



Organic Industries

Voice of Australia's organic industries

www.organicindustries.com.au

60 Investigator Street
RED HILL ACT 2609

18 March 2022

Consultation on Domestic Organics Regulation
Department of Agriculture, Water and the Environment
GPO Box 858
CANBERRA ACT 2601

RE: Domestic organics regulation impact statement

As Australia's independent peak industry organisation representing the diverse members of the Australian organic industry, Organic Industries of Australia Ltd welcomes the opportunity to comment on the Consultation Regulation Impact Statement (RIS) on how Australia regulates organic products domestically.

Our membership base covers the whole of Australia's organic industry, either through the direct membership of more than 120 industry members, or through our industry association members— Australian Certified Organic, National Association for Sustainable Agriculture Australia, Southern Cross Certified, Biodynamic Marketing, and The Organic Food Chain.

We are witnessing a profound global shift towards more sustainable food systems, driven by trends in both consumption and production. Organics is at the centre of this shift. But Australia has a relatively undeveloped domestic organic market as a direct result of confused government policies and responsibilities. In comparison, overseas consumption and production is supported by the implementation of comprehensive regulation of organic production and marketing, and significant financial and policy support from government. In fact, Australia will soon be the only advanced nation that has not implemented domestic regulation.

Worse still, our lack of domestic regulation is undermining efforts to improve market access for organic exporters. Our target markets, quite rightly, question the equivalence of our organic production systems, when there is no domestic organic regulation in place to provide them with some assurance of our market integrity.

Only domestic legislation will provide the necessarily regulations required to adequately protect organic consumers and producers, and provide the assurity needed for improved export market access.

We thank you for the opportunity to comment on this RIS.

Yours faithfully,

A handwritten signature in blue ink, appearing to read "Carissa Wolfe".

Carissa Wolfe
Chair, Organic Industries of Australia Ltd

1. PROBLEM DEFINITION

Australia stands in stark contrast to all other advanced economies in not having implemented comprehensive domestic regulation for the production and marketing of organic products. Indeed, around 80 countries have implemented, or are advanced in implementing, comprehensive organic regulations.

Australia only regulates the export of organic products. This is an artefact of our constitutional arrangements, so that the Australian Government is concerned to ensure the integrity of exports of Australian organic products and has limited power to regulate domestic product markets.

In contrast, the States have the necessary authority to regulate the domestic organic market, but are absent in that space. In some markets, the national and State governments collaborate on domestic regulation. A general confusion about government responsibility for organics regulation is not helpful in providing the regulatory clarity that consumers, producers and our export markets require.

Australian consumers are strongly in favour of mandatory independent certification of all foods which are labelled as organic and that it should be illegal to market or label a product as organic when it is not certified to be organic. These results are consistent across all States and age groups.

Our recent survey of organic operators (attached) demonstrated that there is overwhelming support (91%) from operators for the regulation of the term 'organic'. Respondents indicated a preference for this to be implemented through a separately legislated scheme and administered by a new regulator. Furthermore, 85% of respondents indicated that the lack of domestic regulation had an impact on their business.

The Australian Consumer Law protects consumers and producers against misleading, false or deceptive conduct, and businesses that make any organic claims must be able to substantiate those claims. But existing law is wholly inadequate in regulating the organic market, as products can still be sold with the suggestion they are 'organic', and achieve similar price points to certified products, which incur all the additional costs of being certified to an organic standard.

Organic sales in North America, Europe and increasingly in Asia are growing very strongly, supported by clear regulations that 'organic' only means 'certified organic'.

2. THE NEED FOR GOVERNMENT ACTION

Data on Australia's organic industry is very poor. The ABS previously collected information about organic agriculture in their 2011 and 2016 census of agricultural production and in annual surveys. That data was poor and not useable, and the 2021 census ceased collecting organic information. Industry estimates of production are based on incomplete information and suffer from methodological deficiencies which make much of the reported information unreliable.

