this is a key requirement for our partners entering into equivalence negotiations.

Case Study 8 - import restrictions required

Organic oats are imported into Australia from Europe and are combined with local and imported ingredients to create organic muesli. Because there is no clear legal definition of what constitutes organic for imported organic oats, nor for the finished product, organic muesli may be sold as “organic” regardless of the certification credentials of the ingredients or the manufacturing process. This creates problems for processors looking to export, because these inputs may undermine the authenticity of their product without the processor’s knowledge.

The group holds the view that when considered holistically, this poses a significant issue to manufacturers.

Market growth

Members say a single, mandatory, domestic organic standard would significantly simplify the existing organic regulatory framework and create opportunities for growth domestically and internationally.

Export growth

The previous sections have highlighted how existing barriers to market access directly stymie export growth by limiting the products and markets existing organic businesses can sell to. The case study below attempts to conservatively quantify the potential market expansion for one export commodity.

Case Study 9 – export growth

A conservative estimate of the current value organic beef exports is \$250 million per year – through just 15 exporters, each exporting no more than \$16 million per annum. If organic beef exports were to increase only 1% due to improved domestic regulations that would equate to \$2.5 million/year or \$25 million over 10 years.

The group considers if this was extrapolated across all commodities there would be significant industry growth should equivalence be achieved.

Members suggest if this conservative estimate were used for all key organic export commodities it would demonstrate significant growth in the export sector of the Australian organic industry. Members have advised they expect higher increases in organic exports would result from greater markets access through equivalence arrangements. If this conservative estimate were used for all key organic export commodities it would demonstrate significant growth in the export sector of the Australian organic industry. Members have advised they expect higher increases in organic exports would result from greater markets access through equivalence arrangements.

In addition to increases in export value and volume to existing export markets, members believe reducing complexity in the regulatory framework for organics will lead to companies exporting their products to a greater variety of markets. This can be attributed to significant barriers to additional market access – such as time, sunk costs and the complexity of understanding multiple international standards – falling away. This would further grow the Australian organic industry.

Domestic growth

Members believe a mandatory domestic organic standard would allow the domestic organic industry to grow, creating a more sustainable sector, which can contribute to the GDP.

Case Study 10 – domestic retailers

Interviews conducted by the National Retail Association of member retailers outside the 'big 5' indicated they do not currently stock and sell organic products, with some indicating this was because of the complexity of the existing regulatory framework and the number of certifications. If the framework were simplified and certification became mandatory, more retailers would be interested in selling organic products.

In addition to an expansion in retailers interested in stocking and selling organic products, members noted removing incentives for processors to source their inputs from a single, large producer over a number of smaller producers would facilitate greater supply chain diversification and provide a pathway for smaller producers to enter the organic sector or grow their organic businesses.

Case Study 11 – domestic industry growth

One dairy processor also highlighted that under the current system it was incentivised to use one large producer supplying 1.5 million litres of milk rather than three smaller producers each supplying 500,000 litres. This was because there were certification, auditing and compliance costs associated with each producer, with lower costs associated with using one large producer over three small ones (which would cost triple the amount). Achieving equivalence with key export markets would remove these additional compliance charges that incentivise the use of one large producer.

Other Members noted a mandatory domestic organic standard with import control would allow them to expand their inputs beyond the existing closed loops of 'certified' organic products they source, potentially leading to greater competition and lower prices for consumers.

Consumer confidence

The lack of a single mandatory domestic organic standard creates confusion among consumers and the broader industry as to what legally constitutes 'organic' in Australia. The use of various organic standards with differing requirements is limiting growth of the sector, as consumers are disincentivised from purchasing organic products due to a lack of confidence in the organic integrity of the product.

Mandating a domestic standard would reduce consumer confusion and could increase the amount of genuine organic products stocked in retail outlets, as retailers would have greater confidence in the integrity of organic claims. This would support consumer choice through the greater variety of genuine organic items available.

