Australia's Organic Trilemma:
Public versus Private Organic Food Standardisation

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DECLARATION

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Abstract

The Australian organic food industry has reached a political impasse. Despite being one of the fastest growing sectors of the food economy, the organic industry in Australia remains largely self-governed. There is no specific legislation for domestic organic food standardisation and labelling at the state or federal level as there is in the USA and the EU. The situation has engendered deep division within the sector. While there is recognition among most organic industry actors about a need for regulatory reform and greater engagement with government, there is disagreement over the appropriate nature and extent of government intervention. Some sectoral actors seek government regulation to facilitate the maturation and expansion of the organic industry and to protect consumers and producers from labelling fraud. Others fear that government regulation may undermine the values and traditions of the Australian organic agriculture movement. Drawing upon the social theories of Jurgen Habermas, Niklas Luhmann and Gunther Teubner, the thesis argues the Australian situation represents an example of a regulatory trilemma. Inappropriate government regulation may: (1) be ignored and thus redundant; or (2) it may destroy the inherent structure and normative dynamics of Australia's organic food system; or (3) be counteracted by positive systemic resistance from the organic sector. The thesis finds a reflexive approach provides a sound basis for establishing the limits of government regulation of the organic sector and represents an effective response to the trilemma.

Contents

Abbreviations

ACCC	Australian Competition and Consumer Commission
AFS	Australian Forestry Standard
AQIS	Australian Quarantine and Inspection Service
BDRI	Biodynamic Dynamic Research Institute
BFA	Biological Farmers Australia
BSE	Bovine spongiform encephalopathy
COAG	Council of Australian Governments
DAFF	Commonwealth Department of Agriculture Fisheries and Forestry
DIS	Draft International Standard
EMS	Environmental Management System
EU	European Union
FDIS	Final Draft International Standard
FSANZ	Food Standards Australia New Zealand
FSC	Forest Stewardship Council
GATT	General Agreement on Tariffs and Trade
GM	Genetically Modified
GMO	Genetically Modified Organism
IFIS	Imported Food Inspection Scheme
IFOAM	International Federation of Organic Agriculture Movements
ISEAL	International Social and Environmental Accreditation and Labelling Alliance
ISO	International Organisation for Standardisation
JAS	Japanese Agricultural Standard of Organic Agricultural Products
JAS-ANZ	Joint Accreditation System of Australia & New Zealand
MRL	Maximum Residue Limits
MSC	Marine Stewardship Council
NASAA	National Association for Sustainable Agriculture Australia
NGO	Non Government Organisation
OECD	Organisation for Economic Cooperation and Development
OFA	Organic Federation of Australia
OFC	Organic Food Chain
PEFC	Programme for the Endorsement of Forest Certification
PPS	process and production standards
SFI	Sustainable Forestry Initiative
SFPQ	Safe Food Production Queensland
TOP	Tasmanian Organic-Dynamic Producers

UK	United Kingdom
USA	United States of America
USDA	United States Department of Agriculture
WTO	World Trade Organisation

Chapter 1: The organic trilemma

A society without a sustainable food system is doomed regardless of its other qualities. From individual to global scale, the necessities of food production and consumption are ubiquitous and arguably still account for a greater expenditure of human labour than any other activity. They also provide our most vital, concrete and constant connection to the natural world.[1] Hunting and gathering sustained us until the Neolithic Revolution in 8000 BC.[2] The advent of agriculture led to the settled expansion of clans, then to villages, towns, cities, nation-states, empires and today's global political economy.

Traditional farming systems were developed over millennia via careful observation of natural processes, and trial and error adaptation to local environmental constraints such as water availability, climate and soil fertility. McNeill and Winiwarter note that, 'without any conception of nitrogen, farmers around the world followed practices that fixed atmospheric nitrogen in their soils. Had they not learned to do so, there would be no cities or civilization anywhere on earth.'[3] Traditional agriculture is based on subsistence, where most food is consumed in the vicinity of its production by the people who produce it. The subsistence

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[1] Donald Worster, 'Transformations of the Earth: towards an agroecological perspective in history' (1990) 76(4) *Journal of American History* 1087 p 1092
[2] Jared Diamond, *The worst mistake in the history of the human race* (1987) <http://www.agron.iastate.edu/courses/agron342/diamondmistake.html> at 14/12/06
[3] J.R. McNeill and V. Winiwarter, 'Breaking the sod: humankind, history and soil' (2004) 304 *Science*

strategy relies on a symbiotic balance within the local environment; ensuring sufficient levels of nutrients are conserved in the soil to maintain fertility, and avoiding disturbance to the complex biodiversity and ecological processes that keep pests, disease and other environmental threats under control.[4] Historically, traditional farming societies had mixed success in maintaining this balance long term, with the spectre of crop failure and famine ever-present. Serving as a classic example, the ancient Sumerian civilisation of Mesopotamia is believed to be the first agrarian civilisation and also probably the first to suffer total agricultural collapse (in around 2500 BC) – a consequence of soil salinity caused by its intensive irrigation practices.[5]

In the modern era, fossil fuelled mechanisation and Green Revolution technologies like synthesised nitrogen fertiliser and chemical biocides have delivered unprecedented increases in agricultural production, seemingly ensuring reliable and abundant food supplies for a rapidly expanded human population, at least in the developed world. Spectacular as the productivity triumphs of modern industrial agriculture might be, they have not been enough to allay concerns about long term sustainability. At the heart of these concerns is a conviction that an increasing disparity between agricultural systems and natural ecological systems is fraught with risk. According to environmental historian Donald Worster:

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[4]Worster (1990) op cit

[5] David Getches, 'Water wrongs: why can't we get it right the first time?' (2004) 34 *Environmental Law*

> The vulnerabilities inherent in modern agriculture… include an unprecedented degree of susceptibility to disease, predation, and pest population explosions; a heightened overall instability in the system; a constant tendency of the human manager to take risks for short term profit, including mining the soil [and water resources]… an increasing reliance on technological substitution for natural plant and animal services; a reliance on chemical inputs that have often been highly toxic to humans and other organisms; a dependence on imports from distant regions to keep the local system functioning; and finally a demand for capital and expertise that fewer and fewer individual farmers [can] meet…[6]

In the 1960s two of what are regarded as seminal texts of the environmental movement, '*Silent Spring*' by Rachel Carson[7] and '*The Tragedy of the Commons*' by Garett Hardin,[8] delivered powerful critiques of modern agriculture. The former warned of potentially catastrophic impacts of toxic chemicals on biodiversity; the latter argued an inexorable drive for increased production and consumption would push beyond the carrying capacity of the Earth's common natural resource base. By the end of the 20th Century, the agricultural sustainability debate had become a fulcrum for wide ranging political, scientific and ethical discourse involving such issues as animal welfare; ecological and social injustice associated with international trade; obesity and the overabundance of unhealthy 'fast food' in the developed world; food insecurity in the global South; the loss of traditional food cultures; and the domination of global food supply chains by multinational agribusiness and retail corporations. In an essay decrying the growing power of consumer and environmental movements in the new millennium, British academic Frank Furedi argues that,

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[6] Worster (1990) op cit, p1105
[7] Rachel Carson, *Silent Spring* (1962)
[8] Garrett Hardin, 'The tragedy of the commons' (1968) 162 *Science* 1243

> Consumer activism has succeeded in transforming the issue of food into one of the most high profile political issues facing British society. Although genetically modified foods have been the main target of a bitter environmentalist crusade, the entire food industry has become stigmatised by the claim that it puts profits before people's safety. [9]

The modern food economy demands order, control and predictability but the problem with nature is its propensity for disorder, unpredictability and recalcitrance.[10] Oblivious to politics, drought, floods, weeds, disease and feral pests continue to torment contemporary farmers, as they undoubtedly did the first farmers in 8000 BC. A philosophical dichotomy regarding this 'problem of nature'[11] has emerged from the normative discourse accompanying agricultural modernisation: the *synthetic – organic* dichotomy. The synthetic philosophy underpins modern industrial agriculture, whereby nature's unruliness is confronted scientifically by reducing it to its constituent chemical and molecular elements in order to manipulate biological traits and processes. The countervailing organic philosophy eschews such reductionism; the unruliness of nature is accepted holistically as setting constraints to work within rather than against. Farmers should recruit to the fullest extent natural processes of pest control, nutrient and energy recycling while avoiding the use of external synthetic inputs.[12]

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[9] F. Furedi, 'Consuming democracy: activism, elitism and political apathy' (Paper presented at the The European Science and Environment Forum, 1999)
[10] D. Goodman, Sorj.B. and I. Wilkinson, *From farming to biotechnology: a theory of agro-industrial development* (1987)
[11] Paul Rutherford, *The problem of nature in contemporary social theory* (Ph.D. Thesis, Australian National University, 2000)
[12] Stewart Lockie and Nell Salem, 'Governing consumption: mobilising 'the consumer' within genetically modified and organic food networks ' in Vaughan Higgins and Geoffrey Lawrence (eds), *Agricultural Governance: Globalization and the new politics of regulation* (2005) 154, p 157

The synthetic approach is now exemplified by the drive to develop food using GM (genetic modification) or biotechnology – technology to modify and transplant genes between crop species and create living organisms through DNA cloning. At the other extreme, epitomising the organic approach is bio-dynamic farming. Based on the teachings of Rudolph Steiner (founder of 'anthroposophy') bio-dynamic farming treats the whole farm as a living organism. It prohibits the use of synthetic chemicals, requires exponents to plan crop rotations according to an astronomical calendar, and to promote soil fertility by burying cow horns filled with natural herb and mineral preparations.[13] In 1928 the 'Demeter' label was created in Europe to market biodynamic produce; establishing the first certification and labelling system of what has since evolved and diversified into the broader international organic agriculture movement.[14]

Organic agriculture is defined in the following terms by the International Federation of Organic Agriculture Movements (IFOAM), its peak international body:

> Organic agriculture is a production system that sustains the health of soils, ecosystems and people. It relies on ecological processes, biodiversity and cycles adapted to local conditions, rather than the use of inputs with adverse effects. Organic agriculture combines tradition, innovation and science to benefit the shared environment and promote fair relationships and a good quality of life for all involved.[15]

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[13] Florian Leiber, Nikolai Fuchs and Hartmut Spief, 'Biodynamic agriculture today' in Paul Kristiansen, John Reganold and Acram Taji (eds), *Organic Agriculture: A Global Perspective* (2006) 141, p 143

[14] International Demeter, *History of the biodynamic movement* <http://www.demeter.net/> at 10/04/07

[15] IFOAM, *Definition of organic agriculture* <http://www.ifoam.org/growing_organic/definitions/doa/index.html> at 25/05/11

What distinguishes organic from both modern industrial (or conventional) agriculture and traditional subsistence agriculture is its normative imperative. The industrial agricultural paradigm is relentlessly instrumental; dictating the use of whatever technology is reasonably (and legally) available and considered likely to produce the highest yield for the least expense. Bound by the organic philosophy, organic agriculture repudiates the use of synthetic external inputs on principle, regardless of their claimed effectiveness. Organic farmers might adopt many of the techniques of traditional farmers, not because of unavailability of modern agricultural technology (as is the case with traditional farming) but by choice, in the belief that organic farming is more natural and healthier for the environment. Organic agriculture is thus a phenomenon endemic to the industrialised world rather than traditional rural societies where the sorts of low-tech, low input farming techniques used in organic farming actually predominate by necessity.

The organic movement is a modern reaction against industrial agriculture and arguably represents the most significant 'alternative' agricultural paradigm to challenge it. By 2008 the estimated annual global trade in organic food and drink had reached 50.9 billion $US,[16] and (according to 2008 figures) there are at least 35 million hectares of land managed organically by 1.4 million producers spread worldwide.[17] For a number of years organic food sales in developed countries have been increasing by up to twenty percent per annum, making organics one of the fastest (if not

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[16] H. Willer and L. Kilcher, 'The world of organic agriculture-statistics and emerging trends 2010' (2010)
[17] Ibid

the fastest) growing sectors in the world food economy.[18] A key ingredient in the organic movement's success is the way diverse movement actors have organised into local, national and global networks and developed their own unique mechanisms of governing food production through production standards, certification, labelling and accreditation. These standards initiatives rate as pioneering efforts in the development of eco-labelling and environmental management systems (EMS) that have now been taken up worldwide by other industry sectors such as fisheries, forestry, mining and manufacturing.[19]

The rise of organic agriculture involves pivotal issues in agricultural, environmental and consumer politics, and a unique nexus of market, state and civil society governance mechanisms. It thereby represents a sectoral case study with tremendous scope, which is why it has been chosen as the subject of this research. As a multidimensional social phenomenon it can be studied as an evolving set of alternative agronomic techniques, a social movement, and an industry.[20] Research into organics typically focuses on the agronomic aspects, often seeking to compare organic yields, resource efficiency, environmental and social impacts and economic viability with those of conventional agriculture. That is not the aim here. As will be elaborated in the next section, the aim of this thesis is to explore from a

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[18] Stewart Lockie et al, 'Understanding the market for organic food' in Paul Kristiansen, John Reganold and Acram Taji (eds), *Organic Agricuture: A Global Perspective* (2006) 245
[19] Fred Gale and Marcus Haward, 'Public accountability in private regulation: contrasting models of the Forest Stewardship Council (FSC) and Marine Stewardship Council (MSC)' (Paper presented at the Australasian Political Studies Association Conference, Adelaide, South Australia, , 2004)
[20] Timothy Vos, 'Visions of the middle landscape: organic farming and the politics of nature' (2000) 17 *Agriculture and Human Values* 245

'governance perspective' the policy challenges involved in organic food standardisation and regulation in modern OECD nations.

1.1 Organic agriculture from a governance perspective

This research is premised on the view that organic agriculture is primarily a global network of private and public *governance* systems seeking to promote sustainable agriculture. This concept of a 'governance perspective' is critical and it is important at this point to elaborate more fully its meaning.

Governance is a notoriously difficult concept to pin down, so much so that it can be compared to a concept like time – one can grasp its meaning without being able to readily capture it in a fixed definition, however understanding the notion of governance is central to this thesis. Governance encompasses, but is nevertheless distinguishable from *politics.* Politics conveys more the ideological and personal antagonisms associated with achieving and holding power; whereas governance conveys more the practical exercise of power to achieve collective goals. It also encompasses, yet is distinct from, the concepts of *government* and *regulation*; which here denote the apparatus and legal power of the state. Governance reaches beyond state power and institutions to include power exercised through civil society and business. One attempt at a generic definition is, 'the art of steering societies and organisations.'[21] Another is '…the management of

[21] Institute on Governance, *What is governance? Getting to a definition* <http://www.iog.ca/boardgovernance/html/gov_wha.html> at 19/04/07

the course of events in a social system...'[22] Both of these would be accurate in the context of this research, but rather than seeking to define such an elusive concept it might be more useful to outline the epistemological scope of a *governance perspective*. Stoker[23] provides a series of five propositions for understanding governance in that sense:

1. Governance refers to a set of institutions and actors that are drawn from, but also beyond the state.
2. Governance identifies the blurring of boundaries and responsibilities for tackling social and economic issues.
3. Governance identifies the power dependence in the relationships involved in collective action.
4. Governance is about autonomous self-governing networks of actors.
5. Governance recognises the capacity to get things done which does not rest on the power of the government to command or use its authority. It sees government as able to use new tools and techniques to steer and guide.

A review of the theoretical literature reveals a host of terms used to describe essentially the same phenomenon as Stoker's governance perspective. For example Drahos, Burris and Shearing use *'nodal governance'* to describe how actors within social systems interact and organise in concentrations (nodes) to govern systems they inhabit.[24] There is also *'regulatory pluralism';*[25] *'governmentality';*[26] *'polycentric regulatory regimes';* [27] *multi-level governance;*[28] to name just a few others. The common

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[22] Scott Burris, Peter Drahos and Clifford Shearing, 'Nodal Governance' (2005) *Australian Journal of Legal Philosophy* 30
[23] Gerry Stoker, 'Governance as theory: five propositions' (1998) 50(155) *International Social Science Journal* 17, p 18
[24] S. Burris et al (2005) op cit
[25] N. Gunningham and D. Sinclair, 'Regulatory pluralism: designing policy mixes for environmental protection' (1999) 21(1) *Law & policy* 49
[26] T. Lemke, 'An indigestible meal? Foucault, governmentality and state theory' (2007) 8(2) *Distinktion: Scandinavian Journal of Social Theory* 43
[27] J. Black, 'Constructing and contesting legitimacy and accountability in polycentric regulatory regimes' (2008) 2(2) *Regulation & Governance* 137

thread running through all of them is the notion that political and economic power in a liberal democracy is exercised through a complex plurality of actors and norms besides the regulatory state and its legal institutions.

Agriculture is another term used throughout this thesis which requires further explanation. Compared to governance, it is a relatively straightforward concept. The Oxford English Dictionary definition is as good as any: 'the science and art of cultivating the soil; including the allied pursuits of gathering in the crops and rearing live stock; tillage, husbandry, farming (in the widest sense).'[29] However, in this thesis the term agriculture is expanded to include reference to the broader, interdependent food system, i.e. food production, processing, wholesale and retail distribution, marketing and consumption. Also, while agriculture as often involves the production of textiles and other resources besides food, this research (as a case analysis of organic agriculture) primarily concerns food.

The catalyst for the research was the Australian political debate over institutional design for national organic standards setting and conformity assessment, in particular the appropriate role for government. At the time of commencing the research, the Australian organic industry remained largely self-governed, with no specific organic legislation and minimal government engagement with the sector at any level. While there was a

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[28] G. Marks and L. Hooghe, 'Contrasting visions of multi-level governance' (2004) *Multi-level governance* 15

[29] *Oxford English Dictionary Online* <http://dictionary.oed.com> at 20/04/07

degree of consensus within the sector about the need for regulatory reform and greater political recognition; there was little consensus about the need for direct government regulation.[30] Some key actors sought government regulation to facilitate the maturation and expansion of the organic industry. Conversely, others feared that government regulation may undermine the values and traditions of the Australian organic movement and favour certain sectoral actors at the expense of others.[31]

The Australian situation highlighted a worldwide paradox in regulatory responses to the dramatic international expansion of organic agriculture over the past two decades. Increasing government intervention has led to tensions between private organic governance systems and legal (i.e. governmental) systems. The key aim of this thesis is to examine the political and regulatory dynamics of that tension, which, as is explained below, can be characterised as a 'governance trilemma'.