Our best estimate is that organic agriculture comprises around 1.2% of national agricultural production, and that this level has not changed significantly over the last decade. Industry growth has not been spectacular, except in a few sectors—successful beef exports being a notable exception, albeit on the back of hard work and favourable overseas market conditions.

These circumstances are largely a result of confusion between governments as to who is responsible for regulating organic products and providing policy guidance, and an absence of financial support for industry development from government or Research and Development Corporations. In fact, the organic industry considers that it subsidises conventional agriculture, as we receive very little support from the RDCs.

In contrast, as part of its focus on sustainable farming, the European Union has implemented a target of increasing the total of the agricultural land under organic farming to least 25% by 2030. And, from 1 January 2022, new legislative measures took effect:

- a strengthening of the control system, helping to build further consumer confidence in the EU organics system;
- new rules for producers which will make it easier for smaller farmers to convert to organic production;
- new rules on imported organics to ensure that all organic products sold in the EU are of the same standard;
- a greater range of products that can be marketed as organic.

Strong consumer acceptance of organic products in the European Union and the USA is also supported by clear labelling requirements and only one government trademark which signifies certification by an authorised certification body.

3. POLICY OPTIONS

There is only one policy option that is acceptable to the organic industry—there must be legislation that requires that ‘organic’ can only mean ‘certified organic’. This definition sets the scope of which products would be covered by the legislation, covering the whole supply chain. There should be no exceptions, as these will result in inevitable decline in integrity.

The legislation needs to be supported by significant penalties for breaches, and a new public regulator that has the requisite skills required to be effective—and not by adding yet another poorly funded function to a regulator that can’t deal with its existing functions.

The legislation must be consistent between domestic and export products. Only this level of integrity will allow our exports to access markets on an equal basis as organic exporters in rival countries.

Regardless of which organic standard is adopted, we don’t consider existing standards to be fit for purpose. Significant investment is required to review the standard against best practice overseas, to improve integrity in the standard, and to provide better linkages between organic production systems, environmental sustainability, and improved biodiversity outcomes.

4. NET BENEFITS

Domestic regulation benefits three constituencies: domestic organic producers, organic exporters, and organic consumers. While we agree in principle that each of these groups should contribute to cost recovery for the implementation and management of domestic regulation, this proposition presupposes that we are starting from an ideal market steady state and proposing the introduction of regulation to that steady state. That is clearly not the case, as current market arrangements are far from optimal, and so any estimation of the benefits and cost shares would be spurious. We also note the difficulty in realising a consumer contribution. So, our starting position is we consider the government should fund this scheme in its totality. But we reserve our position on this issue until the cost-benefit analysis is available.

The international organic movement provides for certification through Participatory Guarantee Schemes which provide low-cost community-based certification to the same standard applying to all organic products. We see that such an arrangement has a place in a future Australian regulatory scheme, but only for small producers who may otherwise be impeded from market access due to unaffordable (to them) commercial certification charges. In fact, such a scheme could be beneficial in expanding the scope of

organic certification—for example, to currently uncertified farmers market stall holders—and in providing assurance to consumers of those products.

ATTACHMENT: SURVEY OF ORGANIC OPERATORS

Our survey of organic operators demonstrated that there is overwhelming support (91%) for the regulation of the term 'organic'. Respondents indicated a preference for this to be implemented through a separately legislated scheme and administered by a new regulator.

In Australia, the term 'organic' is not regulated as it is in the United States, Japan and China. It is legal to produce a product and call it 'organic' without providing the consumer with any proof that it is actually organic.

In fact, Australia is the only advanced country that doesn't regulate use of the term 'organic' or is well-progressed in implementing such regulation. 85% of respondents indicated that the lack of domestic regulation had an impact on their business.