75% of organic purchasers say they know certification marks are used on labels as a guarantee a product is organic, 63% of purchasers agreed an organic certification mark can enhance the level of trust in products that display them on packaging. If given the choice

between two identical products but one carried an organic certification mark, its inclusion would have some level of positive influence on their selection.

Without a mandatory domestic organic standard, Australia's organic sector is vulnerable to market failure. The existing system is heavily reliant on consumer trust to support sales of products. If consumers lose trust in organic claims at scale, the organic industry's viability is threatened which would have significant consequences to the domestic market.

Data has shown many shoppers who do not buy organic are dubious about the benefits and authenticity claiming they don't believe in the packaging and labelling on products claiming to be organic.

Nearly 1/3 of those who have bought an organic product in the past year believe that they have been previously misled by 'organic' claims made on product packaging.

4.4.2 Potential costs

The Advisory Group also considered the potential costs and impacts introducing a mandatory domestic organic standard may have on the organic industry.

Costs to consumers

Members noted compliance costs incurred by regulated parties were unlikely to be passed onto consumers through higher prices, as consumers were already paying for the 'organic' label. Existing non-certified operators already claiming organic status would need to absorb any price margins rather than raising prices. Members noted without a significant increase in consumer demand for organic products that outstripped supply, there was unlikely to be an overall price increase for organic products.

Members also noted there may be a reduction of products sold as "organic" in the market as non-compliant manufacturers leave the sector because of the mandatory certification requirements. However, members considered this would be positive for consumers overall, because better assurance measures would prevent misleading labelling and ensure consumers receive the product they intend to purchase, that is, a verified organic product.

Members suggested an education program for consumers would be essential to build consumer awareness of the new Commonwealth domestic standard.

Impacts on small producers

The Advisory Group also considered potential impacts of a mandatory domestic organic standard on smaller producers. One Member noted if all businesses across the supply chain were required to be certified regardless of the proportion of organic products they produced or sold, some businesses may leave the sector rather than become certified. This may have flow-on effects to the certified organic suppliers of these businesses. However, these members also noted these impacts were likely to be outweighed by the benefits of overhauling the existing sector, which Members agreed is anti-competitive and inequitable.

Members noted the design of the legislation should encourage participation from smaller producers, and this could be achieved through community education programs and using government resources to assist small operators become certified. The majority was not in favour of exemptions for small operators on the basis that 'carving out' parts of the sector would compromise consumer trust in organic claims.

The Advisory Group noted because standalone Commonwealth legislation may not capture sale within a State between two unincorporated bodies, there was an inbuilt exemption for some small producers (this is discussed further in section 4 of the report).

Members noted mandatory certification would possibly result in great competition and more certifying bodies in the market and reduce certification costs. The group also suggested certification bodies may be willing to offer subsidised certification for small producers to encourage participation in the organic sector.

One Member noted any legislative framework should reflect and possibly leverage the requirements currently existing for all organic producers selling at farmers' markets, which the Member estimated could encompass a large percentage of small producers. The Member noted farmers' markets were a key incubator for organic producers, with small producers using direct sales to establish a customer base to grow their businesses.

Farmers' markets require sellers claiming organic status to demonstrate their certification to sell at the market, and to make certification available upon request from customers. There is no requirement for these businesses to put organic logo/stickers on their produce, which the Member said would result in unnecessary regulatory and financial burden. Stall signage declaring organic or allied status (spray free, in transition etc.) is strongly recommended. The Member noted the existing requirements of farmers' markets encourage, rather than discourage, participation in the organics sector.

Some Members noted some of the proposed compliance impacts on smaller producers may be mitigated because Commonwealth legislation would not apply to unincorporated businesses selling within their State or Territory. This may apply to a significant cohort that would otherwise be negatively impacted.

