



Australian Government

**Department of Agriculture
and Water Resources**

**Australian Legal Framework for the Import and Export
of Organic Products**

Exporting Country: AUSTRALIA

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ABBREVIATIONS AND SPECIAL TERMS

ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ASICS	Australian Securities and Investments Commission
APVMA	Australian Pesticides and Veterinary Medicines Authority
CTM	Certification Trade Mark
DAWR	Department of Agriculture and Water Resources (Australian Government)
FSANZ	Food Standards Australia New Zealand
GMOs	Genetically modified organisms
IP	Intellectual property
Mark	Australian National Organic Mark
MRLs	maximum residue limit
OISCC	Organic Industry Standards and Certification Council
OPC	Organic Produce Certificate
NSW	New South Wales
NT	Northern Territory
QLD	Queensland
SA	South Australia
TAS	Tasmania
the Code	Australia New Zealand Food Standards Code
the Regulator	Gene Technology Regulator
VIC	Victoria
WA	Western Australia

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Australian Legal Framework for the Import and Export of Organic Products

Australia has three levels of government / law making that work together to form Australia's Legal Framework for the importation and exportation of goods. The three levels are:

- Federal (or National) Parliament, in Canberra (Commonwealth Government)
- State/territory parliaments, in each state/territory capital city
- Local councils (also called shires or municipalities), across the nation.

Australia has one federal Parliament, six state and two territory parliaments, and over 560 local councils.

Section 51 of the *Australian Constitution* details the powers of the Federal Parliament to make laws in relation to national matters. These laws are administered by the federal government. Issues not listed in section 51 are the responsibility of State Governments.

In addition to the three levels, a system of co-regulation also exists. Case Law is also another way of laws being made, in addition to Parliament processes.

Regulations pertaining to the production, import, export and sale of products claiming "organic or bio-dynamic" status are present on all three levels, and in case law. The treatment of organic products under Australia's federal legislation is different depending on whether the organic products are destined for export or the domestic market. While the export of organic products is captured directly under Australia's export legislation, organic goods produced for the domestic market and imported organic goods are captured indirectly through overarching legislation and regulation for foodstuffs.

Australian organics guidelines consists of two separate standards. For imports and the domestic market the Australian Standard (AS 6000) is used to provide the criteria for an organic product. For exports the 'National Standard for Organic and Bio-Dynamic Produce' is used to provide the criteria for an organic product.

Government Legislation and National Codes

Import legislation and regulation

Australian federal legislation

Australia has an effective and robust regulatory system in place which provides guarantees in food chain integrity. The current arrangements for importing food products labelled as organic or bio-dynamic into Australia allow trade to occur freely provided that:

All quarantine requirements are met (*Biosecurity Act 2015*); and
All imported food safety requirements are met (*Imported Food Control Act 1992*); and
The goods are truthfully labelled (*Australian Competition and Consumer Act 2010*).

The Department of Agriculture and Water Resources (DAWR) is responsible for administering two legal instruments with which imported food must comply. The first set of requirements addresses biosecurity concerns. The second set of requirements address food safety and are those set out in:

Imported Food Control Act 1992

Imported Food Control Regulations 1993

Imported Food Control Order 2001

Domestic legislation (The Food Standards Code)

The Australian system of food regulation includes a mandatory code known as the *Australia New Zealand Food Standards Code* (the Code). The Code is enforceable as law by legislation within each state and territory as shown in the Annex and thereby covers all foods sold in the Australian domestic market, including imported products. The Code includes primary production and processing standards.

Food imported into Australia must meet national food standards, published in the Code. The monitoring of imported food is a responsibility shared across many government agencies, including those at local, state, territory and federal levels.

The Food Standards Australia New Zealand (FSANZ) is a bi-national government agency, a partnership between ten Governments: the Commonwealth; Australian States and Territories; and New Zealand. It is a statutory authority under Commonwealth law and is an independent, expert body.

FSANZ is responsible for developing, varying and reviewing standards contained in the Code and for developing guidelines to industry for food production and processing for food available in Australia and New Zealand. The process for amending the Code is prescribed in the Food Standards Australia New Zealand Act 1991.

In Australia, FSANZ also develops food standards for food safety, maximum residue limits, primary production and processing and for a range of other functions, including the coordination of national food surveillance and recall systems, conducting research and assessing policies about imported food.

The Food Standards Code makes reference to organics and organic certification.

The Competition and Consumer Act 2010

The Australian *Competition and Consumer Act 2010* is the legislative vehicle for competition law in Australia, and promotes competition, fair trading and consumer protection. It is administered by the Australian Competition and Consumer Commission (ACCC).

Organic products, including imported organic products, sold domestically within Australia must comply with the *Competition and Consumer Act 2010*. The ACCC is an independent statutory government authority serving the public interest. It administers compliance with the Act which is enforced by all Australian courts and tribunals, including the courts and tribunals of the States and Territories. The Australian Securities and Investments Commission (ASIC) is also involved on relevant matters.

Under the *Competition and Consumer Act 2010*, items that make organic claims must be true. The ACCC defines an organic claim as any claim that describes a product as organic, or the ingredients used to make a product as organic. For example '100% organic', 'made using organic ingredients' or 'certified organic'. Businesses that make organic claims must be able to substantiate those claims.

Office of the Gene Technology Regulator

The Office of the Gene Technology Regulator, supports the Gene Technology Regulator (the Regulator), and is a part of the **Department of Health and Ageing**. The Office was established under the *Commonwealth Gene Technology Act 2000*. This legislation sets up a nationally consistent regulatory system for gene technology in Australia.

In Australia, all dealings with live and viable genetically modified organisms (GMOs), including import, are illegal unless authorised under the Act.