1.2 The governance trilemma in organic agriculture

As markets for organic produce have grown, driven largely by strong consumer demand, the organic industry has had to withstand attacks on its credibility from conventional agribusiness stakeholders such as GM seed and agrichemical manufacturers for whom it poses a commercial and political threat. At the same time organic markets represent an enticing prospect for retailers and other agribusiness actors seeking access to price premiums and the green or 'ethical' consumer dollar. The international organic movement, via IFOAM, responded to such challenges by seeking

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[30] Margaret Merten, 'Uncertainly Organic' (2006) 124(6549) *The Bulletin* 34
[31] Ibid; NASAA, 'Discussion paper in response to BFA ' (31 July 2006)

to strengthen the integrity of the worldwide organic 'brand' through harmonisation and enhancement of its organic standardisation systems. The international network overseen by IFOAM has become one of the largest and most sophisticated private governance systems in world trade.[32]

Along with civil society, national and regional governments have also been drawn into legally regulating organic sectors under their jurisdiction. According to Ikerd, much of the impetus for government regulation originated with the organic community itself. He argues the success of the organic movement had, by the 1990s, sparked optimism among movement stakeholders that organic agriculture could challenge and displace conventional agriculture.[33] The unruly patchwork of competing private standards, certification agents and labels was seen as a hindrance to growth. Organic stakeholders turned to their respective governments for industry support, identifying as a priority the development of internationally recognised standards to facilitate organic food trade in domestic and export markets.[34] In 1991 the European Union implemented the supranational *EC Council Regulation 2092/91 on Organic Agriculture* requiring EU states to legislate harmonised national organic regulations. In 2000 the Japanese Government implemented the *Japanese Agricultural Standard of Organic Agricultural Products* (JAS). After a decade of politically fraught development and consultation the United States Department of Agriculture (USDA) finally assumed statutory responsibility for US

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[32] Sasha Courville, 'Organic standards and certification' in Paul Kristianson, John Reganold and Acram Taji (eds), *Organic Agriculture: A Global Perspective* (2006) 201
[33] John Ikerd, 'Contradictions of principles in organic farming' in Paul Kristianson, Acram Taji and John Reganold (eds), *Organic Agricuture: A Global Perspective* (2006)
[34] Ibid

organic standardisation in 2002 pursuant to the federal *Organic Foods Production Act 1990*. Counting EU states individually, there currently exists more than 89 countries with legislative organic regulations either in the pipeline or fully implemented.[35]

Worldwide, organic standardisation now involves a myriad of competing government and private systems riddled with jurisdictional overlaps and duplication. The regulatory confusion and compliance burden has become such that many potential and existing smallholder farmers, ostensibly the backbone of organic agriculture, now baulk at undergoing full organic certification . Of perhaps greater significance for the movement, government regulation can and has lead to displacement of the civil-society actors and voluntary market mechanisms inherently responsible for organic standardisation in private systems.

Courville asserts that regulatory initiatives devised to protect the integrity of organic agriculture are having the paradoxical effect of threatening the institutions and values at the very heart of the movement that created it.[36] This paradox is the basis of what is referred to here as the *governance trilemma,* it denotes the predicament in attempting to superimpose legal norms onto inherently functional, normatively autonomous social systems: (1) the legal intervention will be ignored and thus redundant; or (2) the law may destroy the structural and functional integrity of the

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[35] Otto Schmid Beate Huber, Gbati Napo-Bitantem, 'Standards and regulations' in H. Willer and L. Kilcher (eds), *'The World of Organic Agriculture-Statistics and Emerging Trends 2010'* (2010)
[36] Sasha Courville, 'Organic standards and certification' in Paul Kristianson, John Reganold and Acram Taji (eds), *Organic Agriculture: A Global Perspective* (2006) 201

targeted system; or (3) the system's resistance to legal intervention may be as strong as to counteract the law or legal institutions involved.[37]

The governance 'trilemma' for organic agriculture – the *organic trilemma* – is realised in tensions (as outlined above) between government regulation of organic sectors and existing private organic governance systems. Worldwide governments and organic sectors now find themselves drawn into such a trilemma as a result of the ongoing pressure to regulate organic food standards in domestic markets.

1.3 Research themes and scope

This thesis aims to explore the political challenges surrounding organic food standardisation. It will look at the public policy drivers impacting on the institutional arrangements of the Australian organic sector and evaluate, from a governance perspective, the merits of state intervention. Following that broad theme the thesis will test a series of interrelated propositions:

- That the governance of organic agriculture within a nation state will reflect that state's unique political economy and culture.
- That organic standards and certification processes enshrined in legislation (law) have greater legitimacy and effectiveness than processes controlled by private actors alone.

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[37] See below (4.3)

- That specific government regulation is necessary for good governance of organic standardisation in the Australia.

1.4 Structure and methodological approach of the thesis

Including this introductory chapter, the thesis will be divided into five chapters. Chapter 2 is a review of theory relevant to the political and governance dimensions of organic agriculture along with a historical examination of the institutional framework for global organic governance. Chapter 3 is an empirical study of Australian organic food governance, particularly focusing on the roles of government, civil society and business. It outlines the policy context of organic agriculture and explains the Australian Government's neoliberal, deregulated approach. Chapter 4 is essentially a focused theoretical discussion – drawing on insights from preceding chapters. It is also intended as heuristic exercise to illustrate the practical application of theory and empirical research in organic institutional design, comparing Australia's reflexive approach to the US approach (where the US Federal Government has taken control of organic standardisation). Chapter 5 concludes the thesis. The remainder of this introductory chapter will outline the thesis blueprint in greater detail.

Chapter 2 charts the political and ideological development of the organic agriculture movement. It commences by exploring the organic movement's ideological critique of industrial agriculture, linking it to the social theories of the European critical tradition starting with Max Weber through to contemporary theorists such as Ulrich Beck. The critical theory perspective entails re-evaluation and deconstruction of enlightenment

rationalism culminating with the risk society and reflexive modernisation thesis of Ulrich Beck and Anthony Giddens. It will be argued the risk society/reflexive modernisation thesis best explains how industrial modernisation has, in developed societies, spawned social movements (of which organic agriculture is a prime example) based on resistance to the scientific and economic rationalist paradigm.

Chapter 2 then shifts its focus to examining organic agriculture as a distinct political and social movement linked to other important new social movements such as environmentalism, consumerism, animal welfare, slow food and fair trade. It will argue that in many respects the organic agriculture movement was a pre-curser to them all. The chapter then sketches the historical evolution of the international organic governance framework, comparing it with other market based standards initiatives. It will argue the governance systems engendered by the movement are essentially the praxis of organic ideology and thus a key element in successful mobilisation.

Chapter 3 represents the empirical core of the thesis. It employs a case study methodology to examine, primarily, the Australian organic governance system. Use of the national case study method is predicated on an historical institutionalist viewpoint, in that each individual state is treated as a distinct politico-legal system (i.e. a *jurisdiction*) with its own uniquely evolved institutions, political economy and culture. States become important units of analysis for studying a transnational political phenomenon (like organic agriculture) because they act as intervening or structuring variables. Their unique institutional configuration provides different structural constraints and opportunities for movement actors;

moreover, political battles inevitably occur *through* state institutions and *over* the future design of state institutions.[38]

An historical institutionalist approach assumes the evolution of the organic governance system in each national context will be 'path dependant', in other words, it will be different in each state context because it will be the outcome of a different convergence of institutions, agents and historical events. Epistemologically, it suggests case study analysis is less useful for testing or generating universally applicable theory than it is for providing deep contextualised understanding of political phenomena.[39] While that suggestion is taken as valid, this thesis seeks to demonstrate that there are systemic dynamics of organic governance applying across jurisdictions. In particular, the governance trilemma hypothesis (see above) is posited in terms of an unavoidable predicament associated with direct state regulation of organics.

Subject to that last disclaimer, the case examples in this thesis are presented for inductive analysis. Their purpose is to illustrate the 'variety of regulatory capitalism' that has evolved in the subject country via the organic sector, and conversely; some governance and policy implications for organic agriculture as a transnational phenomenon. In order to avoid simplistic extrapolation from jurisdiction to jurisdiction (or country to country) each case is presented as a *heuristic* example. In other words, to be read as highly contextualised illustration of organic governance in a

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[38] Sven Steinmo, 'The new institutionalism' in Barry Clark and Joe Foweraker (eds), *The Encyclopedia of Democratic Thought* (2001)
[39] Ibid

particular jurisdiction, albeit capable of providing useful insights and frames of reference for constructing a broader picture.

Several factors influenced case selection. It was decided to concentrate on the OECD, on the basis that (as discussed earlier) the organic agriculture movement is closely associated with highly modernised, 'post industrial', agricultural sectors and food retail markets.[40] It was also decided, for the sake of analytical focus, that the cases should be countries with similar liberal democratic systems of government. Finally, it was considered the study of a transnational phenomenon like organic agriculture could involve an examination of geo-political regionalism, which Balaam and Veseth describe as, '…one of the most powerful dynamics in world history.'[41] To that end, two distinct continents or geo-political regions were identified: North America and, Oceania. From each of those regions two Anglo-Saxon countries were selected with neo-liberalist political economies (or 'varieties of capitalism'), written constitutions and federal systems of government – USA and Australia. Australia is the principal subject while the USA is discussed (in much less detail in Chapter 4) to provide a comparative example.

Chapters 4 and 5 synthesise and review the preceding chapters in a critique of organic policy and governance in the Australian context. They evaluate Australia's regulatory framework from a governance perspective in order to test the three propositions about organic agriculture

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[40] It is worth noting that organic agriculture is also gaining importance in developing countries in the global south, particularly as a means of promoting sustainable agricultural production systems and as a means of gaining access to the growing international market for organic food.
[41] David Balaam and Michael Veseth, *Introduction to international political economy* (Third ed, 2005) p 241

governance stated earlier. To that end they focus specifically on arguments about who should formulate and monitor organic standards, examining whether the Australian organic sector and consumers are sufficiently protected by existing laws.

Chapter 4 outlines the theory underlying the concepts of autopoiesis and the governance trilemma. It develops the hypothesis that Australia's current situation of self regulation represents an example of 'reflexive regulation' which is preferable to government controlled standardisation. It then compares the Australian model of organic standardisation with the USA model.

Chapter 5 argues that the proliferation of different organic labels, standards and certification bodies is desirable, providing competition, and consumers and producers with a choice of standards. This choice, while potentially creating confusion, can foster greater consumer engagement with the values and aims of the organic movement. It concludes the thesis by summarising its key themes and findings and offers a personal perspective on the role of organic agriculture in achieving food security and sustainability.

1.5 Source materials

As reflected in the bibliography, this research has drawn upon scholarly literature from a wide range of disciplines, predominantly from the social sciences, humanities and law but also from related fields such as marketing, economics and the natural sciences. The theoretical framework employed in this thesis represents my interpretation and synthesis of the literature cited.

To put together a broad historical overview of organic agriculture and standardisation I relied on relevant historical commentary published in the peer reviewed journals and other scholarly works. Organisations such as IFOAM and the ISO provide basic information about their organisational history on their web sites and these have been utilised extensively in places as a source of historical data. For statistical and other empirical data relating to the international and Australian organic industries I relied predominantly on industry reports generated by relevant peak industry and civil society organisations, and government agencies. For example, IFOAM publishes an annual statistical and institutional snapshot of the international organic agriculture industry – *The World of Organic Agriculture Statistics and Emerging Trends* – which proved an invaluable resource. Having not conducted any independent quantitative surveys as part of this study I am indebted to other academic researchers like John Paull whose valuable work in this regard I was able to make use of.

A critical task was to provide an account of the evolving public discourse over organic standardisation in the selected case jurisdictions (primarily in Australia and the USA). In this I was assisted by the fact that much of that discourse has been documented and made freely available online. Particularly 'grey literature' sources such as media releases, magazine articles, newsletters, policy submissions and discussion papers are now routinely collated and posted on the internet by the various entities engaging in, or following, the policy debate. Reports emanating from government review processes such as the *Labelling Logic* report discussed in chapter 3 (see 3.4.4) also provided important data and stakeholder commentary pertinent to the research topic.

Another key research task was to undertake a review and critique of the legislative framework relevant to organic standardisation in Australia, and to a lesser extent in the USA. Primary and secondary legal materials such as legislation, case law and explanatory notes were accessed through government legal databases and also (in the case of Australia) the publically accessible databases maintained by the Australasian Legal Information Institute (AustlII).[42] Finally, it is worth noting (or perhaps disclosing) that my professional background is as a legal practitioner. While completing this thesis I have also been working as a government bureaucrat responsible for the review and development of legislation in the State of Tasmania. This professional experience has undoubtedly influenced and informed my approach to all aspects of the research.

[42] http://www.austlii.edu.au/

Chapter 2: Ideology and praxis of organic agriculture

2.1 Introduction

The pioneers of organic agriculture have been described by some as visionaries and by others as 'cranks' and 'luddites'.[43] J.I Rodale, recognised as the founder of North American organic movement, was once profiled in a New York Times article as, 'the guru of the organic food cult.'[44] Organic agriculture still excites debate amongst industry, scientists and consumers as to its legitimacy.[45] Dismissed by opponents as quackery, it is viewed by its many supporters as representing the most viable template for future sustainable food production. As indicated in the introductory chapter, this thesis is not intended as a 'defence' of organic agricultural principles or an attempt to assess its agronomic merits as a sustainable food production system. The primary aim is to examine, through case studies, how its core ideological principles can effectively be translated into practical norms and applied to governing actors within the modern food supply chain. This chapter will provide a brief synopsis of the history and philosophical underpinnings of organic agriculture and how it has developed an international governance framework to articulate and promote the aims of the movement.

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[43] J Guthman, *Agrarian dreams: the paradox of organic farming in California* (2004)
[44] W. Greene, 'Guru of the organic food cult' (1971) 6 *New York Times*
[45] For example see D. Taverne, *The march of unreason: science, democracy, and the new fundamentalism* (2005); A. Trewavas, 'Urban myths of organic farming' (2001) 410(6827) *Nature* 409

2.2 The rationalisation of nature

In an essay tracing the history and prehistory of chemistry, Joachim Schummer identified three different notions of nature in Western thought: *static, teleological* and *dynamic*.[46] Although used in reference to the normative evolution of modern chemistry, Schummer's three notions provide a good insight into the corresponding development of Western agriculture. The first, the '*static*' notion, divides nature into *essential* and *accidental* properties, a division illustrated with the examples of wool dyeing and weaving. Weaving does not interfere with the essential properties of wool fibres because it simply brings them together into a certain alignment. Dyeing, on the other hand, fundamentally alters the essential property of colour and therefore creates an 'accident' of nature – something that was not intended by God. The credo, 'if God had wanted human beings to wear purple cloths he would have created purple sheep,' aptly conveys the underlying sentiment.[47] Schummer argues that in early Christian tradition, technologies that were seen to interfere with nature's essential properties, like metallurgy, dyeing and the manufacture of coloured glass were often treated with suspicion and open to the charge of sinfulness.

By the Middle Ages, the static notion of nature had given way to a *teleological* notion, which found its greatest expression in the practice of

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[46] J. Schummer, 'The notion of nature in chemistry' (2003) 34(4) *Studies In History and Philosophy of Science Part A* 705
[47] Ibid p708

alchemy. Alchemists appropriated Aristotle's idea that nature's elements strained purposefully towards perfection. Rain and soil existed to give effect to the seed's purpose of transformation into the flower. Base metal ores such as lead, iron and copper were merely awaiting transformation into the purer elements of silver or ultimately gold. Alchemists believed God was behind these processes, and they sought to uncover the mysteries of nature to assist in the fruition of divine purpose.[48] Accordingly, the pursuit of knowledge that would enable the emulation and perfection of nature was driven by high moral imperative. Paracelsus, one of the more famous alchemists, proclaimed that philosophers must follow that path '…which was followed by the Great Architect of the Universe in the creation of the world.'[49] The teleological notion of nature in alchemy (along with perhaps a good measure of greed) licensed the efforts of countless individuals throughout the Middle Ages to transform 'base' metals into gold. In pursuit of that goal the alchemists accumulated a body of knowledge and experimental techniques which became the foundation of modern day chemistry.[50] Nevertheless, the teleological notion frustrated the achievement of any genuinely scientific understanding. As Muir noted in his *History of Alchemy*:

> As long as men (sic) were fully persuaded that they knew the plan whereon the world was framed, that it was possible for them to follow exactly "the road which was followed by the Great Architect of the Universe in the creation of the world," a real knowledge of natural events was impossible; for every attempt to penetrate nature's secrets

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[48] M.M.P. Muir, *Story of alchemy and the beginnings of chemistry* (1992)
[49] Ibid, p12
[50] J. Schummer (2003) op cit

> presupposed a knowledge of the essential characteristics of that which was to be investigated.[51]

The 17th Century 'Scientific Revolution' or 'Age of Enlightenment' saw natural philosophers such as Galileo, Newton, Descartes and Bacon begin to sweep aside the mysticism and religious dogma that dominated the Middle Ages in favour of a quest for objective universal facts. Especially significant was the promulgation of the Baconian/Cartesian paradigm of empiricism and mechanical reductionism which challenged the *vitalist* view of biology. Vitalism holds all living matter to be animated by an esoteric, vital soul or spirit.[52] But *mechanicists* such as Descartes argued living organisms comprised only chemical/physical properties, which could be understood through careful observation and measurement. Mechanicists cleared the way for a *disenchanted* worldview where biological organisms were reconceived as machinery amenable to reverse-engineering type experimentation and dissection.[53]

The mechanicist perspective adheres to a *dynamic* notion of nature by which there is no meaningful distinction between organic and synthetic material. Technology is no longer restricted by normative considerations of whether or not it is consistent with the order of nature or 'God's Design', but instead only by its practicability and effectiveness in achieving given human purposes.[54] Such detached pragmatism is the basis of *instrumental rationality*: 'the subjection of activity to the criterion of

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[51] M.M.P. Muir (1993) op cit, p16
[52] J. Schummer (2003) op cit
[53] Ibid
[54] Ibid

effectiveness alone.'[55] The dynamic notion of nature underpinned the accession of instrumental rationality throughout the political and economic spheres of life, referred to as *rationalisation* – the master process which according to Max Weber marked the transformation of Western society from preindustrial to industrial.[56] Western agriculture was not spared this great transformation and, as will be argued below, agricultural rationalisation is one of the driving forces behind the broader industrialisation of society.

2.3 Industrial agriculture

Agronomy is recognised as one of the oldest and most empirical of applied sciences. The ancient civilisations of Asia, the Mediterranean and the Americas are all known to have produced documented prescriptions for soil fertility and soil classifications.[57] Many of the traditional farming techniques developed by those first agrarian civilisations now form the basis of modern organic farming. However traditional 'subsistence' agriculture cannot be classed as 'organic' as understood here, because it does not hold the requisite ideological dimension. Organic agriculture is a reaction to (and thereby defined by) its relationship with industrial agriculture, the mode of agriculture now so dominant in the developed world it is typically described as 'conventional'.

The rationalisation of western agriculture is considered to have begun with the British Agricultural Revolution, which occurred between the 16th

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[55] *Collins Dictionary of Sociology*, 2006, s.v. "instrumental rationality," http://www.xreferplus.com/entry/5996956 (accessed May 24, 2007).
[56] N. Gane, *Max Weber and postmodern theory: rationalization versus re-enchantment* (2002)
[57] J.R. McNeill and V. Winiwarter (2004) op cit

and 19th Centuries. The commodification of land through enclosure laws; basic farm mechanisation; selective breeding of livestock and plants; introduction of nitrogen fixing fodder crops; and the four field rotation system radically improved the productivity of British agriculture. In particular, the introduction of white and red clovers by farmers from about the mid 17th Century vastly increased the rate of symbiotic soil nitrogen fixation, which in turn led to a great leap forward in cereal crop production. Overton noted that this form of farming was both sustainable and remarkably more productive than systems that had preceded it.[58]

Increased food production supported an expansion in population. Better productivity per hectare of land (and per worker) freed up labour, initially for cottage industries and then the factories of the Industrial Revolution. Some historians believe the demographic impact of British agricultural rationalisation was the key driver of the Industrial Revolution.[59] Worster believes the British Agricultural Revolution was two-sided, capitalistic and scientific, and that these two aspects are not entirely compatible. Originally, scientific advances in biology and soil chemistry were utilised by British farmers to reverse declining soil fertility and environmental degradation. But the demands of a growing capitalist market economy forced farmers into a radical pattern of farm expansion and intensification to generate profitable rather than sustainable levels of production. In

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[58] M. Overton, *Agricultural revolution in England: the transformation of the agrarian economy, 1500-1850* (1996)
[59] R.C. Allen, R. Found and D. Mc Closkey, 'Agriculture during the industrial revolution' (1994) *The economic history of Britain since 1700* ; P.K. O'BRIEN, 'Path dependency, or why Britain became an industrialized and urbanized economy long before France1' (1996) 49(2) *The Economic History Review* 213

relation to the 'gospel of turnips and clover' that originally transformed the English countryside, Worster asserts that:

> A biology inspired system of farming, based on striving for a better balance between plants and animals failed to establish a secure, lasting, dependable hold on the imagination of capitalist landholders. The reason was that in the long run such farming too often interfered with the more compelling system of the capitalist economy. There have been, in other words, two kinds of logic in modern agriculture – that of the scientist and that of the capitalist – and they have not agreed much of the time.[60]

The duality between an agriculture that is scientific and ecologically sensitive and one that is exploitative and harmful is central to the present day debate about agricultural sustainability. But in the western world rationalisation of the farm and the food chain has been inexorable. From its early beginnings in Britain, the process of agricultural rationalisation spread across the globe (typically following patterns of British imperial colonisation) and particularly from the mid 19th Century onwards, gathered pace by the decade. The point at which it could truly start to be described as a process of agricultural *industrialisation* came with the rapid uptake of two additional technologies after World War Two: fossil-fuelled mechanisation and externally manufactured synthetic inputs. One farmer with a tractor can manage many times the area of land than he or she could with only human and animal powered technology. By repeat applications of chemical nitrogen fertiliser produced (at a remote factory) from mined phosphates, fields can be farmed at a rate that would otherwise rapidly exhaust the productive capacity of their soils. Livestock in numbers far exceeding the intrinsic carrying capacity of a piece of land

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[60] Worster (1990) op cit, p 1104

can be kept there by trucking in stockfeed manufactured elsewhere. Synthetic biocides obviate the need to maintain on-farm ecological balance to keep the pest and weed outbreaks under control. Any pests that become a problem are chemically exterminated by either aerial or ground spraying.