One Member suggested there was a concerning lack of research into the status of small organic producers, many of whom were active participants in farmers' markets. Members have acknowledged the need for contemporary national research, and this should include smaller farming enterprises and food producers.

4.4.3 Cost benefit analysis

To inform the advisory group's discussions, it was agreed DAWE would engage a consultant to undertake a desktop CBA of currently available information for the implementation of a mandatory domestic organic standard through three identified implementation pathways. As highlighted in the interim report delivered to the Minister, Members disagreed with the quantitative figures and rationale of the CBA and noted that policy should not be developed based on the CBA.

The concerns raised by the group were raised in the interim report delivered to the Minister on 31 March. After the Advisory Group rejected the CBA it was asked to provide its own examples from their experience. These examples have been provided in section 3.4.1.

Data gaps and assumptions

The Advisory Group worked to close the data gaps in the CBA by providing its own examples. This was based on the experiences of the Advisory Group. Rather than assuming the cost of different options, the group were able to provide examples where opportunity

had been lost, where processes to acquire certification was costly and where producers had lost money within Australia because of falsely claimed organic goods.

Instead of focusing on calculations the Advisory Group provided real world examples designed to provide examples to help assist in the legislative process. Instead of focusing on the cost to uncertified producers the examples provided by the group now focus on losses being experienced by members of the group.

Costs and benefits not considered

Willingness to pay for certified products

Part of the key benefit analysis conducted by the Advisory Group included data from research highlighting the importance of certification for consumers and the fear consumers have of products that are falsely labelled organic.

A sizable proportion of consumers highlighted these fears but also stated they would be willing to choose organic under correct certification. Providing greater certainty for consumers with mandatory legislation will help maintain and improve consumer confidence.

Exports

The key benefit analysis highlighted the cost of having to go through multiple certifications across different countries. There are multiple examples provided where someone has decided against pursuing an opportunity or gone through a process which has taken time away from day-to-day business.

While the CBA failed to account for costs associated with export regulations the Advisory Group provided these examples to provide a snapshot of the issue. The key benefits analysis also provides examples of how improvements to the export market can lead to increases in the amount of farmed goods exported. A sustained improvement in the ability to export will help the Government and the Agriculture industry reach its target of a \$100bn industry by 2030.

'Status quo'

Discussions around the status quo since the second round of meetings has been minimal, with the Advisory Group focusing on getting a mandatory domestic standard via legislation. The focus has been on how this would look and how it can best incorporate the different industries within Organics.

While there is still discussion to be had between cost and resources, unless there is an expectation on industry to be responsible for an increase in costs due to compliance it would be hard to see members of the Advisory Group wishing to return to the status quo.

Discussions around increased costs of compliance and the impact on the industry have not been raised by the Department publicly. As the process continues it is expected there would be clarity from the Department on their expected structure and the costs involved.

Issues with Option 2 - FSANZ

Since the second round of meetings, this option has not been discussed. While there has been discussion around how different products would fit under a domestic standard

particularly for products like cosmetics and textiles, these discussions have still been with a view to producing legislation which would allow for the inclusion of amendments governing these products in the future.

Nothing discussed in these meetings gave any support to the findings of the CBA and this option should not be considered going forward.

Benefits of Option 3 – Standalone Organic Commonwealth legislation

The examples of the key benefit analysis helped highlight the benefits of option 3 and the need for legislation with a mandatory standard. This has helped remove the assumptions made against legislation in the original CBA.

While a legislative option may have the potential to increase the amount of regulation on the industry, the examples provided in the key benefits analysis showed the amount of regulation required currently to export goods, while at the same time highlighting the gap when selling goods domestically.

A domestic standard can reduce the administrative burden currently required by exporters while also shoring up consumer confidence in organic products domestically through mandatory certification.

The meetings held after the interim report to the Minister did highlight the need for education programs about these benefits but there is enough support from the peak body and to help the Australian Government assist in any education programs required.