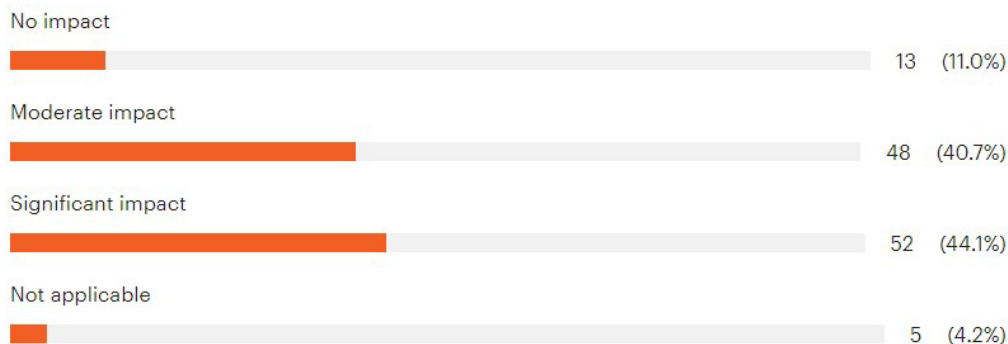
Organic Industries of Australia Ltd has been consistently lobbying the Government on the lack of domestic regulation, and will continue to participate in the Minister's Organic Industry Advisory Group. Our website has our [media release on these consultations](#).

Your responses to this survey will help us continue to represent you.

“1. Should Australia regulate the term 'organic' so that it means all stages of production have been certified as using organic methods?”



“2. How much do you think the lack of domestic regulation affects your business?”



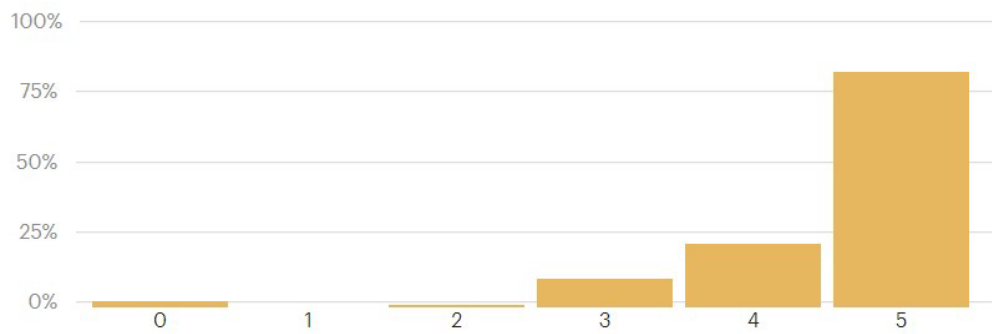
How much do you agree with the following statements?

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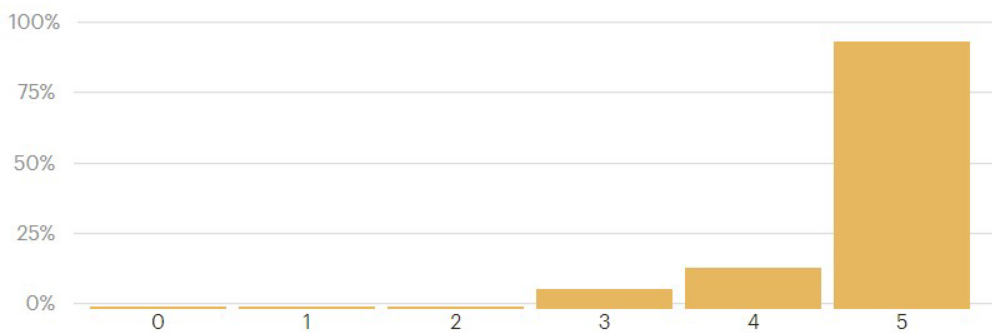
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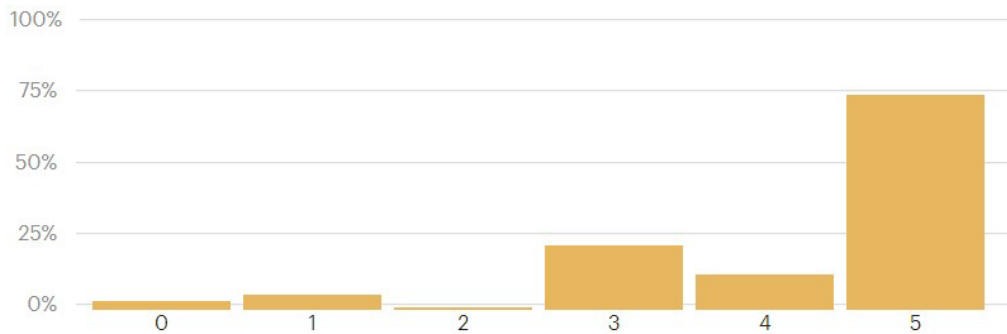
“The lack of regulation is bad for organic producers who have additional production costs and certification requirements, and who currently have to compete with products that are labelled ‘organic’, but which are not certified organic.”