Today's conventional farm is, in essence, a facility to convert gas, petrochemicals and water into food or fibre; virtually manufacturing vast amounts of commodities with uniform precision and efficiency, hence the use of *industrial* and *synthetic* descriptors for modern conventional agriculture. The industrial efficiency of the modern agricultural enterprise is on full display in the 'factory farm' methods of intensive animal husbandry. Take the following account of a modern day poultry processing operation in the US:

> The fast growing offspring of … breeding birds live for only six weeks. At that age they are caught, put into crates and trucked to slaughter … a journey that can take several hours. When their turn to be removed from the crates finally comes, their feet are snapped into metal shackles hanging from a conveyor belt that moves towards the killing room. Speed is the essence, because the slaughterhouse is paid by the number of pounds of chicken that comes out at the end. Today a killing line typically moves at 90 birds a minute, and speeds can go as high as 120 birds a minute or 7200 an hour. Even the lower rate is twice as fast as the lines moved twenty years ago. At such speeds, even if the handlers want to handle the birds gently and with care, they just can't.[61]

The pattern of food industrialisation does not stop at the farm or processor gates. Equally significant is the scale and reach of the global capitalist food supply chain. Vertically and horizontally integrated, multinational

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[61] P. Singer and J. Mason, *The ethics of what we eat* (2007) pp 23 - 24

agribusiness companies such as Nestle, Monsanto, Costco and their like have penetrated practically every food market on the planet. With refrigeration and other food preservation technologies like vacuum packaging and irradiation, foodstuffs have extended shelf-lives and can be flown in bulk to (or from) opposite ends of the globe in a matter of days. It is now rare for anyone in a wealthy country to have to go without a particular food variety just because it is out of season or not grown in their local region. In the words of Michael Pollan, the globalised food economy '…turns any food it touches into a commodity, reaching its tentacles wherever in the world a food can be produced most cheaply and then transporting it wherever it can be sold most dearly.'[62]

Paradoxically, along with the capacity to supply year-round an extensive variety of foods, a corollary of the rationalised global food market is a trend towards international food homogenisation. A 'Big Mac' hamburger purchased in Helsinki looks and tastes identical to one purchased in Hobart. It will also be relatively cheap and almost certainly prepared and dispatched by teenage employees (often through a car window) to the consumer within a matter of minutes thanks to the standardised menu and service model devised by the McDonald brothers of California in the 1950's.[63]

According to Paterson, the industrial mode of agriculture entails an entrenched cycle of reductionism, '…reducing the complex biological character of life to its physical-chemical components and human culture to

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[62] M. Pollan, 'No Bar Code' (2006) 31 *Mother Jones* 36
[63] McDonalds, *Our Story* <http://mcdonalds.com.au/about-us/our-story> at 21/05/11

a narrow set of economic considerations.'[64] The cycle of reductionism has become even more acute with the advent of biotechnology in the early 1990s. Selective breeding to express desirable traits in plants and animals has been a basic farming technique used throughout the 10,000 year history of agriculture. The use of hybridisation (where two or more different varieties of a plant species are combined) in the 20th Century to develop high yielding varieties of maize and rice is seen as one of the crucial technological innovations behind the Green Revolution. But modern biotechnology, particularly when used to create genetically modified organisms (GMOs or 'transgenes'), goes way beyond conventional breeding and hybridisation because it involves forced genetic transmission between totally unrelated species that are not even necessarily genetically compatible. As Joseph Mendelson points out:

> Biotech researchers have shattered kingdom, phyla, and species boundaries almost at will. They have engineered human growth genes into fish and livestock to make them larger and grow faster, fish genes into tomatoes so that they can grow and be stored at lower temperatures, pesticide genes into corn and other vegetables to resist pests, and firefly genes into tobacco plants, causing the plants to glow 24 hours a day. This process clearly challenges the very integrity of seeds, and much of the earth's other life forms.[65]

Proponents of biotechnology argue it holds enormous potential to benefit humanity. For example, *Golden Rice* is a variety of rice genetically engineered to express greater content of protein within each individual rice grain than natural varieties, promising to improve the levels of

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[64] J.L. Paterson, 'Institutional organization, stewardship, and religious resistance to modern agricultural trends: The Christian farmers' movement in the Netherlands and in Canada' (2001) 75(3) *Agricultural history* 308

[65] J. Mendelson III, 'Untested, unlabeled, and you're eating it. The health and environmental hazards of genetically engineered food' (2002) *Fatal harvest. The tragedy of industrial agriculture. Washington* 209

nutrition available to people living in food-insecure communities.[66] In a similar vein the *Protato* is a potato plant that has been engineered to have a higher content of protein.[67] There are now even plants being trialled that have been engineered to detect landmines by turning red when they come into contact with explosives.[68] Regardless of whether biotechnology can deliver on such promises, it has met with a significant level of consumer and political resistance. GM agriculture is subject to specific regulatory controls and even prohibited in many parts of the world, despite assurances from the biotech industry about its safety and value.[69]

2.4 Organic agriculture as reflexive modernisation

In their seminal work of the early 1990s Ulrich Beck and Anthony Giddens theorised that modern society can be characterised as a *risk society*. By definition, risk society is a society preoccupied with the management of new, uncertain risks created by its technological and material progress.[70] For Giddens, risk society is the result of two major transformations occurring in the latter part of the 20th Century – the end of tradition, and the end of nature. The 'end of tradition' refers to the ease with which long established traditions can suddenly lose their relevance and disappear in a modern society dominated by a relentless cycle of innovation and

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[66] *Golden Rice* <http://www.goldenrice.org/> at 20/04/11
[67] A. Coghlan, 'Protato' to feed India's poor' (2003) 177(2376) *New Scientist* 7
[68] Laura Uldakis, *GM plants detect landmines and turn red* <http://www.cosmosmagazine.com/news/2151/genetically-modified-plants-detect-landmines> at 12/12/10
[69] R. Falkner, 'Global biotech food fight: why the United States got it so wrong' (2008) 14 *Brown J. World Aff.* 99; A. Kellow, M. Haward and K. Welch, 'Salmon and fruit salad: Australia's response to World Trade Organisation quarantine disputes' (2005) 40(1) *Australian Journal of Political Science* 17; A. Kellow, 'Risk Assessment and decision-making for genetically modified foods' (2002) 13 *RISK* 115
[70] U. Beck et al, *Risk society* (1993); U. Beck, A. Giddens and S. Lash, *Reflexive modernization: politics, tradition and aesthetics in the modern social order* (1994)

efficiency. The 'end of nature' does not mean that nature has ceased to exist. It refers instead to the growing perception that there are now few, if any, parts of the natural world that have been spared the effects of human intervention. According to Giddens, 'For hundreds of years people worried [more] about what nature could do to us – earthquakes, floods, plagues, bad harvests and so on. At some point, somewhere over the last fifty years or so, we started worrying more about what we have done to nature.'[71]

The risk society account of modernity distinguishes between two types of risk. There are what Giddens calls the *external risks* that have always concerned people (i.e. the earthquakes, floods, plagues, bad harvests and so on); these are generally well understood, even insurable by private and public insurers. Then there are new risks associated with industrialisation and technological encroachment which are not well understood, referred to as *manufactured risks*. Manufactured risks are uncertain, their extent and severity are unknown and their very existence is often the subject of intense scientific and political debate. For example, the developers of penicillin probably had limited (if any) awareness of the risk that overuse of the drug might one day lead to antibiotic resistant superbugs. At the same time as people's general awareness about such risks has increased, so too has their scepticism about those responsible for manufacturing and managing the risks. This scepticism and uncertainty has encroached into even the most mundane aspects of life, fundamentally transforming the relationship between scientists, industry, governments and consumers.[72]

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[71] A. Giddens, 'Risk and responsibility' (1999) 62(1) *The Modern Law Review* 1 p3

In modern society there is no aspect of life more mundane and yet politically fraught for the average citizen than the issues surrounding what to eat. As outlined earlier, in a globalised world environmental and traditional constraints on diet have, for many people, been swept away by an abundance of conveniently available food. Giddens contends that, '...whenever someone decides what to eat, what to have for breakfast, whether to drink decaffeinated or ordinary coffee, that person takes a decision in the context of conflicting, changeable, scientific information.'[73] Modern consumers are now confronted with a sea of contradictory marketing and scientific claims about their food's nutritional value, taste and increasingly over the last decade – issues surrounding environmental sustainability, animal welfare and social responsibility.

The political discourse concerning food is a classic illustration of how the core tenets of risk society theory are played out in the everyday context. It also serves to illustrate another facet of the risk society – the process of *reflexive modernisation*. Traditional industrial modernisation focuses on the goals of technological and industrial expansion i.e. the expansion of society's material wealth. In reflexive modernisation there is the added dimension of risk management – major developments and innovations are evaluated not just in terms of their effectiveness in expanding wealth but also in terms of the threats they might pose to valued cultural institutions and the natural environment.[74] Applying this to food and agriculture; there is the deployment of novel technologies (e.g. genetically modified

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[73] Ibid, p6
[74] U. Beck, A. Giddens and S. Lash (1994) op cit

organisms) and industrial scale production methods (factory farming) to drive food and fibre production yields to unprecedented levels. But the success and inexorable rise of industrial agriculture has fuelled new concerns about health risks from the 'artificial' foods it produces, the environmental risks to the natural ecosystems it disturbs, and the social risks associated with the impacts on rural communities as small family farms are swallowed up by multinational corporations.

Sustainability is a core concern of reflexive modernisation. It holds to an ontological viewpoint (consistent with liberal capitalism) that humans are by nature competitive; that competition is a critical driving force of all forms of risk taking and evolutionary progress. Competition can and should be encouraged throughout all societal systems: in government, competition for legal authority; in the market, competition for commercial profit; and in civil society, competition for ideological influence. However, in reflexive modernisation there is a renewed focus on minimising the harmful effects of this otherwise desirable competitive activity. Unsustainable development is one such concern, if not the predominant one.

Sustainability (as a normative imperative) denotes a perpetual obligation on citizens to consider the present and future environmental impacts of their activities. The classic definition of *sustainable development*, as introduced in the 1987 Brundtland Report is: 'development that meets the needs of the present without compromising the ability of future

generations to meet their own needs.'[75] Sustainable development as a governance objective was formally recognised by the international community at the 1992 United Nations Earth Summit at Rio de Janeiro. It has since been incorporated into domestic law and policy by most of the 172 countries which participated in the summit. For example, the Australian *Environmental Protection and Biodiversity Conservation Act 1999* has a key legislative objective of promoting 'ecologically sustainable use' of natural resources, which it defines to mean '…use of the natural resources within their capacity to sustain natural processes while maintaining the life-support systems of nature and ensuring that the benefit of the use to the present generation does not diminish the potential to meet the needs and aspirations of future generations.'[76] By linking this version of sustainability (often referred to as inter-generational equity) to agriculture I can thus propose a notional definition of sustainable agriculture:

> Farming (in the widest sense) in a way that uses natural resources within their capacity to sustain natural processes, while maintaining the life-support systems of nature, and ensuring that the benefit of the use to the present generation does not diminish the potential to meet the reasonably foreseeable needs and aspirations of future generations.

Sustainable agriculture is virtually incontestable as an abstract normative goal. Those who advocate 'unsustainable' agriculture are few and far

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[75] G.H. Brundtland, 'World Commission on Environment and Development' (1987) *Our common future* 8

[76] Environmental Protection and Biodiversity Conservation Act 1999 (Cth) s 528

between.[77] Controversy about sustainability lies not in its normative legitimacy, but in how to operationalise it in policy and practice.[78] The growing perception of risk associated with modern industrial agriculture has become central to the broader environmental sustainability debate. The emergence of organic agriculture as an alternative agronomic paradigm, and as a social movement (widely recognised as the first modern ecological social movement) can thereby be understood in terms of an inevitable *reflexive response* to the perceived risks of agricultural modernisation.

2.5 Ideology – the emergence of the organic agriculture movement

Organic agriculture is typically portrayed as a practical set of agronomic techniques which utilise traditional *natural* methods of farming. It must be acknowledged here that the notion of what is 'natural' is highly problematic. Taken to its logical extreme the concept of natural in relation to food production would mean hunting and gathering, i.e. the collection and harvesting of wild produce that came into existence independently of human design or intervention. However proponents of organic farming use terms such as *natural* and *organic* to denote farming methods which employ or mimic to the greatest extent natural ecological processes, through deliberate avoidance of external 'chemical' inputs used in modern industrial agriculture. It would be fair to say that many of the early

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[77] Cf Jerry Taylor of the *Cato Institute* argues that sustainability is little more than a 'dubious pipe dream' in Jerry Taylor, 'Sustainable development: a dubious solution in search of a problem' (2002) 449 *Policy Analysis* 1

[78] S. Lockie, 'Capturing the sustainability agenda: organic foods and media discourses on food scares, environment, genetic engineering, and health' (2006) 23(3) *Agriculture and Human Values* 313; Dan Rigby and Sophie Brown, 'Organic food and global trade: is the market delivering sustainability' (University of Manchester School of Economic Studies, 2003)

pioneers of organic agriculture advocated (in respect to agricultural systems) the return to a more *static,* as opposed to a *dynamic,* notion of what is *natural* and what is not (see earlier discussion of Schummer's three notions of nature in 2.2 above).[79]

In 1924 Rudolph Steiner delivered a series of lectures in Poland that inspired the development of *'biodynamic'* farming, based on his broader philosophy of *anthroposophy.*[80] In 1928 a formal system of certification and labelling for biodynamic farming was established (Demeter).[81] Its foundations in Steiner's spiritualist teachings serves to distinguish Demeter (amongst modern mainstream organic systems) as the branch of organic agriculture at furthest remove from the modern industrial paradigm of factory farming and GMOs. Critics of bio-dynamic farming focus on its spiritual or mystical elements, arguing that it represents little more than a modern version of vitalism.[82] Despite such criticism Demeter has succeeded in becoming one of the largest (if not the largest) organic certification and labelling schemes internationally, claiming to have around 4200 producers in forty two countries worldwide. Besides being the first organic label, Demeter can also claim to be the first of modern *eco-label*, pre-dating labels such as Fair Trade, Forest Stewardship Council (FSC) and Marine Stewardship Council by more than sixty years.[83]

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[79] T.R. DeGregori, *Origins of the organic agriculture debate* (2004); J. Schummer (2003) op cit
[80] International Demeter, *History of the biodynamic movement* <http://www.demeter.net/> at 29/04/11
[81] Ibid
[82] A.A. Avery, *The truth about organic foods* (2006); De Gregori (2004) op cit
[83] S. Diver, 'Biodynamic farming and compost preparation. alternative farming systems guide' (1999) *Appropriate Technology Transfer for Rural America* 800

In the UK, two decades after Steiner began advocating his system of Bio-Dynamic farming; Sir Albert Howard published *An Agricultural Testament*.[84] Howard had worked as an agricultural adviser in India between 1905 and 1924, and during that time he became convinced that the agricultural practices of traditional Indian small-scale farmers were superior to those of the rapidly industrialising western agricultural (or conventional) model. In *An Agricultural Testament*, Howard argued that all farm production should be based on the 'law of return' whereby nutrients and organic wastes generated on the farm should be retained and returned to the soil. This principle of soil nurturing via the return and recycling of organic waste remains a core principle of organic farming today. Around the same time as Howard published his work, Lady Eve Balfour published *The Living Soil* which chronicled the findings of her 'Haughley Experiment'.[85] There she had established and compared the performance of two farms; one using organic techniques and another using conventional. It was the first documented experiment of its kind and from there Lady Balfour went on to found the UK's first organic certification and labelling scheme – the Soil Association – in 1946.[86] It was also around that time that the term *organic farming* was first used by Lord Northbourne in his book *Look to the Land*.[87]

Most significant developments in organic agriculture outside of Europe occurred after the Second World War. In Japan, Masanobu Fukuoka and

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[84] A. Howard, *An agricultural testament* (1943)
[85] E.B. Balfour, *The living soil,* The living soil. (1943)
[86] *Soil Association - Our History* <http://www.soilassociation.org/Aboutus/Ourhistory/tabid/70/Default.aspx> at 23/05/11
[87] P. Kristiansen and C. Merfield, 'Overview of organic agriculture' in *Organic agriculture: a global perspective* (2006) 12

Mokichi Okada independently devised and advocated organic 'low-til' systems of farming now referred to variously as the 'Fukuoka Method', 'Nature Farming' and 'Do-Nothing Farming'.[88] Fukuoka's book *The One Straw Revolution*[89] first published (in English) in 1978 has become one of the classic texts in the organic movement's canon of literature. In 1947 the publisher J.I. Rodale founded the first organic institution in North America, the Soil and Health Foundation, later to become the Rodale Institute. The Rodale Institute continues to operate as a research farm in Pennsylvania, USA. Rodale advocated the health and environmental benefits of organic agriculture through a range of magazines published by his company, including the *Health Bulletin*, *Organic Farming and Gardening* and *Prevention*.[90]

The deeply conservative political and religious views of some of the early organic pioneers would be anathema to many of the left-leaning 'progressives' among supporters of organic agriculture in the new millennium. Kristiansen argues that the emergence of the broader environmental movement in the late 1960s, and general acceptance of many of the core values and principles underlying organic agriculture within the environmental movement effectively saved organic agriculture from fading into obscurity.[91] Influential environmental publications such as *The Tragedy of the Commons* by Garrett Hardin, *Silent Spring* by Rachel Carson, *The Limits to Growth* from the Club of Rome[92], James Lovelock's

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[88] Ibid
[89] M. Fukuoka, *One Straw Revolution* (1985)
[90] *Rodale Institute: History* <http://www.rodaleinstitute.org/history> at 28/05/11
[91] P. Kristianson and M. Merfield (2006) op cit
[92] D.H. Meadows et al, *The limits to growth. A report for the Club of Rome's project on the predicament of mankind* (1972)

Gaia: a New Look at Life on Earth[93] echoed many of the essential concerns about sustainability and ecological integrity underlying the organic movement's critique of modern industrial agriculture.