5. Opportunities to address key issues

5.1 Benefits of a single, mandatory standard for domestic organics

The introduction of a single, mandatory domestic standard for organic production and labelling will deliver significant benefits to industry, consumers and government.

Table 1 – Benefits of a single, mandatory domestic organic standard

What benefits are there for industry?	What benefits are there for consumers?	What benefits are there for government?
<ul style="list-style-type: none"> All organic businesses are required to adhere to the same standards Supply chain integrity – certainty that ingredients within organic products meet specific standards Market integrity – consumers will have greater confidence that organic products are made to a specific standard and will continue to buy organic Export market access to key markets including South Korea and the United States or America Consumer confidence resulting in growth in value and volume of organic sales 	<ul style="list-style-type: none"> Consumers are certain that they are receiving the product that they paid for Consumers have confidence that the products they are purchasing are produced in accordance with agreed standards. Consumers can independently verify organic claims Greater protection and enforcement under Australian Consumer Law 	<ul style="list-style-type: none"> Economic growth and increased tax revenue A robust and secure organics industry with diversified market access International reputation and credibility of Australia's agricultural sector.

5.2 Options considered by the advisory group

Option 1 – An information standard under Australian Consumer Law

Under this option, the mandatory 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, amongst other things. These protections can address misrepresentations about organic labels on goods supplied to consumers.

The ACL is administered and enforced jointly by the ACCC and State and Territory consumer protection agencies.

Option 2 – A food standard under the Australia New Zealand Food Standards Code

Under this option, the mandatory domestic organic standard would be implemented through the Australia New Zealand Food Standards Code (the Code). The Code is regulated by FSANZ. The Code 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.

Option 3 – A mandatory standard via standalone Commonwealth 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 to do so. 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. This option is the most flexible and would allow a new system to be tailored to the requirements of the organic industry.

Consideration of options

The advisory group considered each of the implementation models against the desired design features and outcomes required from a domestic regulatory framework. Overall, while there were some differing views on how a mandatory standard should be implemented, Option 3 emerged as the preferred mechanism by a majority of the advisory group. A table summarising the considerations of each implementation option is outlined in **Attachment A**.

Some Members noted limited data within the industry hampered the advisory group's ability to make an informed decision and these data gaps should be addressed through further research before the advisory group recommended a course of action.

Option 1 – An information standard under ACL

Some Members preferred implementation through an information standard under the ACL. Advocates for this option noted it would cover all organic products (including non-food products), make use of an existing regulatory mechanism, and would provide the legislative basis required to enable the ACCC to prosecute false and misleading labelling claims.

Other Members noted while an information standard would address labelling claims, it would not address production. A separate production standard would therefore need to be implemented in conjunction with the information standard.

Concerns were also raised that the ACCC has not been effective in proving misleading labelling claims in the past, and while an information standard may help to make these claims more provable, false or misleading organic labelling claims were unlikely to be a high

priority for the ACCC or for State and Territory consumer affairs regulators noting their other enforcement priorities and limited capacity.

A majority of the advisory group rejected this implementation mechanism.

Option 2 - A food standard under the Australia New Zealand Food Standards Code

The overall view of the advisory group was Option 2 could not operate within a co-regulatory model, there was no certification mechanism, and the standard would be developed by FSANZ and therefore would not be aligned with the National Standard. There was consensus these combined features meant export equivalence would be unlikely to be achieved, consumer confidence without certification would not improve, and limited enforcement mechanisms would not improve market integrity. The advisory group noted this option would not result in the outcomes desired by industry.

Specifically, the advisory group noted the Code could not support mandatory certification because all food producers and manufacturers were simply required to meet a standard under the Code, but did not need to demonstrate a standard had been met. Most members agreed this made the Code an unacceptable option.

The group further noted this mechanism would limit the standard to food, which the majority viewed as too narrow in scope. This meant a separate scheme would be required to cover non-food products, which some Members opposed and others supported. Additionally, concerns were raised about whether the Code could be applied to organic inputs, such as stockfeed to ensure integrity across the organic production and manufacturing supply chain.