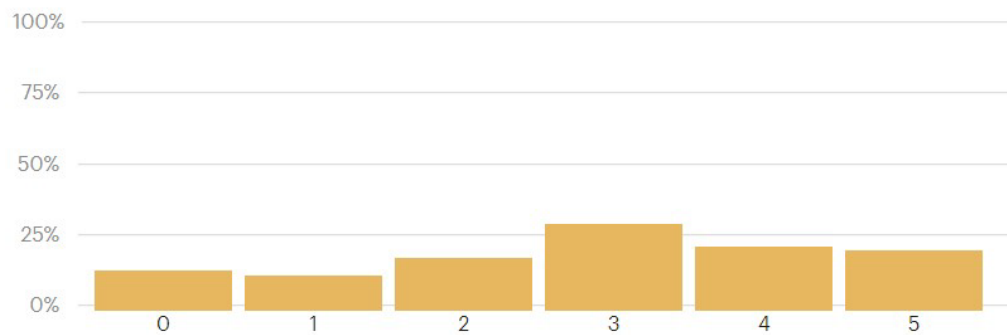
“The lack of regulation is bad for organic consumers, in that there is no protection from products being sold in Australia as organic when they may well have been produced using synthetic fertilisers, pesticides and herbicides.”



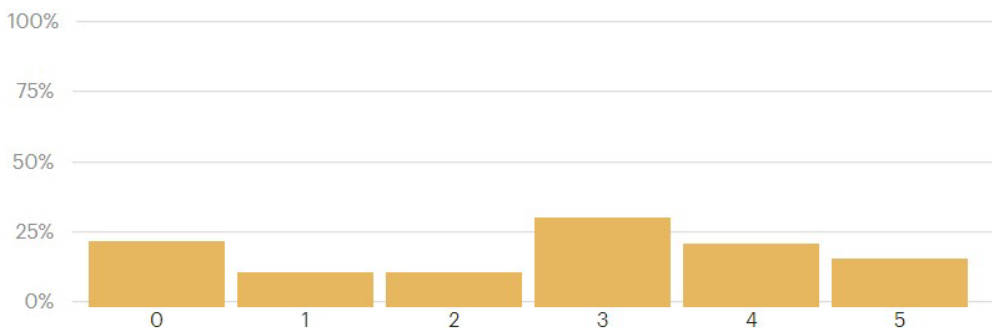
“The lack of regulation is bad for organic exporters, whose access to markets is constrained because many of our trading partners think the lack of domestic regulation undermines the case for accepting our organic exports?”