The organic movement has both influenced and in turn been influenced by a range of 'new' social and political movements emerging in the late 20th Century, all of which could be categorised, at least to some degree, under the broad rubric of the environmental or 'green' movement. *'Slow food'*, *'fair trade'*, alternative medicine, vegetarianism, anti-globalisation, consumerism and animal welfare are just a few of the distinct social or 'issues' movements that can be aligned philosophically with organics. As MacIlwain observed in the journal Nature:

> '...if your politics are green, you like your medicine 'holistic' and you're deeply worried by economic globalization, the chances are your fridge is full of organic produce. Today, support for organic farming is frequently part of a bigger social and political mindset — one that holds that 'natural' is best, and that naked capitalism is a threat to the health of the planet and its people.'[94]

While the 21st Century supporter of organic farming is sometimes characterised as a progressive or even radical environmentalist, organic agriculture continues to draw support from across the socio-political spectrum. As a social movement it confounds traditional notions of left and right, conservative and radical, working class and wealthy, rural and urban, transcending all attempts at such neat categorisation.[95] For

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[93] J.E. Lovelock and A. Árkos, *Gaia* (1979)
[94] C. Macilwain, 'Organic: Is it the future of farming?' (2004) 428(6985) *Nature* 792
[95] R.S. Hughner et al, 'Who are organic food consumers? A compilation and review of why people purchase organic food' (2007) 6(2 3) *Journal of Consumer Behaviour* 94

example, few would be surprised to find the following statement in the 2011 policy platform of the UK Green Party:

> The Green Party will put consumers, animal welfare and the environment before the interests of big business. We need more organic, local production – to reduce wasteful transportation, provide local employment, and strengthen links between producers and consumers.[96]

However, some might be surprised to find implicit support for the Greens policy from the author of the following commentary:

> Let's, then, try and look for a moment at what very probably is not a genuinely sustainable form of agriculture – for the long term, and by that I mean generations as yet unborn. In my own view it is surely not dependent upon the use of chemical pesticides, fungicides and insecticides; nor, for that matter, upon artificial fertilizers and growth-promoters or G.M.? You would have perhaps thought it unlikely to create vast monocultures and to treat animals like machines by using industrial rearing systems. Nor would you expect it to drink the Earth dry, deplete the soil, clog streams with nutrient-rich run-off and create, out of sight and out of mind, enormous dead zones in the oceans. You would also think, wouldn't you, that it might not lead to the destruction of whole cultures or the removal of many of the remaining small farmers around the world? Nor, presumably, would it destroy biodiversity at the same time as cultural and social diversity... Why? Because we cannot possibly maintain the approach in the long-term if we continue to consume our planet as rapaciously as we are doing. Capitalism depends upon capital, but our capital ultimately depends upon the health of Nature's capital. Whether we like it or not, the two are in fact inseparable.[97]

The above passage is from a speech delivered in 2011 by His Royal Highness, The Prince of Wales to a conference at Georgetown University, Washington DC . The fact that organic critique of modern industrial

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[96] *UK Green Party Food Policy* <http://policy.greenparty.org.uk/policypointers/ppfood.pdf> at 18/05/11

[97] HRH The Prince of Wales, (Paper presented at the The Future of Food, Georgetown University, Washington DC, USA, 04/05 2011)

agriculture is an issue on which the heir to the British throne and the UK Green Party are in fundamental agreement provides some indication of the strength and breadth of the organic movement's ideological support base. Particularly in Western Europe (where the growth of organics has been strongest) major food scares such as the Bovine spongiform encephalopathy (BSE) crisis, and the advent of the GMO debate, have provided impetus to a growing political recognition of organic agriculture as a 'safer' alternative to the intensive industrial paradigm.[98]

It is a defining feature of organic agriculture as a movement that it can equally lay claim to being a global industry, and a system of governance that transcends national and international domains, and the traditional legal trinity of market, state and civil society. To put it another way, organic agriculture is a worldwide industry governed by market based norms that express the ideological values of an international socio-political movement. An appreciation of this 'multidimensionality' of organic agriculture is crucial to understanding the phenomenon from a governance perspective. The success of organic agriculture, its ability to survive economically and promulgate its values through a globalised food market has (and always will) depend on its revolutionary praxis – market and civil society coordinated standardisation.

2.6 Praxis – international organic standardisation and IFOAM

[98] S. Lockie (2006) op cit

2.6.1 Standards

In free market economies, competition and the market forces of supply and demand coordinate the behaviour of economic agents (producers, distributors and consumers) so resources are allocated to their highest value use. But this process also entails the evolution of institutions, standards and rules that further regulate the behaviour of economic agents.[99] For example contract law is essentially a voluntary system of market driven norm creation and enforcement. Hayek used the term *catallaxy* to denote how products, product components, technical processes and rules in any particular market sector will standardise to facilitate commerce without any central design or intervention by governments.[100] There are a plethora of examples to illustrate this phenomenon - A4 sized paper, beta versus VHS video cassettes, QWERTY keyboards – the list goes on. Kerwer cites Aeroflot's adoption of voluntary International Air Transport Association rules banning smoking on its aeroplanes as an example of how standardisation can overcome even the most powerful cultural traditions.[101] Our varieties of foods – the vegetables and animal products we eat – are the result of market standardisation (e.g. carrots should be orange not purple). Market standardisation is a complex, dynamic and constantly evolving 'organic' process.

Standards often become translated into law by governments. Standards can also be recognised by courts in professional negligence or product

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[99] G.P. O Driscoll and L. Hoskins, 'The case for market-based regulation' (2006) 26(3) *Cato Journal* 469
[100] F.A. Hayek, 'Competition as a discovery procedure' (2002) 5(3) *The quarterly journal of austrian economics* 9
[101] D. Kerwer, 'Rules that many use: standards and global regulation' (2005) 18(4) *Governance: An International Journal of Policy, Administration, and Institutions* 611

liability litigation. However once a standard becomes enshrined in legislation and backed by state sanction it is no longer a standard, but a law. According to Gramsci the critical distinction between political society (government and law) and civil society (which in his definition included business) is that the former represents the realm of force, while the latter the realm of consent.[102] The legitimacy of a standard derives from market or user consent – based on its utility or instrumental effectiveness and its actual usage. Law is only legitimate when it is the outcome of a state's democratic or constitutional processes. Even in the most deliberative of democracies, law is ultimately *mandated* from the top down by the lawmaking institutions of the state. A standard however is accepted voluntarily from the bottom up, only by those who use it.[103]

The voluntary or consensual nature of market standardisation imbues the process with dynamism, creativity and adaptability. Once a voluntary standard becomes recognised as ineffective or counterproductive it can be freely abandoned for another standard. Laws are rigid - all persons within a jurisdiction are (theoretically) bound by the law whether they like it or not. Of course, an unpopular law can be changed through public pressure, civil disobedience and the like, but the process is difficult, time consuming and sometimes fraught with personal risk.

An example of a codified distinction between a standard and a law can be found in Annex 1.1 and 1.2 of the World Trade Organisation *Agreement on*

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[102] A. Gramsci, 'State and civil society' (2006) *The anthropology of the state: a reader* 71
[103] K. Webb and A. Morrison, 'The law and voluntary codes: examining the "tangled web"' (2002) *Voluntary Codes: private governance, the public interest and innovation. Ottawa: Carleton University*

Technical Barriers to Trade (TBT Agreement). The TBT Agreement differentiates between a 'technical regulation' – a mandatory law which might infringe the Agreement's prohibition on restrictive trade barriers – and a 'standard' as follows:[104]

> *Technical regulation:* Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.
>
> *Standard:* Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

2.6.2 ISO

As the above TBT Agreement definitions indicate, voluntary standards can be documented and codified in a similar fashion to law. But economic competitors will not accept codified standards unless they can be confident of some degree of commercial neutrality (in other words, a business will not accept a standard that delivers a competitive or strategic advantage to a competitor). This opens the door for non-government organisations (NGOs) to participate in standards development, accreditation and conformity assessment. In the international sphere the

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[104] WTO, *Agreement on Technical Barriers to Trade* <http://www.wto.org/english/res_e/booksp_e/analytic_index_e/tbt_e.htm> at 28/05/11

largest and most influential standards development NGO is the International Organisation for Standardisation (ISO).[105]

The ISO was formed out of the merger of two earlier organisations: the International Federation of the National Standardizing Associations founded in 1926, and the United Nations Standards Coordinating Committee, founded in 1944.[106] The ISO commenced operations in New York in 1947 and grew rapidly in the wake of the massive expansion of international trade after the Second World War.[107] The ISO now has its headquarters in Geneva, Switzerland. It is a voluntary non-government organisation made up of member bodies representing individual countries, and its primary objective is, '…to facilitate the international coordination and unification of industrial standards.'[108] According to its website the ISO has, from the time of its formation, published over 18 500 international standards, '…ranging from standards for activities such as agriculture and construction, through mechanical engineering, to medical devices, to the newest information technology developments.'[109]

In carrying out its functions (most commonly the publication and maintenance of 'technical specifications') the ISO has formulated a highly effective system of standards development and implementation which has become the basic template for other national and international standards

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[105] C. Murphy and J.A. Yates, *The International Organization for Standardization (ISO): global governance through voluntary consensus* (2009)
[106] ISO, *The ISO Story* (2011) <http://www.iso.org/iso/about/the_iso_story/iso_story_founding.htm> at 28/05/11
[107] E. Meidinger, 'Multi-interest self-governance through global product certification programs' (2006) 16 *Buffalo Legal Studies Research Paper*
[108] ISO, op cit n77
[109]

organisations including organic standards developers.[110] The ISO system can be broken down into four components: (1) standards development; (2) compliance certification; (3) accreditation of certifiers; and (4) product labelling. Each of these four components will be examined below.

2.6.2.1 Standards development

The ISO develops standards through technical committees and subcommittees comprising technical experts and other interested stakeholders. The development process works through six stages, which (as an illustrative example of international standards development) are briefly outlined below:[111]

1. *Proposal Stage* – in the proposal stage a technical committee conducts a preliminary assessment of a request for the development of a standard to determine (through a formal voting process) whether such a standard is needed.

2. *Preparatory Stage* – in the preparatory stage a working draft standard is developed by a technical working group convened for that purpose by the technical committee.

3. *Committee Stage* – after a working draft standard has passed through the preparatory stage it is registered by the ISO Central

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[110] E. Meidinger 2006 op cit
[111] ISO, *Stages of the development of international standards* <http://www.iso.org/iso/standards_development/processes_and_procedures/stages_description.htm#stage6> at 28/05/11

Secretariat and distributed to the technical committee for assessment and revision. Once the technical committee is satisfied with the text it will be finalised and approved for release as a draft International Standard (DIS).

4. *Enquiry Stage* – in the enquiry stage the draft International Standard (DIS) is circulated to all ISO member bodies by the ISO Central Secretariat for voting and feedback within a five month period. It will gain approval as a final draft International Standard (FDIS) if a two-thirds majority of the technical committee are in favour, and the number of votes received back from member bodies is not in excess of one quarter of total votes. If the approval criteria are not met, the text is returned to the originating technical committee for further revision until a final draft International Standard can meet the approval criteria.

5. *Approval Stage* – in the approval stage the final draft International Standard (FDIS) is again circulated to all ISO member bodies by the ISO Central Secretariat for a final vote within a two month period. Technical feedback received at this stage will be registered but only taken into consideration during future revisions of the Standard – after it has been finalised and published. If a two-thirds majority of the technical committee are in favour and no more than a quarter of votes cast by ISO member bodies are negative the FDIS will be approved for publication as an *International Standard*.

6. *Publication Stage* – an approved International Standard is published by the ISO Central Secretariat under a unique identifying number

and name, e.g. '*ISO-1400:2004 Environmental Management Systems -- General Guidelines on Principles, Systems and Support Techniques*'. If an ISO member body in a particular country chooses to adopt and International Standard it may publish a local version with a country specific descriptor, for example ISO-1400:2004 is published in Australia as part of the '*AS/NZS ISO 14000*' series.

2.6.2.2 Compliance certification

Compliance certification relates to the implementation of a standard after it has been published. Consumers of products or services held out to be in compliance with a particular standard will want some form of assurance that the claims are true. Most standards require users to participate in some form of compliance assurance scheme – the least onerous being 'self certification' where, for example, a producer simply declares their product to be compliant. The highest level is independent third-party certification, whereby the claimant must submit to a rigorous auditing/ inspection and testing program carried out by an independent, accredited (see below) certifier in order to be certified as compliant with the standard.[112]

2.6.2.3 Accreditation of certifiers

Accreditation schemes ensure that third-party compliance testing and certification of products or services against standards are carried out only by persons (including organisations) recognised as appropriately qualified to do so. Accreditation schemes are ideally administered by an independent *accreditation body* which operates at arm's length from the

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[112] S. Dröge and Deutsches Institut für Wirtschaftsforschung, *Ecological labelling and the World Trade Organization* (2001)

certifiers and assesses, against documented criteria, the competence of persons seeking to undertake standards certification activities. Accreditation schemes also lay down protocols and codes of conduct to guarantee the probity of certification practitioners such as, for example, protocols for ensuring certifiers act in good faith and avoid conflicts of interest.[113]

2.6.2.4 Labelling

Virtually all third party standards and certification schemes use a trademarked label or logo to endorse a product as being compliant with their standard. The certified producer is allowed to display the label or logo on their product packaging, thereby providing potential customers with a credible means of verifying claims that the product meets the relevant standard.

2.6.2 Organic standardisation

As argued in Chapter 1, the advent of organic food standardisation was a watershed phenomenon in the governance of sustainable development. A diverse, geographically disparate collection of likeminded farmers, consumers and ecologists formed into a social movement and then organised themselves into a global network of non government organisations (NGOs) to promulgate their movement's ideological values through production and process standards. Organic standards are far

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[113] E.E. Meidinger, C. Elliott and G. Oesten, 'The fundamentals of forest certification' (2003) *Social and political dimensions of forest certification* 3; G. Jahn, M. Schramm and A. Spiller, 'The reliability of certification: quality labels as a consumer policy tool' (2005) 28(1) *Journal of Consumer Policy* 53

more than simply standards for technical harmonisation, commerce facilitation or regulatory pre-emption. While both organic and technical/commercial standardisations are market-driven, organic standardisation incorporates an explicit ideological or political agenda.[114]

Consumers of organic food are motivated by health concerns surrounding pesticide residues and other artificial food additives, and ethical concerns relating to the source and method of their foods production.[115] Organic food standards are *process and production standards* (PPS) in that they relate to the way the food is produced and do not necessarily result in any readily identifiable change in the final product.[116] In the marketing literature, the organic status of food would be described as a *credence attribute*, meaning it is difficult or impossible for remote consumers to ascertain its existence; as opposed to an *experience attribute* such as 'fresh' or 'frozen'.[117] In situations where a community is able to source food locally from known and visible producers it is reasonably easy for consumers to find out how that food was produced. However geographically remote urban consumers purchasing food in a supermarket will often have little connection or familiarity with the places where (or processes by which) their food came into existence. Moreover, it would often be too difficult and expensive for such consumers to find out detailed information on how and where their food was produced. It was precisely to overcome these *'asymmetry of information'* and *'transaction costs'*

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[114] S. Lockie and N. Salem (2005) op cit
[115] A. Makatouni, 'What motivates consumers to buy organic food in the UK?: Results from a qualitative study' (2002) 104(3/4/5) *British Food Journal* 345
[116] G. Jahn, M. Schramm and A. Spiller, (2005) op cit
[117] Jane Harris, 'The role for government in ecolabelling: on the scenes or behind the scenes' (Paper presented at the The Future of Eco-labelling in Australia
Canberra, 2003)

hurdles that independent third-party standards and certification schemes, with their certifying logos, became such an integral part of organic agriculture worldwide.[118]

The organic movement's standards are arguably the industrial world's first set of formalised production norms designed and implemented for achieving sustainable development. The early organic certification and labelling schemes such as Demeter and the Soil Association were the prototype for subsequent civil society and market-based governance initiatives. Since the 1990s, when sustainability and environmental justice issues became entrenched on the political agenda, organic schemes have been joined by a veritable smorgasbord of new market-based environmental certification and labelling schemes or *'eco-labels'*.[119] Examples include Blue Angel,[120] Forest Stewardship Council (FSC)[121], Marine Stewardship Council [122] Fair Trade[123], Rainforest Alliance[124], GLOBALG.A.P. [125] Such schemes promulgate non-product related process and production standards based on substantive environmental justice and sustainability goals. Even the ISO has developed a non-product related PPS aimed at environmental sustainability – the ISO 14000 series for environmental management systems. The situation has reached a point where, according to some commentators, the proliferation of eco-labels is

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[118] E. Meidinger (2006) op cit
[119] Gale and Haward (2004) op cit
[120] http://www.blauer-engel.de/en/
[121] http://www.fscaustralia.org/
[122] http://www.msc.org/
[123] http://www.fta.org.au/
[124] http://www.rainforest-alliance.org/
[125] http://www.globalgap.org/cms/front_content.php?idcat=9

undermining their general market credibility or 'currency' by confusing consumers.[126]

2.6.3 IFOAM Organic Principles and the trilemma

The International Federation of Organic Agriculture Movements (IFOAM) was formed in 1972. It has its headquarters in Bonn, Germany and is currently made up of 750 member organisations from 116 countries around the world.[127]

IFOAM engages with the United Nations and other international legal entities to promote the interests of its membership and the general worldwide organic movement. IFOAM is recognised internationally as the preeminent organic body, and has been accredited or granted official observer status by most major multilateral international legal institutions, including the following:[128]

- Consultative status within the Economic and Social Council (ECOSOC) of the United Nations General Assembly
- The Food and Agriculture Organization of the United Nations (FAO)
- United Nations Conference on Trade and Development (UNCTAD)
- Codex Alimentarius Commission (FAO and WHO)
- World Trade Organization

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[126] J.E. Fliegelman, 'The next generation of greenwash: diminishing consumer confusion through a national eco-labeling program' (2010) 37 *Fordham Urb. LJ* 1001; R. Sullivan, 'What's in a label?' (2010) 2010(156) *ECOS* 20

[127] IFOAM, *About the International Federation of Organic Agriculture Movements (IFOAM)* <http://www.ifoam.org/about_ifoam/index.html> at 25/05/11

[128] Ibid

- United Nations Environment Program (UNEP)
- The Organization for Economic Cooperation and Development (OECD)
- International Labor Organization of the United Nations (ILO)

IFOAM's stated mission is, 'leading, uniting and assisting the organic movement in its full diversity' and it has set itself the following five strategic goals to fulfil it:[129]

1. build the global platform for the organic movement
2. develop, communicate and defend the principles of organic agriculture
3. advocate and facilitate the adoption of organic agriculture
4. promote the development of organic markets
5. ensure an effectively managed organization with sufficient and sustainable resources

The 'principles of organic agriculture' (Organic Principles) referred to in the second strategic goal have been codified by the IFOAM through its General Assembly. The Principles have evolved over time. According to Kristianson, 'modern organic agriculture's alignment with the wider environmental movement has resulted in principles that have a stronger environmental focus than those from the first half of the 20th century.'[130] IFOAM has published two codified versions of the Organic Principles; the first version (reproduced in *Table 1* below) was published in 1980:

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[129] IFOAM, *Mission and Goals* <http://www.ifoam.org/about_ifoam/inside_ifoam/mission.html> at 25/05/11
[130] Kristianson (2006) op cit p12

Table 1: IFOAM Principles of Organic Agriculture 1980[131]

- To work as much as possible within a closed system, and draw upon local resources.
- To maintain the long-term fertility of soils.
- To avoid all forms of pollution that may result from agricultural techniques.
- To produce foodstuffs of high nutritional quality and sufficient quantity.
- To reduce the use of fossil energy in agricultural practice to a minimum.
- To give livestock conditions of life that conforms to their physiological needs and to humanitarian principles.
- To make it possible for agricultural producers to earn a living through their work and develop their potentialities as human beings.