Some Members suggested the focus of FSANZ was on food safety and organic consumer issues such as organic production and labelling would not rate highly and there would likely be limited interest from FSANZ in developing or implementing such a standard. These Members also believe because enforcement of the Code is undertaken by States and Territories independently of each other, there was no clear or consistent way to ensure enforcing organic standards was a priority.

Two Members preferred this option. One noted the low cost of the option and potential use of an existing mechanism, but was concerned about statements from the rest of the group that a lack of certification requirement would impact on market access negotiations.

The majority of the group overwhelmingly rejected this option.

Option 3 - A mandatory standard via standalone Commonwealth legislation

The group strongly prefers implementing a mandatory standard through standalone Commonwealth legislation. Members agreed this option was the most flexible and met the widest criteria, with the highest benefit for industry. The group felt this option allowed creation of a regulatory framework that could be tailored to specific needs of the organic sector while providing the opportunity to incorporate almost all of the preferred design features.

The group felt that based on available information, this was the only option of the three options considered that could incorporate a co-regulatory model, allowing for the expansion of the existing, proven system for exports into the domestic space.

Most Members agreed implementing a mandatory standard through this option was also the best mechanism to improve integrity in Australia's domestic organics market because it would provide dedicated resources to enforce the mandatory standard. Some Members emphasised this option could provide the flexibility to incorporate penalties to revoke accreditation and withdraw non-compliant operators' ability to use the term 'organic'.

The group recognised some minor limitations to this option, including sale of NZ products were likely exempt 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*. If necessary, this could be rectified by amending the treaty with New Zealand. However, given New Zealand is in the process of amending legislation to implement a mandatory domestic organic standard, this may not be required.

The group is also aware this option may not capture all sales within a State between two unincorporated bodies. The volume and value of these sales are considered to be insignificant, and it has been noted by some Members this is an advantage of this option because in effect this could provide an exception to smaller producers to mandatory regulation. Despite these gaps, the group considers this option is the best mechanism to improve integrity in Australia's domestic organics market and capitalise on opportunities in export markets for the sale of Australian organic products.

The group agreed Option 3 would result in the highest benefit to industry through market growth, export opportunity and coverage of organic food and non-food products.

6. Background

6.1 Industry advisory group

In December 2020, after a thorough short-listing process of potential stakeholders, DAWE approached organisations and individuals to participate in the group. Careful consideration was undertaken to ensure the group consisted of stakeholders across the organics supply chain, including producers, manufacturers, farmers' markets, retailers, certifiers, consumers, and importers and exporters.

DAWE procured an independent chair, Mr Stephen Copplin, to provide independent leadership to the group.

Group members

- *Independent Chair – Stephen Copplin*
- ACO Certification Ltd – Rick McDougal
- Angove Family Winemakers – Victoria Angove
- Arcadian Organic and Natural Meat Co. – Alister Ferguson
- AUS-QUAL – Ian King
- Australian Farmers' Markets Association – Jane Adams
- Australian Organic Limited – Niki Ford
- Bio-Dynamic Research Institute – Sue Armstrong
- Consumer Law Expert – Professor Gail Pearson
- Cullen Wines – Vanya Cullen
- Kialla Pure Foods and Aus. Organic Feeds – Quentin Kennedy
- Mallee Organic Farms & Wattle Organic Farms – Kelvin Free
- National Retail Association – David Stout
- Organic Industries of Australia – Dalene Wray
- Organic Systems and Solutions – Marg Will
- Pure Harvest – Pasquale Lazzarro
- The Organic Milk Company – Ryan Reynolds

6.2 Objective

The objective of the advisory group was to consider whether Australia's domestic regulatory framework for organics is fit-for-purpose and to investigate the costs and benefits of potential improvements to the current domestic regulatory framework.