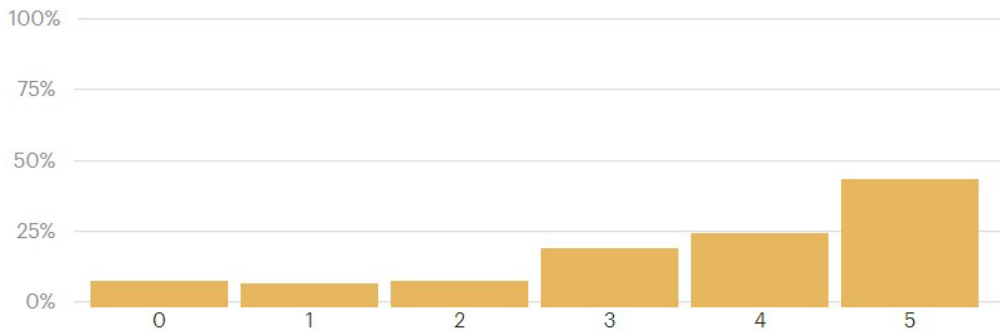
“I would trust the Australian Competition and Consumer Commission (ACCC) to regulate organic products in Australia”



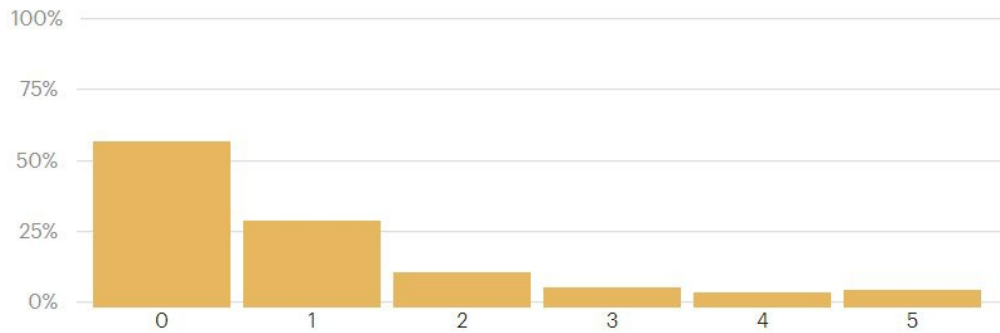
“I would trust Food Standards Australia New Zealand (FSANZ) to regulate organic products in Australia”



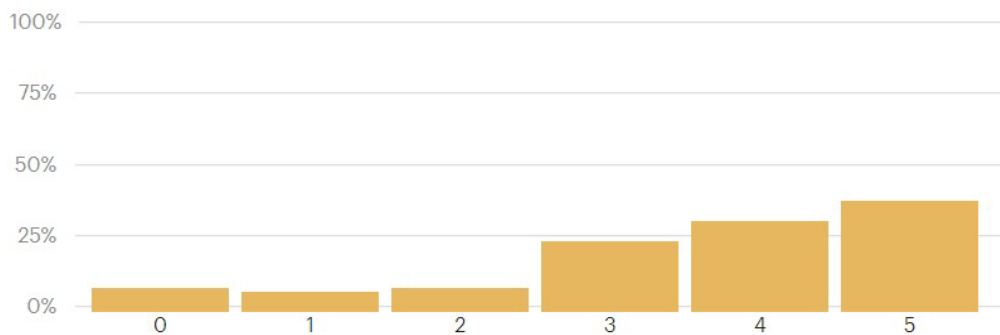
“I would trust a new independent regulator to regulate organic products in Australia”



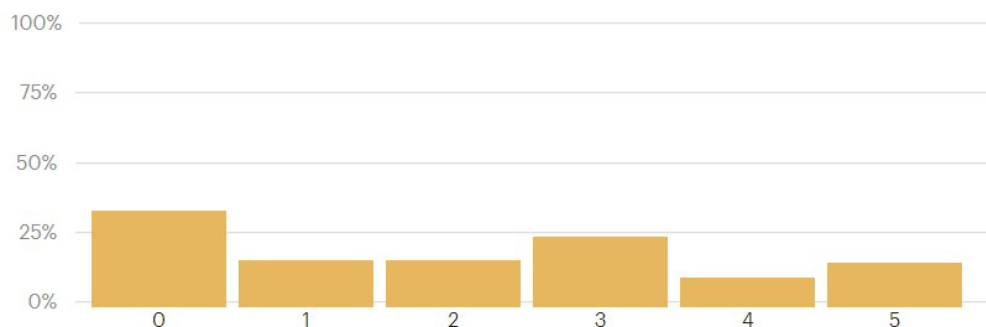
“A voluntary code of practice will provide adequate regulation”