A new more succinct set of Organic Principles (reproduced in *Table 2*) was approved by the IFOAM General Assembly meeting held at Adelaide, Australia in 2005.

Table 2: IFOAM Principles of Organic Agriculture 2005[132]

Principle of health

Organic Agriculture should sustain and enhance the health of soil, plant, animal, human and planet as one and indivisible.

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[131] L. Woodward, Vogtmann, H. , 'IFOAM's organic principles' (2004) 36 *Ecology and Farming* 24 in Kristianson, op cit p12

[132] IFOAM, *The Principles of Organic Agriculture* <http://www.ifoam.org/about_ifoam/principles/index.html> at 25/05/11

Principle of ecology

Organic Agriculture should be based on living ecological systems and cycles, work with them, emulate them and help sustain them.

Principle of fairness

Organic Agriculture should build on relationships that ensure fairness with regard to the common environment and life opportunities.

Principle of care

Organic Agriculture should be managed in a precautionary and responsible manner to protect the health and well-being of current and future generations and the environment.

To give effect to the Organic Principles IFOAM oversees a sophisticated international standards development and implementation system, in a similar vein to the system administered by the ISO. The *IFOAM Basic Standards for Organic Agriculture* was first published in 1980 and these IFOAM 'Basic Standards' have since undergone numerous revisions.[133] Another significant milestone in IFOAM's development occurred in 1997 when it established a separate entity – the International Organic Accreditation Service to undertake the international accreditation of private organic certifying bodies.[134] The IOAS has now accredited 43 certification bodies, with a total of 150 000 registered organic operators spread throughout 75 countries.[135]

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[133] Kristianson,(2006) op cit
[134] IOAS, *Who We Are* <http://www.ioas.org/who.htm> at 20/05/11
[135] http://www.ioas.org/acbs.htm at 20/05/11

Courville describes the international private governance framework for organic agriculture (at the centre of which is IFOAM) as, 'one of the largest and most established global, non-government systems of regulation of industry production, processing and commodity trading.'[136] She also makes the following critical observation:

> Organic standards and certification systems have had key roles in clarifying, harmonising and ensuring the integrity of organic agriculture as it moves from movement driven agricultural niches to mainstream markets worldwide. However with the growth of organic markets…governments have become increasingly involved in organic regulation, resulting in loss of ownership of the meaning of organic agriculture by the movement itself. Increased international trade of organic produce has resulted in complex organic regulatory systems fraught with duplications and overlaps among the various government regimes and the private regulatory systems… The tensions between the private systems dominated by the International Federation of Organic Agriculture Movements and public systems managed by various national and regional governments… and the increasing over-regulation of organic agricultural production and trade may have the effect of squeezing out the key stakeholders at the heart of the organic movement: smallholder farmers.[137]

Courville's observation encapsulates, in a nutshell, the governance trilemma facing the organic movement and which is the core analytical focus of this thesis. As with other jurisdictions, government and non-government stakeholders in the Australian organic industry have been grappling with the trilemma for the last twenty years. The next chapter will investigate how these stakeholders have responded to it.

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[136] Sasha Courville, 'Organic standards and certification' in Paul Kristianson, John Reganold and Acram Taji (eds), *Organic Agriculture: A Global Perspective* (2006) 201 p203
[137] Ibid, p201

Chapter 3: Organic standardisation in Australia

3.1 Introduction

This Chapter presents a detailed case study of the Australian organic sector. It starts with a brief historical examination of the political economy of Australian agriculture, and follows it with an outline of some salient features of the general regulatory framework for food standardisation. It then focuses on the policy, standardisation and governance arrangements pertaining specifically to the organic sector.

3.2 Australian agriculture and neoliberalism

Australia was colonised by the British in the late eighteenth century with the explicit aim of establishing a new frontier for agricultural production.[138] The colonists' initial failure to adapt their European farming techniques and technology to the new environment saw the first settlement at Port Jackson (modern day Sydney) come perilously close to starvation.[139] But by 2004 Australia had become the world's sixth largest exporter of agricultural commodities, maintaining one of the most rural based economies in the OECD.[140]

Roughly sixty per cent of Australia's land mass is devoted to some form of farming. The bulk of agricultural land is used for pastoral grazing: mainly

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[138] Bill Pritchard, 'Implementing and maintaining neoliberal agriculture in Australia. Part 2: strategies for securing neoliberalism' (2005) 13(2) *International Journal of Sociology of Agriculture and Food*
[139] K. T. H. Farrer, *To Feed a Nation* (2005)
[140] AGPC, 'Trends in Australian Agriculture' (Australian Government Productivity Commission, 2005)

beef cattle and sheep for mutton and wool.[141] Like Australia's population density, the level and intensity of agriculture generally decreases with distance from the coast and is most concentrated in the south east quadrant of the country. The mainland interior comprises arid or semi-arid desert; its ancient, fragile soils and scarcity of fresh water impeding agricultural encroachment. In higher rainfall areas closer to the coast, grain cropping, dairy and horticulture predominate.[142] While much of the continent is unsuitable for farming, the sheer size and climatic range of Australia has enabled the establishment of productive and diverse agricultural industries in those areas that are suitable. It is a world leading exporter of wool, beef and wheat and these have come to be recognised as the 'big three' signature commodities of Australian agriculture. In recent years other commodities such as wine grapes, horticulture, poultry and dairy have gained importance as domestic and international dietary preferences changed, and new markets have emerged in the fast growing economies of Asia.[143] Australia's various horticultural regions (typically along the eastern seaboard) currently produce a range of more than forty different commodities - from tropical fruits such as mangoes and bananas in northern Queensland, to cool weather crops like potatoes and apples in Tasmania.[144] Of particular note is the rapid expansion of the wine industry since the late 1970's, which has put Australia into the top ten (by volume of production) of the world's wine producing countries.[145]

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[141] DAFF, 'Australian agriculture and food sector stocktake' (Australian Government Department of Agriculture, Fisheries and Forestry, 2005)
[142] Ibid
[143] ibid
[144] Ibid
[145] AGPC (2005) op cit

Somewhat belying its agricultural foundations, Australia is a highly urbanised nation and three quarters of its twenty million or so people live in cities with a population greater than 100,000.[146] In demographic terms that translates into a relatively small number of farmers managing a huge aggregate area of farmland with some very large individual farms - the largest cattle stations can span tens of thousands of hectares. Vanclay describes Australian farming as 'extensive rather than intensive'[147] and while physically vast farms are certainly a feature of the Australian rural landscape, the majority of working farms are somewhere in the 100 -500 hectare range, and could be classed as small to medium sized, family owned and operated businesses.[148]

The Australian economy no longer 'rides on the sheep's back', but agricultural production generally constitutes a greater percentage (around one fifth) of Australia's national export income than is typical for OECD nations.[149] The productive capacity of the agricultural sector has long exceeded the needs of the domestic market so farm business growth is dependent on access to overseas markets.[150] In the Australian political economic discourse, the performance of the agricultural sector is more often framed in terms of its capacity to generate export income and

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[146] ABS, *Year Book Australia 2006* (2006) Australian Bureau of Statistics <http://www.abs.gov.au/websitedbs/D3310114.nsf/home/home>
[147] frank vanclay, 'the impacts of deregulation and agricultural restructuring for rural Australia' (2003) 38(1) *Australian Journal of Social Issues*
[148] AFPRG, 'Creating Our Future: Agriculture and Food Policy for the Next Generation' (Agriculture and Food Policy Reference Group, ABARE, 2006)
[149] AGPC (2005) op cit
[150] Neil Andrews et al, 'Agricultural trade reform: benefits for Australian Broadacre agriculture' (2003) 10(2) *Australian Commodities*

contribute to a favourable balance of trade, rather than its capacity to supply food and fibre to the Australian population.[151]

Australian agricultural policy has been driven by a neoliberal agenda of trade liberalisation and open market competition since the Hawke/Keating reforms of the 1980s. Apart from New Zealand, Australia has possibly the least 'protected' agricultural sector in the OECD.[152] As a founding member of the Cairns Group of agricultural exporting countries, the Australian Government is committed to the dismantling of government agricultural subsidisation and protection worldwide. Pritchard notes that in the decade between1995 and 2006 Australian Government agencies produced over 100 economic reports advocating trade liberalisation and de-regulation in agriculture. Many of these reports were produced in multi-lingual formats to facilitate Australia's international efforts to, in Pritchard's words, '…gain high moral ground as world leader of the [global] trade liberalisation project.'[153] He attributes the rise of the neoliberal agenda in Australia to the dominance of the 'Chicago School' of macro-economic theory within Australian government policy networks. The Chicago school is characterised by a deep normative commitment to laissez faire market coordination and minimal government involvement in business activity. According to Pritchard:

> The rise in influence of the Chicago School within the community of Australian economics affected the intellectual practice and philosophical orientation of the sub-discipline of agricultural economics, with

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[151] Bill Pritchard (2005) op cit, n138
[152] Judith Brett, 'The country the city and the state in Australian settlement' (2007) 42(1) *Australian Journal of Political Science* 1
[153] Bill Pritchard (2005) op cit, n138, p145

> implications for the recruitment of graduates into the areas of the Canberra bureaucracy dealing with agricultural policy.[154]

The ideological commitment to free markets is manifested in three broad based economic reforms (both macro and micro) to the Australian political economy that have been pursued by successive Australian governments since the early 1980s. The first is the dismantling of all forms of trade protection such as import tariffs and quotas, particularly in the manufacturing sector. The second is the embrace of a multi-lateral international trade strategy, which saw Australia move away from pursuing favourable bi-lateral trade arrangements with individual countries or trading blocs. The new strategy involved lobbying collectively (with other agricultural exporting nations) against trade protectionist nations through multi-lateral institutions such as the GATT (General Agreement on Tariffs and Trade) and the World Trade Organisation . However it is the third of the neoliberal reforms that has perhaps had most impact on the governance of the Australian organic agriculture industry – a commitment to across the board national deregulation.[155]

3.3 National Competition Policy

In the early 1990's the Keating Government established an independent commission of enquiry to investigate how Australia's national regulatory framework, particularly the Commonwealth *Trade Practices Act 1974*, could be changed to remove restrictions on business competition. The

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[154] B. Pritchard, 'Implementing and maintaining neoliberal agriculture in Australia. Part I' (2005) p3
[155] Ibid

resulting Hilmer Report (named after its chair – Professor Fred Hilmer) contained a swathe of recommendations aimed at facilitating the adoption of 'competition policy' throughout all levels of government in Australia. The following quote from the Report summarises one of its core findings and recommendations:

> If Australia is to take competition and competition policy seriously, a new mechanism is required to ensure that regulatory restrictions on competition do not exceed what is justified in the public interest. The Committee recommends that all Australian governments adopt a set of principles aimed at ensuring that statutes or regulations do not restrict competition- unless the restriction is justified in the public interest. '[156]

The Hilmer Report was accepted virtually in its entirety by Australia's Commonwealth and all state and territory governments. At the 1995 meeting of the Council of Australian Governments (COAG) all Australia's governments signed on to the intergovernmental *Competition Principles Agreement*. The same year the Commonwealth Government passed the associated *Competition Policies Reform Act 1995 (Cth).* This was a watershed development for the accession of neoliberal free-market doctrine in Australia's political economy. The resulting suites of micro-economic reforms, carried out under the banner of 'National Competition Policy', have had a profound impact on the nature and extent of government regulatory involvement in all areas of industry, not the least in food and agriculture.

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[156] F.G. Hilmer and Australia. National Competition Policy Review Committee, *National Competition Policy: Report by the Independent Committee of Inquiry, Executive Overview* (1993), p.xxix

Under National Competition Policy reforms there was a coordinated nationwide review of all legislation and regulatory arrangements that could have an effect on business competition. At both the state/territory and Commonwealth levels all legislation that was considered likely to restrict competition was to be repealed unless a 'net public benefit' could be demonstrated for its retention. Any new regulatory proposal must also satisfy the same net public benefit test before it can be introduced. In practice it means that all legislative initiatives in Australia must now first pass a formal cost – benefit analysis type assessment, the outcomes of which are published in a *regulatory impact statement*.[157] Bronwyn Morgan describes the Australian neoliberal paradigm under the National Competition Policy as one which,

> '…institutionalises a presumption in favour of market governance, and this causes bureaucrats to reframe or 'translate' aspects of social welfare that previously may have been expressed in the language of need, vulnerability or harm into the language of market failures or market distortion.'[158]

As will be illustrated below, National Competition Policy has proved an insurmountable barrier to the Australian organic industry in prosecuting its claim for government regulatory intervention in the domestic market.

3.4 The Australian regulatory framework for food

3.4.1 Australia New Zealand Food Standards Code

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[157] Bill Pritchard (2005) op cit, n154
[158] B. Morgan, *Social citizenship in the shadow of competition: the bureaucratic politics of regulatory justification* (2003) p3, cited in Ibid, p6

Uniform regulatory food standards are implemented in Australia under a cooperative regime involving the Australian Commonwealth, the states and territories, and New Zealand. Food Standards Australia New Zealand (FSANZ) is a joint Australian and New Zealand Government agency established under the *Australia New Zealand Food Authority Act 1991* and a trans-Tasman treaty arrangement. FSANZ is responsible for developing and maintaining food safety standards in the *Australia New Zealand Food Standards Code* (the Food Standards Code). All food produced or imported for sale in Australia and New Zealand must comply with the standards in the Food Standards Code. Due to the different responsibilities under the Australian Constitution, the Code is not enforced in its own right at the federal level. Instead it is given effect in each jurisdiction by legislation (which is based on national uniform model food legislation) passed by each state and territory parliament.[159]

The Food Standards Code contains a collection of discrete albeit related standards grouped under four Chapters. Chapter 1 contains general food standards applicable to most foods, including requirements for food labelling, particular contaminant limits and maximum residue limits (MRLs) relating to agricultural and veterinary chemicals. Chapter 2 prescribes the compositional requirements for particular classes of foods like, for example, *Standard 2.3.2* which states inter alia 'jam must contain no less than 650g/kg of water-soluble solids.' Chapter 3 deals with food handling safety and hygiene issues in Australia. Chapter 4 contains primary production and processing standards (applying in Australia only)

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[159] FSANZ, *The Australia New Zealand Food Standards Code - a guide for consumers* <http://www.foodstandards.gov.au/foodstandards/theaustralianewzeala5151.cfm> at 20/03/2011

for primary produce commodities recognised as having a high food safety risk, i.e. meat and poultry, eggs, dairy products and bi-valve molluscs such as oysters and scallops.[160]

State and territory enforcement agencies are responsible for enforcing the Food Standards Code (through their own legislation) with respect to all food available for sale within their jurisdictions, including imported food. They investigate specific complaints and, if necessary, conduct prosecutions for breaches of the provisions in the Code. State and territory agencies are also responsible for general surveillance of food businesses to establish compliance with food safety and labelling standards.[161]

Any Australian or New Zealand individual or organisation can apply to FSANZ for the standards in the Food Standards Code to be changed. The application will then be considered by the FSANZ Board (which comprises members with relevant scientific expertise) taking into account public comments. If the FSANZ Board decides to change the Code in response to a public application it will first submit the proposed change to the Australia New Zealand Food Ministerial Council, which comprises the ministers from each affected Australian and New Zealand jurisdiction. Once a change is accepted it will be 'gazetted' and then applied in each state and territory through that state or territories food safety legislation.[162]

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[160] Ibid
[161] Ibid
[162] FSANZ, *Varying and setting food standards*
<http://www.foodstandards.gov.au/foodstandards/changingthecode/> at 20/03/2011

3.4.2 Australian Quarantine and Inspection Service

The Australian Quarantine and Inspection Service (AQIS) is the Commonwealth agency with operational responsibility for the inspection and clearance of food destined for export and imported food when it reaches the Australian border. Food exports are regulated by AQIS under the *Export Control Act 1983* and a host of subordinate Export Control Orders. AQIS conducts inspections on the basis of risk or specific intelligence about potential breaches, targeting food products that may threaten public health or may not comply with legal import/export requirements. For imported foods, the relevant standards in the Food Standards Code are enforced under the *Imported Food Control Act 1992* through the Australian Government's Imported Food Inspection Scheme (IFIS). IFIS is focused on food safety and biosecurity, aiming to ensure that imported foods are fit and safe for human consumption and meet other legal import requirements.[163]

3.4.3 Australian Consumer Law

Complementing the statutory framework for the regulation of food safety and integrity there are trade practices and consumer protection laws overseen primarily by the Australian Competition and Consumer Commission . These laws deal with matters such as false and misleading conduct in food marketing, and use of product labels and trademarks. A

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[163] AQIS, *Food* <http://www.daff.gov.au/aqis/import/food> at 20/03/2011

single, overarching piece of Commonwealth legislation now regulates virtually all aspects consumer protection and trading in Australia.[164]

The *Competition and Consumer Act 2010 (Cth),* referred to as the *'Australian Consumer Law'* commenced on 1st January 2011. The principal Act is a renamed version of the *Trade Practices Act 1974 (Cth)* and it consolidates or replaces a multiplicity of consumer protection provisions scattered among more than twenty Commonwealth, state and territory legislative instruments. The Australian Consumer Law is the outcome of a COAG agreement between the Commonwealth, states and territories – *The Intergovernmental Agreement for the Australian Consumer Law* – committing all Australian jurisdictions to the implementation of uniform fair-trading and consumer protection laws across the whole country in order to promote a 'seamless' national economy. The Australian Consumer Law applies across all states and territories, and to all Australian businesses. It is enforced by the ACCC at the national level and otherwise by the various state and territory consumer protection agencies.[165]

3.4.4 Labelling Logic

In 2008 the COAG decided that the Australia New Zealand Food Regulation Ministerial Council (Ministerial Council) should undertake a comprehensive review of Australia's food labelling law and policy. In October 2009 the Ministerial Council convened a panel chaired by former

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[164] *Australian Consumer Law* Australian Government <http://www.consumerlaw.gov.au/content/Content.aspx?doc=the_acl.htm> at 21/04/2011
[165] *Australian Consumer Law - Legislation* Australian Government <http://www.consumerlaw.gov.au/content/Content.aspx?doc=the_acl/legislation.htm> at 21/04/2011

Australian Health Minister, Dr Neal Blewett AC to conduct the review. After an extensive public inquiry which involved holding eleven public meetings throughout Australia, and the consideration of over 8000 written submissions from stakeholders, the review panel released its findings in a report entitled *Labelling Logic*.[166]

The *Labelling Logic* report contained a total of sixty one recommendations for reforming Australian food labelling law and policy. The recommendations were framed around a hierarchy of food labelling issues. Under the labelling hierarchy, food safety information concerning direct acute risks to health such as 'use by' date marking was considered to be the highest order of priority. This was followed by preventative health information relating to indirect, long term impacts on health such as, information on food calorie content. Next in the hierarchy was 'new technologies information' in respect to the use of food technologies that require pre-approval such as, for example, information on the presence of GMOs and nanotechnologies in food. Finally, at the bottom of the hierarchy was information considered to relate purely to consumer values or preferences. Information as to whether or not food is organic was considered to fall within this last category. The Report recommended government mandated regulatory measures for the higher order priorities (i.e. food safety) with co-regulatory mechanisms being applied to the middle of the hierarchy (i.e. new technologies), and lower order priorities best left to self-regulatory mechanisms. A graphic depicting the hierarchy from the *Labelling Logic* report is included in Appendix 1.[167]

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[166] Commonwealth of Australia, 'Labelling Logic: review of food labelling law and policy' (2011)
[167] Ibid

The Report referred specifically to organic agriculture in its discussion (in chapter 6) on industry initiated approaches to 'consumer values issues'. It found that organic standards in Australia provided a good example of an 'industry agreed' food production standard. It also made the observation that, 'several different definitions of "organic" had evolved in the Australian marketplace, causing confusion for consumers and lack of confidence in the value claim.'[168] In relation to regulation of general consumer values labelling, the Report found,

> Consumers increasing desire to make food purchase decisions according to their personal values, their perceptions of the world and their ethical convictions brings a further dimension to the [Australian] food labelling debate…Generalised consumer values issues such as human rights, animal welfare, environmental sustainability and country of origin labelling… were raised in a large number of submissions…As a general principle, food labelling for such generalised values issues is best left to market responses to consumer demand and is best covered by the consumer protection laws.[169]

3.5 The Australian organic industry

As of 2006 there were more than 12.1 million hectares under organic management in Australia; almost twice the area of all organically managed land in Europe, and the largest portion of any single country or continent.[170] This deceptively impressive statistic reflects the distinct economic geography of Australian agriculture rather than high levels of

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[168] Ibid, p103
[169] Ibid, p97
[170] Minou Yuseffi, 'Organic farming worldwide 2006: overview and main statistics' in Helga Willa and Minou Yuseffi (eds), *The World of Organic Agriculture: Statistics and Emerging Trends 2006* (2006)

organic production, with the vast majority of certified land used to run cattle. In keeping with Australia's low population density there are comparatively few certified organic farms, probably less than 2000 in total.[171] By contrast, Italy had an estimated 36,639 organic farms covering 954,361 hectares, an organic acreage of around one twelfth that of Australia.[172] Nevertheless, in line with most of the developed world, the Australian organic food sector has been one of the most rapidly growing in the domestic food economy.