6.3 Problem statement

The Department of Agriculture, Water and the Environment regulates the export of Australian organic produce to overseas markets, but there is no system in place to regulate the importation and production and sale of organic food and products within Australia.

There is currently no legislated definition of 'organic' in the domestic market. This creates a significant impediment to the growth of the organic industry domestically, erodes consumer confidence and inhibits businesses' ability to easily take up opportunities in key export markets like the USA and South Korea.

Equivalency arrangements in export markets are underpinned by regulatory arrangements in domestic markets. A lack of domestic regulation hampers our ability to negotiate preferential equivalency arrangements in many export markets. Equivalency reduces the cost burden on Australian organic exporters as there is no need for additional certifications.

7. Current regulation

7.1 Domestic

In Australia, there is no domestic regulation to provide a clear legislated definition of what constitutes 'organic'.

In the absence of fit-for-purpose domestic regulation, the production and sale of organic goods within Australia is governed by two key pieces of legislation:

- 1) For all organic goods – Schedule 2 of the **Competition and Consumer Act 2010**, the Australian Consumer Law (ACL), establishes the regulatory framework to protect consumers from false and misleading representation about products, including products labelled organic.

Under the ACL, businesses are prohibited from making statements that are incorrect or likely to create a false impression. This rule applies to advertising, product packaging and any information provided to consumers by staff, online shopping services, or on the business' website.

While the ACL is jointly enforced by the ACCC and State and Territory consumer affairs regulators, concerns have been raised by many members of the advisory group that a lack of resourcing and other priorities (such as product safety) mean current arrangements cannot adequately deal with organic labelling claims.

- 2) For food goods only - the **Australia New Zealand Food Standards Code (the Code)**, established under the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), sets legal requirements for the labelling, composition, safety, handling, and primary production and processing of food in Australia.

The standards within the Code are designed to ensure food is safe and suitable for human consumption; prevent misleading conduct associated with the sale of food; provide adequate information to enable consumers to make an informed choice; and provide an effective regulatory framework for the effective operation of the food industry.

While there is no standard on organic production, processing, or labelling in the Code, organic food must meet all the same standards as conventionally farmed food.

States and Territories adopt, without variation, the food standards established within the Code within their own legislation. Enforcement and interpretation of the Code is the responsibility of State and Territory government departments and other food enforcement agencies. Enforcement programs are generally focussed on food safety matters and are influenced by a hierarchy of priorities ranging from food safety (highest priority) to consumer value issues (lowest priority).

The law requires those making claims to be able to substantiate their claims. Notwithstanding, the absence of a definition within a standard, this has created problems in litigating false claims that a product is 'organic'.

7.2 Exports

There are specific regulatory requirements products labelled as 'organic' must meet for export. DAWE regulates the export of organic produce from Australia—ensuring products comply with export laws and meet importing country requirements.

The National Standard for Organic and Biodynamic Produce (the National Standard) is Australia's organic export standard, owned by the Commonwealth. The standard stipulates requirements for products with labelling which states or implies they have been produced under organic or biodynamic systems. The standard covers production, processing, storage, transportation, labelling and importation.

Organic or similarly labelled produce exported from Australia must be produced or processed by an organic operation certified by an Australian Government-approved organic certifier to the National Standard and accompanied by DAWE's 'Organic Goods Certificate' (OGC). This is a legal requirement set out in the *Export Control (Organic Goods) Rules 2020*.

7.3 Voluntary standards

Organic products intended for the Australian market are not required to comply with an organic specific standard, or to be certified, to be labelled 'organic'. However, the vast majority of genuine organic businesses choose to be certified by an organic certification body. They have various reasons for doing so, including but not limited to:

- Enabling ease of access to export opportunities. As the export of organic products is regulated, certification ensures that products comply with export laws and meet importing country requirements.
- To underpin integrity in labelling requirements.
- To promote consumer confidence.
- To market into specific retail stores.