“Legislation requiring certification will provide adequate regulation”



“I would be willing to pay 20% higher certification fees if mandatory regulation through legislation is implemented”

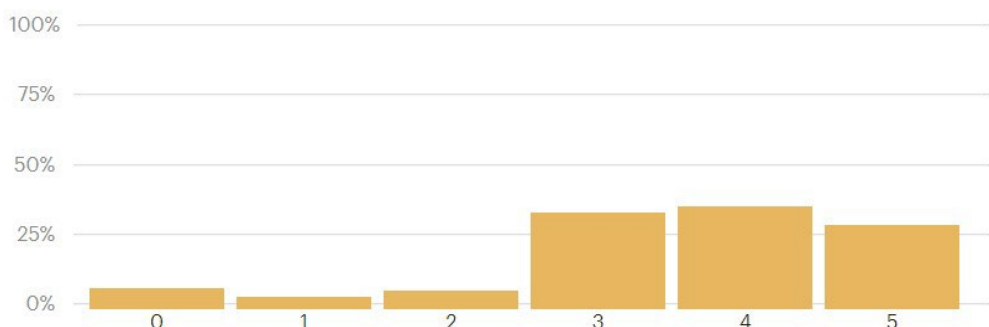


We also asked respondents how much they trust the organisations representing the interests of Australia's organic sector.

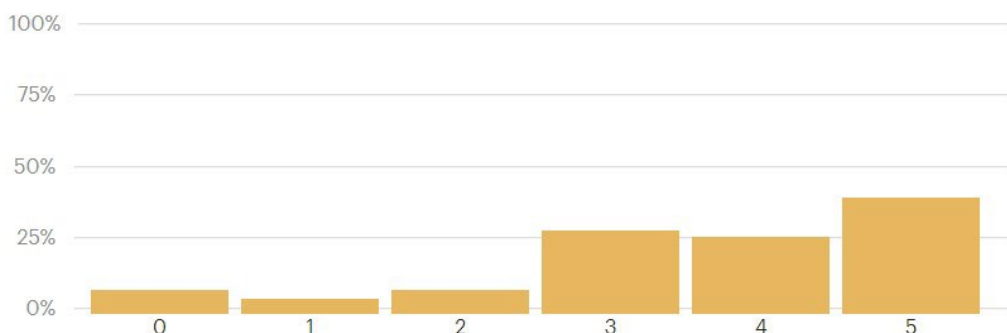


OIA and NASAA rated highest with an average score of 3.5 out of 5.0, Australian Organic scored 2.9 and the National Farmers Federation scored only 1.4.

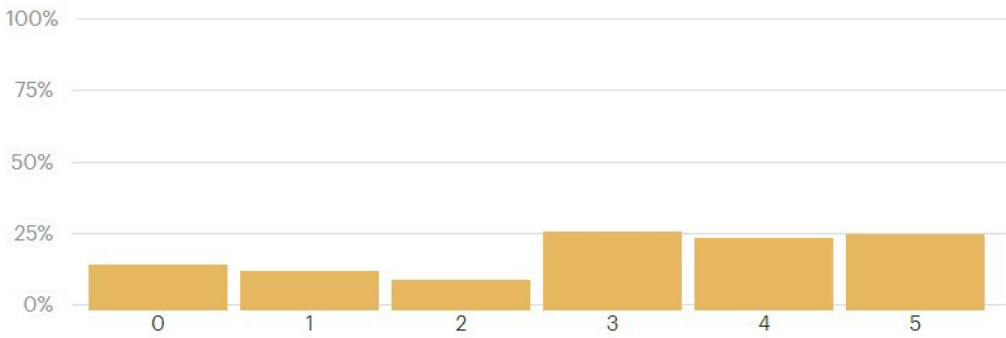
“Organic Industries of Australia Ltd”