There are currently seven private certifying agencies operating on the Australian domestic scene. The two largest are National Association for Sustainable Agriculture Australia (NASAA) established in 1986, and Biological Farmers Australia (BFA), established in 1987. By 2006 figures, BFA (via its certified logo 'Australian Certified Organic') accounted for around 70% of the market share for organic producers and NASAA around 25%.[173] The other five certifying bodies are: the Organic Food Chain (OFC); Safe Food Production Queensland (SFPQ); Tasmanian Organic-Dynamic Producers (TOP); Aus-Qual Limited (AUSQUAL) and the Australian Demeter label – Biodynamic Dynamic Research Institute (BDRI). Each one of these organisations undertakes the auditing, certification and labelling of producers in accordance with the organisations own standards. The logos of each of the Australian

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[171] Els Wynen, 'Organic farming in Australia' in Helga Willa and Minou Yuseffi (eds), *The World of Organic Agriculture: Statistics and Emerging Trends 2006* (2006)
[172] Minou Yuseffi (2006) op cit
[173] E. Wynen (2006) op cit

certifying organisations, along with a link to their websites are included in Appendix 2.[174]

The growth of the Australian organic sector has been consumer and industry driven with minimal assistance from government.[175] Organic farmers in the UK receive a subsidy from the UK Government to assist with conversion to organic certification. They are then entitled to further subsidies in recognition of improved environmental impacts attributed to organic farming methods, in addition to the usual benefits available pursuant to the EU Common Agricultural Policy . By contrast the Australian organic community has never received nor sought any special government subsidies. But for a decade the industry has campaigned for the establishment of a government backed regulatory scheme for domestic organic standardisation. The reason is the same one behind the push for government regulation elsewhere: to promote expansion of the local organic industry. Government standards are seen as necessary to build consumer confidence and reduce consumer confusion associated with the proliferation of inconsistent private standards and labels.[176] Of particular concern to organic stakeholders is the potential for fraudulent or misleading claims in organic food trade without a basic, legally controlled definition of the term organic.[177] According to Munro,

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[174] AQIS, *AQIS organic approved certifying organisations* <http://www.daff.gov.au/aqis/about/contact/aco> at 15/05/2011
[175] E. Wynen (2006) op cit
[176] J. Ikerd (2006) op cit
[177] NASAA, *Organic chicken debacle reinforces urgent need for new independent Australian organic standard* (2006) <http://www.nasaa.com.au/data/pdfs/Organic_Chicken_Debacle_6.11.06.pdf> at 3 July 2007

> The concern in the industry appeared to stem from unscrupulous entrepreneurs labelling their domestic-bound products as being "organic" or "free range", since the states, territories and Commonwealth lacked any legislative provision unequivocally outlawing such practice. By labelling products as being "organic", "free range" or "chemical free", producers can demand a premium on price by appealing to those seeking a cleaner, greener product. A stroll down the supermarket isle even today shows no shortage of products spruiking their green credentials.[178]

A prime example was a court case that occurred in 2007. In *ACCC v G.O. Drew Pty Ltd [2007] FCA 1246* the ACCC took Federal Court action against an egg producer – G.O. Drew Pty Ltd under Section 52 of the *Trade Practices Act 1974* for false and misleading conduct relating to organic claims. The respondent company admitted to supplying eggs to supermarkets and other retailers labelled as certified organic by NASAA, when the eggs were not in fact certified. As a result of the proceedings G.O. Drew agreed to pay $54,000 to NASAA to help it enhance its certification and monitoring programmes; and $216,000 to the Organic Federation of Australia to assist in the development of the Domestic Standard through Standards Australia. The ACCC also obtained declaratory orders from the Court that the respondent's actions amounted to false and misleading conduct in breach of several provisions of the Act. The Judge hearing the case (Gray J) noted that there was as yet no settled legal definition of the term 'organic'. He stated, 'there can be little doubt that the word organic has attained a colloquial meaning used to distinguish foods produced without inputs that are regarded as artificial, particularly chemicals.' But he found that the term nevertheless remained

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[178] Andy Munro, 'Organic and biodynamic products: the new regime' (2010) (April 2010) *NSW Law Society Journal* , p1

imprecise because there was no agreed legal standard about which inputs were to be regarded as artificial or chemical.[179]

3.6 Government regulation

Unlike governments in Europe, North America and Asia, no Australian government has implemented specific regulations for the domestic organic industry. The only significant Federal Government engagement is through the Australian Quarantine and Inspection Service (AQIS) which oversees a standards and accreditation arrangement for licensing organic exports.

In 1991 the European Union through EC Regulation 2097/91 introduced import restrictions on organic produce from other countries. Europe was an important market for Australian organic exporters and the new restrictions required all Australian organic exports to be certified by the Australian Commonwealth Government as compliant with the European standards. This led to the Government (via AQIS) becoming involved in organic standardisation and accreditation of certifying organisations.[180]

The Commonwealth *Export Control (Organic Produce Certification) Orders* and *Export Control Act 1983 (CTH)* proscribes the export of produce labelled or described as organic without a government export certificate. AQIS acts as the competent government authority to accredit private certification agents, authorising them to issue organic export certificates

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[179] A. Munro (2010) op cit
[180] E. Wynen, 'Standards and compliance systems for organic and bio-dynamic agriculture in Australia: past, present and future' (2007) 2(2) *Journal of Organic Systems* 38

on behalf of the Australian Government. In the early 1990s, as part of the export scheme, AQIS and key representatives from the Australian organic community established the Organic Industry Export Consultative Committee to develop and maintain the *Australian National Standard for Organic and Biodynamic Produce* (the 'Export Standard'). The Export Standard, in current form, runs for some fifty pages and sets out basic requirements for crop management, animal husbandry, food processing, handling, transport and labelling.[181]

At the time of writing all seven of Australia's certifying bodies were accredited by AQIS to certify Australian organic produce for export.[182] To be AQIS accredited, private certifying bodies must implement the minimum requirements of the Export Standard, although they are free to add extra and more rigorous requirements in their own version of the standards. Consequently, the Export Standard became the benchmark used by all established certifying bodies in the Australian organic sector for both domestic and export certification. However there is no requirement for the export standard to be applied to goods sold on domestic markets. Nor is there any legal requirement to be AQIS accredited before a certifying body can certify domestic produce. There is no specific legal requirement for certification of locally sold organic produce at all. While the Commonwealth Government refers to the current standardisation arrangements as a 'co-regulatory' scheme, this is only correct insofar as organic exports are concerned. The domestic

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[181] E. Wynen (2007) op cit
[182] AQIS, *AQIS organic approved certifying organisations* <http://www.daff.gov.au/aqis/about/contact/aco> at 15/05/2011

organic industry is essentially self-regulated, and the evolution of domestic standards remains subject to voluntary market participation only.

Although it has been used by Australia's seven private organic certifying agencies as a *de facto* national standard, the export standard is not legally enforceable in domestic markets. Despite extensive lobbying from the organic sector, the Australian Government has been unwilling to implement domestic organic regulations, maintaining that a self-regulatory regime is sufficient. The Government's stance, anchored in its neoliberal National Competition Policy agenda of market deregulation, engendered deep frustration among key industry stakeholders unable to reach agreement over the formulation of an alternative centralised governance regime.

Apart from the spurious organic claims of uncertified domestic producers, Australian organic stakeholders fear the lack of legal protection exposes the domestic industry to unfair competition from uncertified imports. Australia's commitments under World Trade Organisation agreements on technical barriers to trade mean restrictions or standards cannot be imposed on food imports that exceed those applying to domestically produced foodstuffs. The absence of a mandatory domestic standard precludes any corresponding legal requirement for accredited certification of imported goods labelled organic.[183] Moreover, there is no way for AQIS

[183] Hui-Shung Chang, 'Labelling issues of organic and GM foods in Australia' (University of Melbourne, 2005)

to test the veracity of foreign organic food labels when it conducts random audits of imported produce under the *Imported Food Control Act 1992*.

In 2005 the Commonwealth Department of Agriculture Fisheries and Forestry convened a series of roundtable consultations with key organic industry stakeholders to identify threats and opportunities facing the industry. The consultant's report emanating from those meetings identified the development of a well recognised and enforceable national domestic organic standard as a priority . It discussed three possible options to achieve this: first, a legally mandated standard in the *Food Standards Code* administered by Food Standards Australia New Zealand (FSANZ); second, a voluntary code developed in conjunction with the Australian Competition and Consumer Commission ; and third, the development of a voluntary non-government standard with Standards Australia: Australia's representative on the International Organisation for Standardisation (ISO) and peak non-government standards development body. Of the three, the report suggests the Standards Australia option was favoured by most (but not all) participants, and it is the one subsequently pursued by the peak national organic body, Organic Federation of Australia (OFA) with the support of NASAA.[184]

Biological Farmers Australia (BFA), the organisation behind Australia's largest organic label (*Australian Certified Organic*) did not support the option to develop a domestic standard with Standards Australia. In July

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[184] NASAA, *Press Release 19.04.07* (2007) at 4 July 2007 ; Standards-Australia, *Committee meets to develop organic standard: media release 8 May 2007* (2007) <http://www.standards.org.au/downloads/070508_Committee_meets_to_develop_new_Organic_Standard.pdf> at 5 July 2007

2006 BFA Board member Scott Kinnear (with the endorsement of the BFA Board) released an industry discussion paper arguing against the decision to pursue a domestic standard with Standards Australia, proposing that the industry instead redouble its efforts to convince FSANZ to include organic standards the Food Standards Code. The papers executive summary stated (inter alia):

> Twice before, the organic industry in Australia has sought legislation to limit the use of the word organic in the marketplace, to "certified organic" products only. Despite our efforts, Government has preferred that we use systems of self regulation. At the beginning of this year (and on behalf of the organic industry) the Organic Federation of Australia (OFA) applied to Standards Australia to develop an organic standard. The OFA believed that this would reduce the fraudulent use of the word organic and be a good place to house our existing National Standard, given that the Australian Quarantine and Inspection Service (AQIS) has indicated it no longer wishes to be associated with this task indefinitely… The BFA has a contrary view to the OFA, and is further concerned that not only is this application premature, but that there has not been sufficient assessment of the likely implications for the organic industry if a Standards Australia organic standard were developed and used… The BFA proposes that the organic industry revisits the option of a legislated control of the word organic within the Food Standards Code as administered by FSANZ. [185]

In contrast to BFA, the OFA had, from its inception in 1998, never been a strong advocate for a government controlled domestic organic standard. The OFA's industry newsletter for March 2004 reported that in the previous year, 'The OFA has met with Senator Troeth[186] and various sectors in government to get a self regulation system for the organic

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[185] Scott Kinnear, *An organic standard for Australia industry at the crossroads – are we asleep at the wheel?* (2006) <http://www.nasaa.com.au/data/pdfs/BFA%20Organic%20Standard%20Discussion%20Paper%20July%202006.pdf> at 19/05/2011

[186] Commonwealth Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry from 21/10/98 to 26/10/04

industry.'[187] After outlining the regulatory issues and acknowledging the need for reform the newsletter gave an indication of the OFA's reluctance to cede control to Government:

> It seems that the best option is to adopt a code of practice conduct under the auspices of the ACCC. This would allow the industry to have control over the national organic standard and having a mechanism of dealing with fraud. This solution looks preferable to the government enforced systems of the USA and other countries. The organic industry will be in control, rather than government.[188]

By 2006 the OFA had resolved squarely in favour of applying to Standards Australia to develop a domestic standard and it did so in January that year. In support of its decision to pursue the application to Standards Australia, the OFA put forward five key advantages it considered that option held over others:[189]

> 1. The organic sector would 'own' the Australian Standard. It would be a standard written by the sector for the sector and controlled by the sector.
>
> 2. The process of developing and maintaining the standard is free.
>
> 3. An Australian organic standard can be constantly changed and adapted under the Standards Australia approach. The other regulatory processes for amending standards are not very flexible, nor amenable to small variations.
>
> 4. An Australian Standard can be called up by regulatory authorities like FSANZ, ACCC and the various State food safety and consumer protection authorities to prosecute fraud.

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[187] OFA, *The Organic Update (March 2004)* <http://www.ofa.org.au/newsletters/Organic%20Update%20March%2004.html> at 20/05/2011
[188] Ibid
[189] OFA, *Special Organic Update (August 2006)* <http://www.ofa.org.au/newsletters/OFA%20Special%20Organic%20Update%20August%202006.html> at 20/05/11

> 5. This option gives the Australian organic sector the best of both worlds. The control and flexibility to change the standard and backed up by the regulatory powers of the relevant State and Federal Government authorities.

After considering the OFA's application, Standards Australia decided it would establish a technical committee to commence development of an Australian domestic organic standard in 2007.

3.7 The new Domestic Standard

In May 2007 the newly formed Standards Australia Technical Committee FT-032 (the Standards Australia Committee) held its inaugural meeting to develop an Australian national domestic standard for organic food production (the Domestic Standard). The event represented an important milestone in the evolution of the Australian organic industry, but it also highlighted the ongoing controversy and political fault-lines that had formed around the issue of sectoral governance. On the day of the meeting, Biological Farmers Australia (BFA) issued a press release calling for the process to be stopped, claiming, 'the development of an organic standard with Standards Australia will be a retrograde step which will undermine the existing self-regulatory system in Australia and one that will encourage uncertified organic produce'.[190] Somewhat ironically, while criticising the Standards Australia process for threatening to undermine organic industry self regulation, BFA also advocated the implementation of mandatory organic food standards via the Food Standards Code

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[190] BFA, *Biological Farmers Australia Media Release 07.05.07* (2007) <http://www.bfa.com.au/_files/20070507_Standards%20Australia.pdf> at 6 July 2007

administered by the Australian and New Zealand joint statutory food authority. A step that would not just undermine the current self-regulatory system; it would effectively end it by handing control to government.

The decision to pursue the Standards Australia option was not supported by BFA because (as outlined earlier) it favoured a mandatory organic standard in the *Food Standards Code.* BFA also disagreed with Standards Australia's refusal to make certification by an accredited body a mandatory component of the standard, as is currently the case for organic exports. Standards Australia made it clear that it would not be involved in certification and accreditation and that it would develop a *voluntary* standard. The consultant's report from the industry partnership program succinctly outlines the Standards Australia approach:

> Standards developed by Standards Australia are prepared, and are intended to be, for voluntary application… Standards Australia is a strong supporter of the concept of industry and business self-regulation with regulatory action only being used as a last resort based on an analysis of the risks associated with non-compliance and marketplace behaviour. The use of Australian standards and other normative documents and guidelines can provide the tools for industry and business to regulate itself.[191]

Although the decision by the Organic Federation of Australia to pursue a voluntary standard was initially opposed by BFA, it did not attempt to boycott or undermine the standard development process. In an article published in *The Bulletin,* Dr Andrew Monk, chairman of the BFA Organic

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[191] Hassall&Associates, 'DAFF Industry Partnerships Program: organic industry taking stock and setting directions' (Department of Agriculture, Forsetry and Fisheries, 2005)

Standards Committee was quoted as saying, 'the industry will probably go down that track with Standards Australia and will probably have a good outcome if there's enough consultation and engagement with the industry.'[192] Australian governments also expressed support for the initiative. A communiqué from a meeting of the intergovernmental Primary Industries Ministerial Council on 20 April 2007 stated:

> Council noted that the development of an Australian Standard for Organic and Biodynamic Produce by Standards Australia will provide greater certainty and credibility for the industry and consumers and will help the industry maintain its recent strong rate of growth. Council agreed to consider the need for a regulatory framework once the Australian Standard is developed and agreed to consult the organic sector as part of this process.

The Standards Australia committee consisted of representatives from all seven of Australia's organic certification organisations, along with the Organic Federation of Australia, and representatives from Federal and State Government agencies (including DAFF and the ACCC), consumer groups, primary industry and retailers. There was a separate subcommittee comprising the seven certifying organisations and the OFA. A number of specialist working groups were also convened which drew on outside expertise to work on issues as such synthetic feed supplements, cosmetics, additives and processing aids, retail and marketing, bio-dynamic production, and equivalence recognition.

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[192] M. Merten (2006) op cit

The Standards Australia Committee took the AQIS export standard as the base document and developed it in the following three ways to produce a draft Domestic Standard:[193]

- New content – provisions were added to cover the retail aspects of the Australian organic industry such as sales, marketing and labelling. There were also new provisions to cover biodiversity and landscape management, and an appendix was added setting out principles, criteria and procedures for future amendment of the Domestic Standard.

- 'Hotspot' issues – committee members and other stakeholders had identified a number of issues with the Export Standard that required differential treatment in the Domestic Standard. These included provisions covering synthetic feed supplements, bio-dynamic production, and processing aids for winemaking.

- Supporting material – a companion document called the *'Miscellaneous Publication'* was produced which contained guidelines and procedures for certification of domestic products and equivalence recognition of international standards. The Committee Chair, Craig Sahlin, noted that procedures for international equivalence recognition were '…crucial for the

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[193] Craig Sahlin,
Launch of Organic and Bio-Dynamic Products Standard (2009)
<http://www.ofa.org.au/media/Organic-Standards-Launch-Craig-Sahlin.pdf> at 22/05/11

> integrity of the domestic market because something like 70% of this market includes composite products containing some ingredients, such as organic chocolate, that cannot be sourced locally in sufficient quantities or at all.'[194]

The draft Domestic Standard was released for a nine week public consultation period in July 2008. Standards Australia received a total of 900 public submissions – easily a record for a technical standards development process. After considering the public submissions the Standards Australia Committee finally released in October 2009, *Australian Standard AS 6000 – 2009 (Australian Standard for Organic and Bio-Dynamic Products)* along with the accompanying *MP 100 – 2009 (Miscellaneous Publication)*.