There are two main standards in Australia that outline the production process and labelling requirements with respect to organic produce:

- the National Standard for Organic and Bio-Dynamic Produce (National Standard);
and
- the Australian Standard 6000 Organic and Biodynamic Products (AS 6000).

There are six 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.

Businesses may elect to adhere to these standards and may become certified by an organic certification body. Certification demonstrates the business's products meet the relevant standard they are being certified to. Fees are charged by certifiers for certification services.

Some certifying organisations also charge industry development fees or collect them on behalf of the standard owner.

7.4 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. With New Zealand in the process of introducing mandatory domestic organic regulation, Australia is about to become the only organic market out of the top 25 markets (by value) without mandatory domestic organic regulation.

7.4.1 New Zealand

Currently in New Zealand, organic marketing claims and use of the term 'organic' on product labels is controlled through consumer law (*Fair Trading Act 1986*). This means representations about products must be truthful and accurate, and they must not mislead a consumer. Operators must be able to demonstrate products labelled as 'organic' are produced organically and if a product claims to be 'certified organic', operators must be able to back this claim with a certificate.

New Zealand is in the process of introducing new legislation, the Organic Products Bill 2020 (the Bill), to mandate organic standards for organic products. The Bill proposes that:

- if there is an organic standard that relates to a product, a person must not describe the product as organic unless the product complies with the standard; and
- a person who describes a product to which an organic standard relates as an organic product must be approved as an operator by the relevant chief executive (i.e., an organic producer or manufacturer, not a retailer).

7.4.2 United States

In the United States, the National Organic Program (NOP) is a Federal regulatory program that develops and enforces uniform national standards for organically produced agricultural products sold in the United States. Operating as a public-private partnership, the NOP accredits third-party organisations to certify farms and businesses meet the national organic standards. USDA and accredited certifiers also work together to enforce the standards, ensuring a level playing field for producers and protecting consumer confidence in the integrity of the USDA Organic Seal.

The NOP also authorises State Organic Programs, which provides the opportunity for a state to oversee organic production and handling operations within its state. An authorised State Organic Program must assume regulatory enforcement responsibility of the USDA organic regulations for all organic farms and businesses operating within its boundaries. Upon approval by the NOP, State Organic Programs may add more restrictive requirements due to specific environmental conditions or a need for specialised production and handling practices in that state. California is currently the only state in the U.S. with a State Organic Program (SOP). California's SOP does not provide organic certification. Instead, the

California State Organic Program oversees and enforces the USDA organic regulations within California.

7.4.3 Canada

In Canada any food, seed, or animal feed labelled organic is regulated by the Canadian Food Inspection Agency (CFIA). Producers of these products must be prepared to demonstrate that organic claims are truthful and not misleading, and that all commodity-specific requirements have been met. All food sold in Canada must comply with *Food and Drugs Act 1985* and the *Safe Food for Canadians Act 2012*.

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.

The Canada Organic Regime does not apply to organic products that are only sold within a province or territory and do not display the Canada organic logo. For these products, the CFIA would verify on complaint that organic claims are truthful and not misleading, as required under the Food and Drugs Act as well as the Safe Food for Canadians Act. For example, the CFIA inspector may verify the validity of the organic claim by:

- evaluating the production methods against the company's organic plan.
- checking the company's records; and/or
- identifying the areas where organic products could be contaminated with prohibited substances and/or come into contact with non-organic products.

Provincial organic requirements apply within British Columbia, New Brunswick, Nova Scotia, Manitoba and Quebec. For example, Nova Scotia requires any product sold or labelled as organic be certified through a third-party certification body to the federal Canadian Organic Standard.

7.4.4 European Union

In the European Union, organic products are regulated through Council Regulation (EC) 834/2007, which sets out the principles, aims and overarching rules of organic production and defines how organic products should be labelled. This regulation is also complemented by several Commission implementing acts on the production, distribution, and marketing of organic goods.