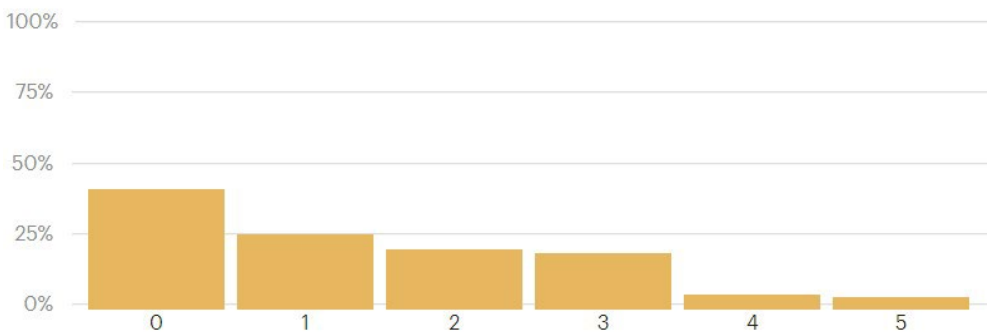
“NASAA - National Association for Sustainable Agriculture Australia”



“Australian Organic Ltd”



“National Farmers Federation”



Respondents also provided a range of thoughtful comments about aspects of domestic regulation. For example:

- Global comparison
 - We need to speed up the rate of change. Organic in Australia is years behind everywhere else worldwide. Do what ever is necessary to get rid of greenwashing and strengthen our organic status.
- Coverage of domestic regulation
 - It is just too hard competing with products labelled organic when they are not. Anyone can use the word organic with or without good intention. It is used flippantly as a word of trend.
 - The word 'organic' does not have to be regulated as only 'certified organic' - it can also be determined that all produce called organic (non-certified/pgs etc) must provide evidence that it has followed organic standards. Another option is that produce that is certified organic is 100% must be audited and traceable.
 - Currently, both production and processing stages need to be certified. He asks whether the regulation would potentially remove the processing stage from certification requirement, or does the term 'all stages of production' also include 'processing' in this question? Processing would include abattoirs, bakeries and mills. Well, we will be strongly arguing for stronger regulation across all stages of the production process, including inputs and processing.

- He is a beef producer who no longer has access to a certified organic abattoir. He now sells beef as 'organically grown'. The production process is completely compliant and certified, however, he no longer sells meat as certified organic due to the break in certification in the supply chain. This is an excellent point, and we are aware of beef producers, and many other sectors too, that are disadvantaged by a lack of scale and rate of return in organic processing. If we can grow the organic industry more, many of these issues will disappear. In the meantime, we need to consider better industry and government support for these areas of market failure.
- Conditions are being eroded and she is sceptical at the accuracy of packaging.
- He objects to usurping the term 'organic' to allow it to be used in the narrow sense of 'certified organic' to the level of one of the certifying bodies. The term needs to be differentiated when used to denote 'certified organic' - perhaps organic(C) or Organic. He supports the regulation of claims that foodstuffs are produced as 'organic' as a trade description, as it is quite misleading to say something has been organically produced when it has in fact been produced with complex synthetic pesticides, herbicides and synthetic fertilisers.
- He is worried about non-organic food being sold as organic. He tells us that there have been many cases of fraud including Mexican garlic sold as Australian in supermarkets, and that the only way to stop these practices is to legislate with jail terms applicable - it is straight out fraud on a worldwide scale, and he hopes one day it will change.
- FSANZ is considering allowing genetically modified products regulated by their manufacturer into Australia. Why would one of your survey questions be whether or not they could regulate organic products? Is that some kind of joke? Unfortunately, no it is not a joke (and we are totally with you on GMOs) - one of the options being considered by Government is whether FSANZ should set the domestic organic standards.
- Low cost certification
 - Concerned that stronger regulation will drive a lot of good committed small operators out of the industry and onto the black market. She believes a system like NOP has, that fosters new operators with grants will eventually build our industry and provide more excess produce for export, is a better way forward.
 - Noted that USNOP standard (205.101), provides exemptions and exclusions, from certification. This is an important component to include in any update to the AU standards. A production or retail operation that sells agricultural products as 'organic' but whose gross agricultural income is \$5K or less annually, is exempt from certification BUT needs to comply with the applicable organic production, handling, record keeping and labelling requirements of the standard. The products can not be sold for further on-processing at another handling operation. This then allows for small producers (grower's markets or seasonal boxes) and small businesses, who wish to grow organically or use organic ingredients, to sell directly to customers, can carry on their business without the additional cost of certification.
 - Fees are becoming out of reach for small producers. In some cases the fees are larger than the income generated. It's killing me in particular.
 - Wouldn't like to see new so called certification parties based on low cost relaxing the inspections letting in the charlatans take over & ruining the cert system. He thinks most people who buy organic would look for a certification label - there maybe products in