With the release of the Domestic Standard the Australian organic sector finally had a national standard that could be used by each of the certifying organisation as the basis for their individual standards. However, it is important to note that any one of the certifying organisations could, in the development of their own individual standards, stipulate additional requirements and also standards that are either more or less restrictive than the national Domestic Standard. In other words, uptake of the Domestic Standard remains purely voluntary.

At the launch of the Domestic Standard, the Chair of Standards Australia Committee acknowledged there was still work required on the part of the

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[194] Ibid

industry to ensure it was effectively implemented. He pointed in particular for the need for the industry to agree on a formal structured process for the establishment of an accreditation body such as the JAS-ANZ[195] to accredit certifying organisations in accordance with the Miscellaneous Publication (MP-2009). He also noted that –

> '...while in one sense any Standard is a living document always subject to change, there are a number of pent-up and difficult issues that will need to be resolved if the Standard is to provide a practical regulatory framework for the industry and also continue to meet consumer expectations.'[196]

The *Labelling Logic* Review Panel referred to above (in 3.4.4) examined the Domestic Standard development process and found it to be an effective demonstration of how a private industry standard relating to food labelling could be developed without the need for government intervention. It noted however that 'there is not full industry support for the new standard… [and] …some argue that a competing standard National Standard for Organic and Biodynamic Produce (2009, edn 3.4) is a more effective Standard.'[197] The Review Panel expressed disappointment in the fact that unanimity within the organic industry on a domestic standard appeared not to exist, 'despite years of effort and negotiation'.[198]

Although the Domestic Standard remains a voluntary private standard there is scope for its recognition within the Australian legal system. It is

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[195] Joint Accreditation System of Australia and New Zealand (see http://www.jas-anz.com.au/)
[196] Craig Sahlin (2009) op cit
[197] Commonwealth of Australia, 'Labelling Logic: review of food labelling law and policy' (2011) p103
[198] Ibid

not uncommon for ISO standards to be called up or referred to into Australian regulations.[199] The ACCC was represented on the Standards Australia Committee for the development of the Domestic Standard. It has indicated that it will refer to the Domestic Standard in situations where it is asked to investigate complaints involving false or misleading conduct under the Australian Consumer Law.[200] An example might be where a producer, in spruiking their product, makes representations to the effect that the product complies with 'nationally recognised organic standards', when there is no basis for such a claim. Such a producer may have a case to answer under section 18 of Schedule 2, *Competition and Consumer Act 2010.* The new Domestic Standard can assist the ACCC (and the courts) in ascertaining what the 'nationally recognised organic standards' are. Of course, as with *ACCC v G.O. Drew Pty Ltd [2007] FCA 1246 (*see 3.5. above); the strongest cases will be those where a producer falsely claims their produce to be certified by a recognised organic certifying organisation.

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[199] Ibid
[200] OFA, *OFA Position Paper: The Australian Standard for Organic and Biodynamic Products and Regulation* <http://www.ofa.org.au/papers/OFA-position-Aust-Std-and-TPA.pdf> at 20/05/2011

Chapter 4: Theory and comparison

4.1 Introduction

Chapter 1 put forward three propositions in relation to organic agriculture from a governance perspective:

- That the governance of organic agriculture within a nation state will reflect that state's unique political economy and culture.
- That organic standards and certification processes enshrined in legislation (law) have greater legitimacy and effectiveness than processes controlled by private actors alone.
- That specific government regulation is necessary for good governance of organic standardisation in Australia.

This and the next chapter aim to test those propositions. They discuss the theoretical implications of the political debate over institutional design for Australian organic food governance, particularly the merits of government regulatory intervention. They compare the Australian Government's neoliberal market policy regarding organic standardisation with the approach taken in the USA. They argue that the Australian system represents a *reflexive governance* approach drawn from evolutionary legal theories of Habermas, Luhmann and Teubner, and examine whether the Australian Government's policy stands as a credible response to the governance trilemma confronting it.

4.2 The Australian model

The first proposition is that the governance of organic agriculture in a nation-state will reflect that particular state's unique political economy

and culture. It leads to the following question: what are the defining features of the Australian political economy, particularly in relation to Australia's agricultural or food economy and how have they impacted on the organic sector?

As we saw in section 3.4 of the preceding chapter, the Australian policy and regulatory landscape has, since the early 1980s, been dominated by neoliberal, Chicago School ideology which militates against government intervention in business activity. Particularly following the advent of the National Competition Policy reforms in the 1990s; many productive sectors of the Australian economy have been stripped of their regulatory shield and exposed to the full forces of domestic and international market competition. In the Australian context, economic actors and sectional based interests need to present a compelling public interest case for government regulatory intervention. More often than not, such a case cannot be made out. In the context of agriculture this has created (with the exception of Oceania's other major developed economy – New Zealand) the least protected national agricultural sector in the developed world.

Along with the dominance of neoliberal free-market doctrine, the Australian food economy is distinguished by a sustained political focus on export trade facilitation as opposed to production for domestic markets. The twin themes of neoliberal market deregulation and export trade facilitation are borne out graphically in the example of the Australian organic industry. While successive Australian governments have steadfastly ignored pleas for regulation of domestic organic standardisation, there was no hesitation in establishing a regulatory framework to facilitate the export of Australian organic produce overseas.

This apparently contradictory policy has baffled some observers. Scott Kinnear, speaking on behalf of Biological Farmers Australia, is quoted as follows,

> We believe FSANZ should pass a labelling rule in the Food Standards Code to make it mandatory for organic foods to be certified organic by an approved certifying organisation overseen by a competent authority such as AQIS or JAS-ANZ. Currently Australian exports are regulated in this manner as are most developed overseas organic markets. If it is good enough for the Australian Government to protect our overseas customers, then we ask them to do the same at home.[201]

The Australian Government's position might seem contradictory but it is consistent with public policy over the past three decades to calibrate the Australian agricultural economy as a purely market driven food exporter. For many in the organic sector standardisation represents an issue of organic values and integrity. For the Australian Government, organic standards represent a trade mechanism only.

4.3 The theory of autopoiesis and the governance trilemma

This leads to the next two propositions posited earlier – that publicly regulated standardisation has more legitimacy than privately governed standards; and that specific legislation is required for Australian organic standardisation. Has the Australian sector spontaneously developed an effective private governance system? Are the legal/institutional mechanisms already in place that enable the sector to effectively self govern, or is there need for government intervention? Can the hands-off

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[201] Rosemary Ryan, *Development of national organic products standard begins* (2007) Hospitality Magazine <http://www.hospitalitymagazine.com.au/article/Development-of-national-organic-products-standard-begins/234809.aspx> at 20/05/2011

approach of the Australian Government be characterised as one of trenchant neoliberal neglect or could it have deliberately served to enhance the legitimacy of Australian organic standards?

These are precisely the sorts of issues raised by the governance trilemma hypothesised in this research. The trilemma, as a theoretical concept, represents a variation of the *regulatory trilemma* first posited by the German legal theorist Gunther Teubner.[202] Teubner, in turn, developed it from Jurgen Habermas' concept of *juridification* – when law colonises the social *lifeworld*, imposing formal bureaucratic norms and modes of organisation, triggering conflict, loss of individual freedoms and a crisis of legitimacy.[203] Building on juridification, the regulatory trilemma describes the situation where: (1) the legal intervention might be ignored and thus redundant; or (2) the law might destroy the structural and functional integrity of the targeted system; or (3) the system's resistance to legal intervention might be strong enough to counteract the law or legal institutions involved (in some cases strong enough even to bring down a government).[204]

Teubner's work on juridification and the trilemma is a synthesis of Habermas' and Niklas Luhmann's neo-evolutionary theories of law.[205] A thorough rendition of this body of theory is beyond the scope of this thesis but I will attempt here to at least outline its salient elements. In Luhmann

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[202] Gunther Teubner, 'Juridification: concepts, aspects, limits, solutions.' in Gunther Teubner (ed), *Juridification of Social Sphere: a comparative analysis in the areas of labour, corporate, antitrust, and social welfare law* (1987)
[203] Peter Vincent-Jones, 'Responsive law and governance in public services provision: a future for the local contracting state' (1998) 61(3) *The Modern Law Review* 362
[204] Julia Black, 'Constitutionalising self-regulation' (1996) 59(1) *The Modern Law Review* 24
[205] P. Vincent-Jones (1998) op cit

and Teubner's *systems theory*, society is viewed as the sum of interactive yet discrete subsystems such as law, politics, religion and business, operating as specialised cycles of communication and meaning . Social systems and subsystems are *autopoietic* – reflexive, self-organising, evolving and reproducing according to unique internal logic and communicative dynamics.[206]

Similar to how biological organisms form into distinct species at a certain point in their evolution, social systems become distinct from their social environment when they reach the evolutionary threshold of *normative closure*, in short, once they begin determining their own rules . The systemic integrity of a social system is reflected in the degree, strength and structural sophistication of this normative closure. So the legal system, a highly evolved social system, will only recognise a norm as 'law' if it is the product of its specialised lawmaking institutions: legislation, judicial decisions and contracts. Social systems are normatively closed but they are *cognitively open*, meaning they perceive and respond to their environment (which includes other social systems) and internally construe perceptions according to their own logic and *binary* normative codes. For instance an insult might have one meaning in an informal social network (loss of friendship), but it may also simultaneously have another meaning in the legal system (defamation, provocation) and another in the economic system (loss of business goodwill). A system's normative codes are binary in that their specified values have counter-values; to illustrate: profitable – unprofitable (business); legal – illegal (law); scientific – unscientific ;

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[206] Niklas Luhmann, *A sociological theory of law* (1985)

Christian – unchristian (church); democratic – undemocratic (politics); and organic – synthetic (organic agriculture).[207]

The autopoiesis (or reflexive self-determination) of social systems has profound implications for the governance of industry at either sectoral or enterprise level by governmental systems (legal and political) that are themselves autopoietic. Governments will actively try to destroy some social systems like organised crime and terrorist networks; a task demanding heavy if not prohibitive commitment of power backed by force. But governments are rarely aiming to destroy business or industry sectors by regulation, quite the opposite. Industries provide essential goods and services to society and regulation seeks to address perceived negative 'externalities' or failure to fulfil desired functions on the part of a targeted sector (or individual enterprise such as a factory) while supporting performance of its valued functions.[208] So, for example, in agricultural regulation governments might aim to support the vital performance of food production and deter negative environmental impacts such as land-clearing and agrichemical pollution in water catchments. The problem lies in how to motivate the desired behaviour patterns among private actors bound by their own peculiar normative logic. Business succeeds on the basis of entrepreneurship, competition, mercurial innovation and relentless commitment to the pursuit of profit. Teubner points out that a regulatory initiative, heavily sanctioned or not,

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[207] Gunther Teubner, *Law as an Autopoietic System* (1993)
[208] Charles Lindblom, 'The privileged position of business in policy making' in *The Policy-Making Process* (2nd ed, 1980) 71

stands little chance of success with business actors if it conflicts with their profit motive and no chance at all if it threatens them with bankruptcy.[209]

4.4 Reflexive governance

Autopoiesis dictates that normative imperatives will not be adopted by disparate systems and subsystems purely because they have the force of law. A government that tries to superimpose conflicting norms or logic on another social system inevitably risks either irrelevance or destructive reaction; ergo the regulatory trilemma. The trilemma implies intractable difficulties in regulation through command and control interventions. The perceived failure of numerous well-intentioned regulatory programmes throughout the 20th Century has generated a substantial body of literature, spawning the notion of a 'crisis of the welfare state'.[210]

In the Anglo-Saxon world, renewed neoliberal faith in market rather than government coordination of economic activity has been a core tenet of public policy since the 1980s. But for Teubner, the trilemma does not signify a wholesale return to *laissez faire* deregulation and privatisation. Taking his cue from Nonet and Selznick's idea of *responsive law* he develops the notion of *reflexive law* which takes advantage of the cognitive openness of social systems while respecting their normative closure.[211] Acknowledging the limits of prescriptive regulation, reflexive regulation relies on indirect strategies that aim to facilitate, rather than override, the

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[209] Teubner (1993) op cit
[210] J. Black (1996) op cit
[211] Philippe Nonet and Philip Selznick, *Law and society in transition: toward a responsive law* (1978) ; J. Black (1996) op cit; G. Teubner (1983) op cit

internal self-regulatory mechanisms of systems it seeks to influence.[212] As Gunningham notes, a business is likely to have more expertise and skill within its sphere of operation than governments are ever likely to have and, '…the most appropriate role of the state is to channel industry expertise in the public interest'.[213]

Reflexive regulation, or more broadly *governance*, can be contrasted with neoliberal deregulation in that government does not abandon the field, leaving the private sector purely to its own devices; it proactively develops strategies tailored to stimulate private actors' innate self-regulatory impulses. For example, a government website which publishes environmental performance data concerning a range of industrial competitors may prompt voluntary pollution reduction initiatives from companies keen to demonstrate their corporate social responsibility and avoid a community or shareholder backlash. In the case of food production, a legal labelling requirement to inform consumers about the presence of GMO ingredients may cause loss of sales for a particular product line, leading to retailers switching to competing products that do not use GMOs. In both cases government has undertaken a monitoring role but has not attempted to command or control behaviour directly. By causing publication of crucial information it simply enabled all the relevant stakeholders to make their own informed determination of how best to respond, if at all.

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[212] Vincent-Jones (1998) op cit
[213] Neil Gunningham, 'Reconfiguring environmental regulation: where labelling fits' (Paper presented at the The Future of Eco-labelling in Australia, Canberra, Australia, 2003)

Governments can operationalise the concept of reflexive governance by providing institutional frameworks to enhance democratic participation within and between societal organisations. This aspect of reflexive governance furthers the powerful democratic theme in Habermas'work on *communicative rationality*. For Habermas, the rationality, and thus legitimacy, of social norms and actions is not determined by their instrumental effectiveness but rather the quality of communication that gives rise to them. In other words, the extent of free communication and mutual acceptance that underlies a group decision is what determines its legitimacy for group members, notwithstanding its substantive effect.[214] The criteria for legitimacy therefore are found in decision-making *procedures* rather than results. In autopoietic systems, norm legitimacy is the product of reflexion, and reflexion is a process of communication. Government 'institutional design' initiatives which enhance the procedural scope and quality of democratic communication throughout society (and its subsystems) should encourage reflexion, and consequently, legitimated social outcomes. Such techniques are referred to as *proceduralisation* or *constitutionalisation*, where the law acts as an external constitution to guarantee procedural freedoms of communication and participation among social systems, without dictating outcomes . According to Teubner:

> Law as an external constitution can provide the discursive decision processes and consensus-oriented procedures of negotiation and decision. It does so by providing norms of procedure, organisation, and competences that aid other social systems in achieving the democratic self-organisation and self-regulation which, according to Habermas, are at

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[214] Jurgen Habermas, *The theory of communicative action, Volume 1 Reason and rationalization of society* (1984)

> the heart of procedural legitimacy. Reflexive law, in other words, will neither authoritatively determine the functions of other social systems nor regulate their input and output performances, but will foster mechanisms that *further the development of reflexion structures within other social subsystems*.[215]

In reflexive governance, just because government should function as a catalyst and facilitator of self regulation in other social systems does not mean that it must always intervene. A reflexive approach requires that governments act cautiously and strategically to avoid regulatory trilemmas, intervening only when independently evolved self-regulatory mechanisms are either underdeveloped or dysfunctional. In the context of an independently evolved system based on voluntary civil society and market standardisation (such as organic agriculture); it would require a government to intervene if there was failure in the market mechanisms in play.

Clearly, in the case of Australia's organic governance system, no such failure had been identified. Through its refusal to legislate domestic standards, the Australian Government encouraged industry stakeholders to enlist the resources and expertise of the ISO (via Standards Australia) to develop a sophisticated national private standard. The Government reinforced this by actively providing policy and material support for the organic industry in its self-regulatory efforts. The Government also developed and maintained a robust consumer protection and fair-trading legislative framework through which organic standards certification and labelling initiatives could operate to their full effect. Whether by default

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[215] G. Teubner (1983) op cit

or design, the neoliberal policy employed by the Australian Government in relation to the organic sector stands as a showpiece example of reflexive governance in action.

4.5 The USA model

In contrast to Australia, the USA experience with organic agriculture governance provides one of the best examples of what can happen when the Government opts against a reflexive approach and decides to intervene. The evolution of US public organic standardisation began in the 1970's when Oregon became the first US state to introduce a legislative standard in response to reports of fraud. This legislative initiative was followed by other states until, by the early 90's, twenty eight States in all had various legislative standards and definitions in relating to organic food. However many states had no legislative standards and some didn't even have private third-party certification schemes, relying on organic producers to self-label. A wide range of actors, within and outside the organic industry sought national standardisation.[216] The desire for a national standard for organic food was mainly driven by economic and trade motives. The shift to a Federal legislative standard, emulating the EU scheme, began with the passage of the *Organic Food Protection Act 1990* (OFPA). The *National Organic Program* (NOP) was established a decade later to 'develop, implement, and administer national production, handling, and labelling standards'. [217]

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[216] K.C. Amaditz, 'Organic Foods Production Act of 1990 and its impending regulations: a big zero for organic food' (1997) 52 *Food & Drug LJ* 537

[217] USDA, *National Organic Program* <http://www.ams.usda.gov/AMSv1.0/nop> at 20/05/2011

The NOP is overseen by the United States Department of Agriculture (USDA) and is responsible for the development of the national organic standards which include production and handling standards; a list of prohibited non-synthetic substances and allowed synthetic substances; labelling standards; and certification and accreditation standards. [218] The setting of organic standards, certification and the labelling requirements for the whole country are based on the recommendations of the National Organic Standards Board (NOSB) comprising fifteen individuals representing different facets of the organic industry. However the National Organic Standards Board recommendations can be either accepted or rejected by the USDA.[219]

The *Organic Foods Production Act 1990* and associated *National Organic Program* regulations therefore give the USDA ultimate statutory responsibility to formulate organic standards, to enforce the standards, and to accredit agents to audit and certify organic producers. Section 205:501 of the regulations provides *inter alia*:

> … A private or governmental entity accredited as a certifying agent under this subpart may establish a seal, logo, or other identifying mark to be used by production and handling operations certified by the certifying agent to indicate affiliation with the certifying agent: Provided, That, the certifying agent:
>
> (1) Does not require use of its seal, logo, or other identifying mark on any product sold, labelled, or represented as organically produced as a condition of certification and

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[218] USDA, *NOP Background Information* <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELDEV3004443&acct=nopgeninfo> at 19/05/2011
[219] Ibid

> (2) Does not require compliance with any production or handling practices other than those provided for in the Act and the regulations in this part as a condition of use of its identifying mark: Provided, That, certifying agents certifying production or handling operations within a State with more restrictive requirements, approved by the Secretary, shall require compliance with such requirements as a condition of use of their identifying mark by such operations.

The effect of the provision is to mandate government controlled standards as both the minimum and *maximum* benchmark for organic production; in other words they function as both a floor and a ceiling. Private certifiers are legally prohibited from claiming organic status if they promulgate standards that add extra or more restrictive requirements than the government standards.