These legislative acts are the legal basis governing whether goods can be marketed as organic within the EU, including those imported from non-EU countries. The regulations also define how and when the EU organic logo can be used (can only be used on products that have been certified as organic by an authorised control agency or body).

Every country in the EU appoints a 'competent authority' which is ultimately responsible for making sure EU organics rules are followed. Usually these are either a department of

agriculture or a department of public health. This competent authority can delegate its role to:

- one or more private control bodies
- one or more public control authorities
- a mixed system with both private control bodies and public control authorities.

Regardless of the system chosen, the competent authority is ultimately responsible for auditing the inspection system within its own area of responsibility. 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.

7.4.5 China

In China, organic products must meet 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. It is applicable to both domestic and imported products. The standard consists of four different sections setting out, respectively, the rules for the production, processing, labelling and management system of organic products and certified facilities. The scope of the standard covers crops, mushrooms, wild plants, livestock and poultry, aquaculture products, textile products and their unprocessed products among others. Organic products to be sold in China must have the organic product certificate issued by an accredited certification body in China.

7.4.6 South Korea

In South Korea, organic products are regulated by the *Promotion of Environment-friendly Agriculture and Fisheries and Management and Support for Organic Food Act 2012 (2015)*. All domestic and imported organic produce and processed products are required to be certified by an accredited certifying agent.

Attachment A - Implementation options considerations

Implementation options	Design features						Benefits	Issues
	Full coverage	Mandatory certification	Complaints system	Audit program for certifiers	Market Access	Enforcement		
1. Information standard through Australian Consumer Law (ACL)	✓	?	✓	?	x	?	<ul style="list-style-type: none"> - Covers all organic products. - Provides a mechanism for state and territory consumer affairs regulators to manage complaints and aid with resolving disputes 	<ul style="list-style-type: none"> - Labelling standard would need to be underpinned by a production standard. - Ineffective at proving misleading labelling claims in the past. - Inaccurate organic labelling is unlikely to be a high priority for ACCC. State and territory consumer affairs regulators also have limited resources and are unlikely to prioritise organic-labelling compliance. - No ability to have a co-regulatory model. - ACCC would not be an appropriate regulator for managing on-site inspections. - Would not support improved export market access.
2. A food standard through Food Standards Australia New Zealand (FSANZ)	x*	x	✓	x	x	?	<ul style="list-style-type: none"> - Least regulatory burden on industry and existing uncertified operators. - This option provides a mechanism to assess compliance of imports claiming to be organic with Australia’s organic requirements. 	<ul style="list-style-type: none"> - Does not cover non-food products - Focus on food safety rather than production and labelling - No possibility for co-regulatory model - Organics issues would not be enforced and no easy way to manage enforcement with states and territories - No mandatory certification would mean organic export market equivalency would be unlikely to be achieved in key export markets. - No appetite within FSANZ to implement an organic standard. - No control over the content of the standard as this is independently developed by FSANZ - No certification scheme so no increase in consumer confidence.
3. New standalone Commonwealth legislation	x	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> - Industry’s preferred option. - Highest benefit for industry - Allows for a mandatory certification scheme and a variety of design features, preferred by industry. - Could cover organic food and non-food products. - Dedicated enforcement resources. - Industry believes this option is the best mechanism to improve integrity in Australia’s domestic organics market, despite the gaps identified. - If National Standard is adopted, least regulatory burden on the industry and existing operators and allows for equivalency to untapped export markets. 	<ul style="list-style-type: none"> - Minor limitations which are considered insignificant include: <ul style="list-style-type: none"> - The sale of organic products within States between non-corporate entities (e.g., a sole trader QLD farmer selling direct to the public at a farmers’ market in Queensland). - The sale of organic products from NZ which are likely exempt under the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System (the Treaty) and the <i>Trans-Tasman Mutual Recognition Act 1997</i>.

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