farmers markets claiming to be organic without certification, but he doesn't think the mainstream products in the larger organic food chain with certification are a problem.

- The domestic tightening of the proprietary use of the word 'organic' under a certification scheme needs to accommodate small end producers with appropriate cost structure and transitional pathway to full certified organic status.
 - By all means chase down the large companies that are "Greenwashing", but if you want to fix things for small producers lower the fees dramatically and introduce peer to peer auditing.
 - Certified organic growers already pay too much in certification fees and levies. Any changes made should not be to the cost of current certified growers, governments must not put any further financial onus on growers.
 - Current audits are driving people out of being organic producers.
 - The cost of certification should be based on the cost to certify - without the additional "tax" based on volume or sales. Large and well supported business that comply with the requirements of the organic movement should not be penalized for being popular to consumers.
 - Small businesses should be supported financially to comply with funded government support - the future competitive point of difference for Australia will be as a producer and exporter of truly organic goods - the first countries to move in this direction will be the most successful over the next few decades.
 - These are great suggestions. We are interested in exploring low cost and flexible arrangements to make sure regulation does not create problems for small producers. The US National Organic Program is one route that needs to be considered. Another option is the adoption of Participatory Guarantee Schemes which provide for certification by community / peer groups.
- Certification processes
 - The current systems is paper heavy and run by pen pushers that do not necessarily know or understand what clean green food production is about. It is fine to have a whole lot of boxes to tick but that does not transfer necessarily to understanding soil and plant health which is directly affecting the quality of the food we produce. In some instances it appears that the dollar is more relevant than the quality of the food produced.
 - Organic standards and industry governance
 - The AS6000 should be taken up in federal government legislation as both the domestic and export standard, that the MP100 is updated by SA-FTE032 committee to include provision for all imported organics are compliant to it, and that a SDO is formulated under the auspices of SA which would provide higher level of governance, would allow the industry to own and manage its standard, be recognised by govt as standards setting authority.
 - OIA Ltd should be the designated peak industry body, that the government invest more money into the organic industry commensurate to its worth 2.5 billion and the other co-benefits it brings re climate change mitigation and adaption, functional biodiversity benefits, health outcomes, less downside externalities than the current agricultural paradigm and more social capital outcomes.

- Current organic standards permit the addition of FSANZ regulated additives and flavour enhancers as ingredients, misleading consumers as these products are not in fact organic but contain additives of concern. Unless this issue is addressed we cannot recommend organic as being any better than non-organic to the 17,500 members of the Food Intolerance Network.
- Worried that the current certifying entities will use the likely position to strengthen their influence over the industry, and in no way does he want to see the 'Bud Logo' as the national symbol for certified organic. He would prefer exploration of the AS6000 or another reviewed standard that takes in a 21st Century approach, greater clarity re dealing with matters of innocent bystander environmental contamination, and installing greater sustainability values within the standard.