The US laws effectively removed the ability of private organic certifying agents' to differentiate their programs in the market through promotion of unique or more rigorous standards and continue representing themselves as organic. Evolving 'organic' practices could no longer be legitimised in the US through the voluntary and competitive interplay of ideologically driven NGOs, farmers and consumers in the marketplace. The organic label had become the exclusive property of USDA bureaucrats and ultimately lawmakers who may have minimal commitment to the traditions and ideology of the organic movement, if any. The implications were well and truly brought home to the movement in December 1997 when the USDA first released the draft National Organic Program Proposed Rule to establish the National Organic Program. The draft regulations proposed authorising the use of genetically modified organisms, municipal sewage sludge and food irradiation in the production of organic food, a move which according to Vos was, '…a

sobering indication of a bureaucratic process extraordinarily out of touch with a constituency it is ostensibly meant to serve.'[220]

The draft regulations provoked a massive negative reaction. The USDA received around 300,000 written public comments; more than for any other legislative proposal in US history.[221] The public response forced a revision of the regulations before final implementation in 2002, but the US National Organic Program remains the focus of sustained criticism from many traditional organic proponents who consider the USDA and Congress susceptible to capture by corporate interests. Their fears appeared to have been confirmed by a series of amendments to the *Organic Foods Production Act 1990* that potentially allowed the use of hundreds of synthetic chemicals and other non-organic ingredients in organic food production. The amendment was achieved through an inconspicuous rider attached by the Republican majority leadership to a large 2006 Agricultural Appropriations Bill, allegedly at the behest of agribusiness lobbyists.[222]

The US example provides a cautionary tale of how the imposition of a substantive legal regime onto an organic food sector led to the organic movement losing ownership and control of perhaps its most essential institutional asset – use of the term 'organic'. The situation is not unique to the US, and government regulation of organic standardisation has created similar tensions in European jurisdictions. To illustrate, the following is an

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[220] T. Vos (2000) op cit, p248
[221] Ibid
[222] Steve Gilman, 'A grassroots perspective concerning big foods threat to organic standards' (2006) 68(2) *The Natural Farmer*

excerpt from a 2006 submission to government by one of Europe's premier private organic labels (Sweden's 'KRAV') regarding proposed EU amendments to *EC Council Regulation 2092/91*:

> If the proposal is adopted, private labels will be forced to approve all products that fulfil the EU regulation, even if these do not fulfil their own standards. For KRAV, this would mean that other certification bodies will have the right to issue KRAV certification. ..Great immaterial value that has been built up over time is therefore confiscated. If we take a look at the KRAV label, others will have access to a trademark that most likely would cost many hundreds of million Swedish kroner to build up… We are also decidedly against detailed standards being introduced about what can be stated in marketing of the private label…To attempt to regulate whether one may say that something is better or not is the same as involving oneself in a regulation of value judgments, which should be extremely difficult at the EU level.[223]

[223] KRAV, *Response to request for comments on proposed amendment to EEC 2092/91* (2006) <http://www.gfrs.de/fileadmin/files/vo-revision/krav_response.pdf> at 27/05/11

Chapter 5: Conclusion

5.1 Public versus private organic standardisation

In both the US and Australian examples presented above, actors from within and outside the organic sector exerted pressure on their governments to regulate a dynamic and fast growing emergent industry. In both cases a principal driver for government regulation was the desire to control the proliferation of competing industry standards. Proliferation was seen as harmful because of its potential to generate confusion in marketplace, increase potential for misinformation and fraud, and loss of confidence amongst market actors. Legal organic standards would have the force and legitimacy of law, and could mandate a single uniform set of standards that all producers would be bound to comply with.

The problem is that organic movement actors, from IFOAM down to the smallest community garden, cannot create or control law in the way that they can their own standards. A legal standard is essentially a monopoly standard controlled by the state and its instrumentalities. Legal standards must pass through democratic, legislative processes and as such are susceptible to a broad array of vested interests. Organic food standards are particularly vulnerable in this process because of a double threat. On one hand the industry offers lucrative potential for corporate food retailers (i.e. price premiums, new niche markets) generating intense pressure on organic producers to cut corners in order to accelerate production and supply to meet demand. On the other hand, organic agriculture threatens conventional industrial agriculture because it challenges the very

foundations (i.e. monoculture, GMOs, synthetic fertilizer and biocides) of its existence.

The introduction of state regulated standardisation to an organic sector will transform, if not destroy, its fundamental nature. It will change from a market and civil society governed industry, embedded within the values of a social movement, to just another government regulated industry sector vulnerable to rent-seeking and capture. Organic certification organisations will cease being the proponents of their own particular values and standards to become proponents of the government's standards instead – in other words they effectively become privately funded surrogate instrumentalities of the government. Inevitably, the 'industrial agricultural complex' that the organic movement formed to oppose, emerged as a powerful player in the regulation of the US organic industry. The net result was pressure for broader compromise, less rigorous standards and displacement of organic movement actors in the public standardisation process. Commentators such as Pollan and Guthman argue that in many respects organic agriculture in the USA has begun to resemble industrial agriculture, a phenomenon Pollan refers to as 'industrial organics'.[224]

Private voluntary standards are governed by dynamics that may not be as vulnerable to capture by powerful stakeholders as legally mandated standards. Even though organic standards (and other ethical 'values-based' standards) involve the added ideological dimension they are still

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[224] J. Guthman (2004) op cit; M. Pollan (2006) op cit

ultimately subject to market forces of competition and freedom of consumer choice. The proliferation of different standards creates a situation where standards and labelling schemes must compete for legitimacy. Competition enhances the power of market driven standardisation by reinforcing consumer sovereignty. Choice in relation to competing values-based standards operates as a communicative mechanism to engage producers, certifiers, retailers and consumers in debate over the relevant issues at stake. In this sense an inflexible, ubiquitous 'monopoly' (i.e. governmental) standard is in itself a form of market failure.[225]

The weakness some see in a purely voluntary standard (its *dispensability*) functions as its greatest strength from a reflexive governance perspective. It will stand or fall on consumer, producer and certifier acceptance and if it is not accepted by a particular stakeholder, that stakeholder is free to pursue an alternative and put it to the market for validation. Accordingly, a proliferation of inconsistent and competing standards is not such a bad prospect. It promotes choice, and those private standards and labelling schemes that succeed in gaining the trust of both consumers and producers in such an unruly competitive environment will have enhanced not diminished legitimacy. That is, after all, the way brands and trademarks are supposed to work. The pioneering organic organisations of Europe and the US such as the Soil Association (UK), KRAV (Sweden) Demeter and the Rodale Institute (US) established the solid credentials of

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[225] K. Webb, 'Understanding the voluntary codes phenomenon' (2004) *Voluntary codes: Private governance, the public interest and innovation* 3

organic agriculture in the marketplace long before the advent of government regulation.[226]

There is no compelling evidence to suggest that a government regulated domestic standard is necessary to establish the credibility or legitimacy of the Australian organic industry in the eyes of Australian consumers or to promote industry growth. On the contrary, the evidence suggests that private organic organisations are already performing this role effectively. Research recently conducted by Paull found that Australian consumers could clearly distinguish between food products that were merely self-proclaimed organic from products labelled as being 'certified organic' *i.e.* independently audited and certified by a third-party organisation. He found that, on average, self-proclaimed organic food products attracted a price premium of 8.12% over their non-organic equivalent, whereas certified organic products (displaying an independent organic certification organisation's logo) attracted an average price premium of 15.63%. [227]

One of Australia's largest and most influential independent consumer organisations Choice named Australian Certified Organic (ACO) as the winner of its inaugural award for 'best food endorsement program'. NASAA, the second largest organic Australian organic scheme behind ACO, was the runner up. The award was judged by an expert panel on criteria of transparency; consumer friendliness; no conflict of interest; stakeholder engagement; accessibility to businesses of all sizes; and

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[226] P. Kristianson and M. Merfield (2006) op cit
[227] J. Paull, *Provenance, purity & price premiums: consumer valuations of organic & place-of-origin food labelling* (University of Tasmania, 2006)

independent verification. Other contenders shortlisted for the award included: Dolphin Safe, Fair Trade; Heart Foundation Tick; RSPCA Approved Farming Scheme; and Free Range Egg and Poultry Australia Ltd. The award judging panel found that, out of all the shortlisted contenders, ACO and NASAA were the only two food endorsement programs which met all the award criteria.[228]

Influential business forecaster IBISWorld Australia predicted that in 2011 organic farming would be the fastest growing industry in the Australian economy (i.e. as measured against all industry sectors – not just agriculture).[229] A separate market report published by Biological Farmers Australia (BFA) found that in the period between 2008 and 2010 the percentage of Australian households purchasing organic foods on occasion increased from 40% to 60%. The BFA report also found that in the same period retail sales of organic food had increased by more than 50%, from $623 million in 2008 to $947 million in 2010. According to the authors,

> The organic industry in Australia is a paragon of industry self regulation, remaining independent of government intervention, with ownership in industry member hands. The active presence of not-for-profit industry owned groups such as the BFA delivers protection of organic integrity for consumers, both via standards setting, as well as via independent, non-profit driven auditing and certification programs.[230]

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[228] Choice, *CHOICE Awards 2010: best food endorsement program* <http://www.choice.com.au/reviews-and-tests/money/shopping-and-legal/shopping/choice-awards-2010/page/best%20food%20endorsement%20program.aspx> at 20/05/2011
[229] IBISworld-Australia, *Industries to fly and fall in 2011* <http://www.ibisworld.com.au/about/media/pressrelease/release.aspx?id=251> at 19/05/2011
[230] Alexandra Mitchell Paul Kristiansen, Nick Bez, Andrew Monk, *Australian organic market report 2010: Key Findings* BFA <http://www.bfa.com.au/Portals/0/100824%20Media%20brief%20-%20AOMR%202010.pdf> at 18/05/2011

5.2 Summary of key findings

As argued in chapters 3 and 4 (see in particular 4.2), the Australian agricultural political economy has, since the 1980s, been one characterised by a deep commitment to neoliberal deregulation, market based governance, and a focus on agricultural exports. With respect to the Australian organic sector, this is clearly manifest in the Government's regulatory facilitation of organic exports, limited regulatory engagement with domestic industry, and the corresponding advent of an effective model of domestic private organic standardisation and reflexive governance. Accordingly, insofar as the Australian case study is concerned, the thesis finds in favour of the first research proposition – that the governance of organic agriculture within a nation state will reflect that state's unique political economy and culture.

However this thesis finds against the second proposition – that a legal organic standard has greater legitimacy than a purely private standard. While a legislated organic standard may have legitimacy as a law – that ultimately says nothing about the extent to which it conforms to the values and ideals of the social movement from which it originated. A legislated standard may, like most other laws, simply represent a series of compromises and deals to accommodate a broad base of divergent interests some of which may be diametrically opposed to those of the organic movement. No such compromises need be made within a private standardisation process. Applying Habermas' notion of *communicative rationality*, organic standards with greatest legitimacy are those which best express the free communication between organic consumers, organic

producers and the organic movement's civil society actors in the marketplace.[231]

Perhaps unsurprisingly, given the finding in relation to the second proposition, this thesis also finds to the contrary of the third proposition – that specific legislation is required for the good governance of the Australian organic industry. The case study in Chapter 3 showed that Australian organic sector is one of the last in the OECD to have an effective private governance system left intact. The experience in other countries, most notably the US, suggests the Australian organic food industry has little need for the 'protection' of government regulation. On the contrary, the overseas evidence suggests that, if anything, the Australian industry needs continued protection *from* regulation. Even the threat from uncertified organic imports could be turned into an opportunity for local certifiers to promote the benefits and integrity of locally certified produce, a likely marketing advantage with sustainability minded consumers. Regulatory interference with the voluntary, free-wheeling dynamics of market standardisation risks weakening the key 'reflexive' mechanism (i.e. the market – civil society nexus) traditionally underpinning organic food's legitimacy, and the US experience provides a classic illustration of the consequences.

This thesis has not studied or analysed in detail the minutiae of the different Australian organic standards as compared with one another, or in comparison to the organic standards of other countries. Nor has it

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[231] J. Habermas (1984) op cit

studied in detail the deliberative processes employed within and between the multiplicity of different organic standardisation organisations either public or private. Another important area not covered here in depth is the comparative degree and robustness of compliance verification activities carried out in relation to the organic standards in different jurisdictions. Empirical data on all of these issues would be extremely valuable for further testing and verification of the findings of this thesis and, as such, represents a rich vein of opportunities for further research.

5.3 Towards agricultural resilience

This thesis has elaborated the notion of the governance trilemma and, as it pertains to organic agriculture, an *organic trilemma*. The trilemma hypothesis is at odds with intuitively attractive arguments supporting government regulation of Australian organic food standards. The thesis found that the neoliberal hands-off approach to the Australian organic sector taken by the Australian Government stands as a successful demonstration of 'reflexive governance', which has allowed public and private stakeholders to overcome the organic trilemma. This is not to say that state regulation, even 'command and control' regulation should be discounted or is ineffectual in relation to issues of concern to the Australian organic movement. Australia's consumer protection and fair trading laws are needed to support the free-market communication and competition dynamics that underpin market based standardisation. Furthermore, it may not be beneficial to legislatively displace or dismantle effective market and civil society governance systems – but nor should governments leave clear fraud, animal cruelty, public health risks or

serious environmental harm risks to the market alone. If evidence for the risk and harmfulness of a practice is clear then it should be regulated via criminal and civil sanctions. Only law can deliver legitimate 'force' sanctions and only legally authorised officers of state regulatory agencies can legitimately exercise the powers of investigation, search and seizure that are sometimes necessary to protect public safety.

But the harmfulness of any particular agronomic practice or technology is seldom clear-cut. Take the example of biotechnology – proponents believe it can promote sustainability by increasing yield and thereby decreasing land and water requirements, or by engineering pest resistant crop varieties thereby reducing the need for biocides. Opponents believe that biotechnology is untested and the full extents of its risks are unknown, whereas organic agriculture relies on proven techniques and knowledge that have evolved over thousands of years. Ultimately, achieving sustainable agriculture presents an enormously complex and uncertain challenge, in Australia and overseas, whichever side of the organic – synthetic divide one sits. It is likely that only diversity and competition between different agricultural systems will drive the discovery of locally viable and sustainable modes of food production. As neoliberal theorists such as Hayek argued – where knowledge is limited, the creativity of free market competition excels in mobilising diffused resources, knowledge and capacities to deliver solutions to localised problems.[232]

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[232] F. Hayak (2002) op cit

Within the environmental sciences, and other disciplines researching sustainability, there is growing recognition of the importance of *'system resilience'*. It refers to a system's ability to withstand disturbance without breaking down or transforming into a totally different system. Internal sub-systemic diversity and adaptability are seen as two critical determinants of resilience.[233] In the context of food production – whether or not organic agriculture represents a safer or better agronomic system than any other mode of agriculture matters less for sustainability than that it exists as a viable alternative 'subsystem' functioning within the broader agricultural system. As Michael Pollan contends in his popular book *'The Omnivores Dilemma'*

> .... feeding the cities may require a different sort of food chain than feeding the countryside. We may need a great many different alternative food chains, organic and local, biodynamic and Slow, and others yet undreamed of. As in the fields, nature may provide the best model for the marketplace, and nature never puts all her eggs in one basket. The great virtue of a diversified food economy, like a diverse pasture or farm, is its ability to withstand any shock. The important thing is that there be many food chains, so that when any one of them fails—when the oil runs out, when mad cow or other food-borne diseases become epidemic, when the pesticides no longer work, when drought strikes and plagues come and soils blow away—we'll still have a way to feed ourselves.[234]

Diversity can engender adaptability and resilience within a governance system in much the same way it can in a natural ecosystem. The participation of diverse range of actors, instruments and processes – from market, civil society and government creates a governance system in

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[233] *Resilience* Resilience Alliance <http://www.resalliance.org/index.php/resilience> at 18/05/2011
[234] M. Pollan (2006) op cit, p10

which the failure of one regulatory instrument, such as the failure of a corrupt or under-resourced government to enforce its laws, does not spell the end of all efforts to protect the public interest.[235]

It was not just an alternative agronomic paradigm that the organic agriculture movement gave to the industrialised world. Its role in developing and pioneering the use of eco-labelling schemes and environmental management systems also gave us a powerful new governance instrument for achieving environmental sustainability. The 'cranks and luddites' of the early organic movement believed passionately their ideas could help save the Earth from ecological collapse and future generations from hunger. Perhaps, and not necessarily for the reasons they expected, history may show that those cranks and luddites were right.

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[235] K.R. Webb, Science Carleton Research Unit for Innovation and Environment, *Voluntary codes: private governance, the public interest and innovation* (2004)

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Resilience Resilience Alliance <http://www.resalliance.org/index.php/resilience> at 18/05/2011

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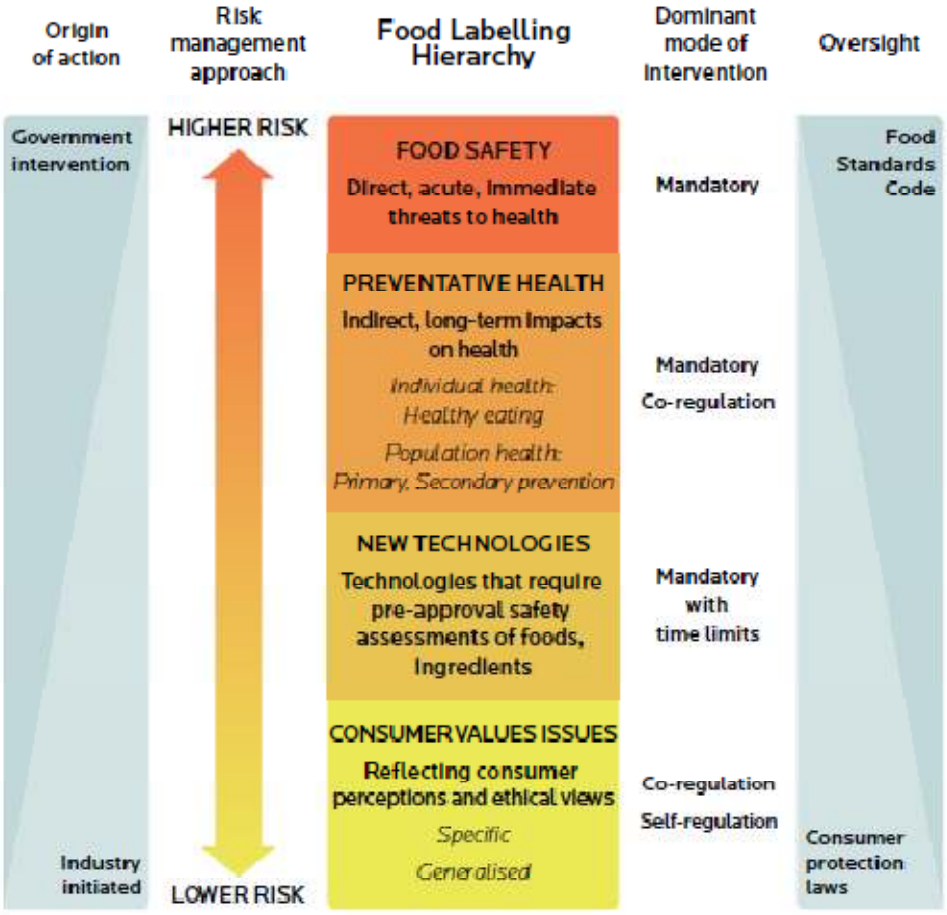
Appendix 1

Labelling Logic – Food Labelling Hierarchy



Appendix 2

Australian Organic Logos

AUS-QUAL Limited (AUSQUAL) www.ausqual.com.au/index.html	
Australian Certified Organic (ACO) (Biological Farmers Australia) www.australianorganic.com.au/	
Bio-Dynamic Research Institute (BDRI) www.demeter.org.au/index.html	
NASAA Certified Organic (NCO) www.nasaa.com.au	
Organic Food Chain (OFC) www.organicfoodchain.com.au	
Safe Food Production Queensland (SFQ) www.safefood.qld.gov.au/index.php	
Tasmanian Organic-dynamic Producers (TOP) www.tasorganicdynamic.com.au	