The Office of the Gene Technology Regulator administers all use of GMOs including trial crops and import permits. This provides the Organic Industry with the capability to monitor GMO use and manage segregation.

Pesticides and veterinary medicines

The Australian Pesticides and Veterinary Medicines Authority (APVMA) places strict limits on agricultural and veterinary chemicals that can be used on crops and animals in Australia. The APVMA also sets withholding periods for when chemicals are used and when plants or animals can become part of the food supply.

The APVMA can make amendments to the FSANZ Maximum Residue Limit (MRL) standard (in the *Food Standards Code*) for MRLs that are currently registered for use in Australia, following consultation with FSANZ about dietary exposure assessments.

The Australian National Organic Mark

While not mandatory under Australia's legal framework, industry has developed an organic mark for use by international third parties on imports into Australia.

The Australian National Organic Mark (Mark) is registered as a Certification Trade Mark (CTM), and its use is governed by, and covered under the Trade Marks Act 1995 and the Competition and Consumer Act 2010. It is registered as a trade mark and protected from misuse by both civil laws and legislation (e.g. Trade Marks Act 1995 and the Consumer Law 2010).

A CTM indicates to consumers that a product or service meets a particular standard. In the case of the Mark, it will indicate that product conforms to the requirements of The National Standard for Organic & Biodynamic Produce. This standard stipulates the minimum requirements for products placed on the Australian market with labelling which states or implies they have been produced under organic or bio-dynamic systems. Unless otherwise formally notified by the Organic Industry Standards and Certification Council (OISCC), licensees approved to use the Mark must conform to the conditions and restrictions detailed in the National Standard for Organic and Biodynamic Produce.

Once eligible, USA certification bodies can apply to OISCC to use the Mark by entering into a licence agreement. Once this has been signed, USA certification bodies may then allow organic operators to apply the Mark – once a sub licence agreement has been signed by the operator.

The Mark must be used in conjunction with an Organic Certifier's existing logo and state the country of manufacture.

Any use of the Mark must be approved by the Certification body prior to printing labels.

Intellectual Property (IP) Australia

Intellectual Property (IP) Australia administer Australia's intellectual property (IP) rights system, specifically trademarks, patents, designs and plant breeder's rights.

IP Australia, is a part of the Department of Industry, Innovation and Science as a listed entity under the *Public Governance, Performance and Accountability Act 2013* but operate independently of the Department on financial matters and with some degree of autonomy on other matters.

The Organic Mark is registered as a Trade Mark under IP Australia, as are the Certification Logos of each of the approved organic certifiers.

Export Regulation and Legislation

Australian federal legislation

Australia's regulation of organic exports under the *Export Control Act 1982* is based on parameters of quality of production. Currently every organic product exported from Australia requires a government certificate. Under the *Export Control Act 1982* all product to be exported as organic is a 'prescribed good' and therefore requires a government 'Organic Produce Certificate' (OPC) before it can leave the country.

Australian Organic Certifying Organisations

The *Export Control (Organic Produce Certification) Orders* allows DAWR to assess organic certifying bodies and recognise them as approved certifying organisations for export. Once an organisation is recognised as an approved certifying organisation, it may perform the following functions on the department's behalf:

- Assess and certify organic operators to determine compliance to the National Standard for Organic and Bio-Dynamic Produce and importing country requirements.
- Issue OPCs for export consignments of organic labelled produce

DAWR advises approved certifying organisations and the Organic Federation of Australia about any changes to export or importing country requirements by circulating industry notices. Consultation is primarily through OISCC, while the Organic Notices are distributed to inform stakeholders about system changes and issues. These orders are currently being reviewed.

Apart from export regulation, DAWR has policy documents that underpin the Organic Export Program:

- The 2013 Administrative Arrangements guidelines (non-binding)
- The National Standards for Organic and Bio-dynamic Produce

To use an imported ingredient in an organic product destined for export, a certified operator will obtain approval from their certifying organisation. The certifying organisation will then determine whether an imported product or ingredient is eligible to be used in an organic product by:

- Confirming the product has been produced under a certified organic system in its country of origin.
- Assessing supporting documentation to determine conformance with the destination country's requirements.

Industry Codes

The ACCC encourages industry to develop codes that will deliver effective compliance with the *Competition and Consumer Act 2010*. Effective codes potentially deliver increased consumer protection and reduced regulatory burdens for business.

The Organic Industry in Australia has a Code of Conduct, signed by each of the approved Organic Certification Organisations, and based on the guidelines issued by The ACCC.

ANNEX

Federal Regulations

Export Control Act 1982 and associated orders.

Imported Food Control Act 1992

Imported Food Control Regulations 1993

Imported Food Control Order 2001

State / Territory Regulations

The Food Standards Code is applied in the following legislations for each state:

ACT

Food Act 2001

Food Regulations 2002

NSW

Food Act 2003

Food Regulation 2015

NT

Food Act

QLD

Food Act 2006

Food Regulation 2006

Food Production (Safety) Act 2000

Food Production (Safety) Regulation 2014

SA

Food Act 2001

Food Regulations 2002

TAS

Food Act 2003

Food Regulations 2012

VIC

Food Act 1984

WA

Food Act 2008

Food Regulations 2009

Consumer Laws

Consumer law is applied in each state by the following Government Departments:

ACT Office of Fair Trading (OFT)

NSW Fair Trading

NT Consumer Affairs

Office of Fair Trading Queensland

SA Office of Consumer and Business Services (CBS)

Tasmanian Consumer Affairs & Fair Trading

Consumer Affairs Victoria (CAV)

WA Department of Commerce

False claims of “organic” have resulted in prosecutions in several States, contributing to Case Law history.

Local Government Regulations

Local Councils across Australia have the authority to investigate food establishments, usually by an Environmental Health Officer.