

**IN THE SUPREME COURT OF WESTERN AUSTRALIA  
COMMERCIAL AND MANAGED CASES LIST**

CIV 1561 of 2012

B E T W E E N:

**STEPHEN WILLIAM MARSH**

First Plaintiff

**SUSAN GENEVIEVE MARSH**

Second Plaintiff

and

**MICHAEL OWEN BAXTER**

Defendant

**FURTHER SUPPLEMENTARY WITNESS STATEMENT OF JANET BOURKE  
DENHAM**

1. This is my third statement in this proceeding.

**NCO QM System**

2. At paragraphs 20 to 30 of my first statement (dated 14 February 2013) I describe the operation of the NASAA/NCO within the DAF Organic and Biodynamic Program. I now provide some further evidence about NASAA/NCO's quality management system and NCO's role in issuing Organic Produce Certificates for export.
3. NASAA was an "Approved Certifying Organisation" under the *Export Control Act 1982* (Cth) (**Export Control Act**) for several years prior to it transferring its certification business to NCO in 2009.
4. Since 2009 NCO has been an Approved Certifying Organisation.
5. In order to gain DAF approval NCO must operate a QM system. The NASAA Organic Standard (**NASAA Standard**) which is licensed to NCO, forms part of NCO's QM System.
6. Because NCO is an Approved Certifying Organisation it may issue Organic Produce Certificates (**OPC's**) under the *Export Control Act*. OPC's are issued by NCO to exporters who apply for them, to NCO.

7. DAF issues to NCO books of blank numbered OPC forms for NCO's use. I refer to *Australian Government Organic Produce Certificate* [TB 1550.8].
8. Before issuing an OPC, NCO determines two things.
9. First, NCO determines whether the production system in which the goods the subject of the application were produced and prepared, complies with NCO's QM system.
  - a. Compliance with the QM system means that the exporter has, at the relevant time, been registered by NASAA as certified to the NASAA Standard, for the goods, and for the property on which the goods were produced (or processed).
  - b. In any given case the exporter may be the primary producer, or a secondary entity which has packaged or processed the goods in some way. In the latter case the exporter will be required to produce to NCO certificates of registration from the primary producer verifying that the producer has been registered as certified to the NASAA Standard, for the goods, and for the property on which the goods were produced
  - c. NCO intends and considers that the NASAA standard is consistent with the National Standard. It acts on the basis that if it certifies to the NASAA Standard it is meeting the requirements of the National Standard. NASAA declares, on issuing OPC's, that the certified produce has been prepared in accordance with the National Standard. I refer to *Australian Government Organic Produce Certificate* [TB 1550.8], above.
10. Second, NCO determines whether the exporter complies with the importing country's organic certification requirements.
  - a. Compliance with the importing country's certification requirements can be met in one of two ways. The first is where Australia and the importing country have in place an equivalency agreement to the effect

that the importing country will accept certification to the National Standard (as verified by an OPC issued by a DAF approved certifying organisation) as satisfaction of that country's own requirements. As I state in my first statement, there is such an agreement between Australia and the European Union.

- b. The second, where there is no equivalency agreement, requires that the exporter be certified to the relevant importing country's organic standard.
- c. NCO may certify operators (producers and exporters as the case may be) if it is accredited by the relevant overseas certification body. As I state in my first statement, NCO holds accreditation under the US National Organic Program (USNOP) and the Japanese Accreditation Standard (JAS).
- d. The certification of operators to an overseas standard is conducted in the same way as certification to the NASAA standard. The operator's certificate of registration issued by NCO will indicate the standards to which that operator is certified.
- e. Where there is no equivalency agreement in place the exporter must satisfy both the national standard and the relevant importing country's standard.
- f. If it is not possible in a particular case to satisfy both standards an OPC is refused, with the result that the produce cannot be exported as organic.
- g. The importing country may have other requirements (including administrative requirements) that the importer must meet.
- h. NASAA/NCO has prepared guidelines for exporters, concerning OPC's. I refer to *NASAA IS7.2 Organic Export Certificates Guideline for Exporters* [TB 1550.1-1550.7].

11. In no case does NASAA test the produce that is the subject of the application for an OPC. In every case certification applies to the *production system*.
12. I do not myself issue OPC's but as member of the board of both NASAA and NCO, and for the purposes of fulfilling that role I am required to have, and do have an understanding of the NASAA/NCO QM System, the DAF and third country requirements of NCO including in respect of the issue of OPC's.

### **Other matters – First Statement**

#### Domestic Market

13. At paragraphs 31 to 40 of my first statement I refer to my involvement in the domestic market for organic produce.
14. I state at paragraph 37 that we must provide a Certificate of Registration to the wholesalers to whom we sell our organic produce and at paragraph 38, that the wholesalers to whom we sell have informed us that they are required to have available for the purposes of inspection, our certificates of accreditation. By this I mean that the wholesalers BioDynamic Marketing, Eco-farms, United Organics and from time to time others, literally will not accept our produce if we do not provide an accompanying annual Certificate of Registration.
15. All of the wholesalers with whom we deal require us to provide a Certificate from a DAFF-approved certifier.
16. We have been selling our produce to wholesalers for on-sale to the supermarkets Coles and Woolworths since about 2003. At all times we have been required to produce Certificates of Registration from a DAFF-approved certifier (which in our case is NASAA).

17. I am aware of the matters in paragraphs 39 and 40 of my first statement through my involvement in the organic industry, which I describe in my first statement. The necessity for each facility in a supply chain to be certified is basic to the structure of the organic industry that is something that I have observed during my time in the industry.

#### Organic Standards

18. The principle to which I refer at paragraph 64 of my first statement is one which in my opinion underpins the NASAA and National standards. I have formed that opinion in the course of my involvement in the development and drafting of organic standards (which I describe at paragraphs 8 to 10) of my first statement).

#### Seeds On Marsh's Property

19. The statement paragraph 83 of my first statement about the difficulty of detecting seeds in soil and the fact that because of the extent of plant matter spread over the property it is likely that a vast number of seeds were spread over the property is based on my reading of the inspection reports concerning the contamination of the Marsh property in 2010, my inspection of canola plants and pictures of canola seeds, and my reading of research papers on the length of time over which canola seeds decline.

#### **Other Matters – Supplementary Statement**

20. The statements at paragraphs 8 to 17 and 27 to 31 of my supplementary statement are based on my knowledge of:
  - a. NASAA's Standards and the National Standards;
  - b. What NCO inspectors do when they inspect a farm – which I know because I have reviewed NASAA/NCO inspection reports and also because in the course of my role on the NASAA and NCO boards and on the NASAA Standards Committee I am required to be aware and have become aware of the approach that NCO takes to inspections

and certification including specifically the matters addressed in those paragraphs.

21. As a member of the NASAA and NCO boards (and as a former Chair of NASAA and current Chair of NASAA and NCO) I am required to have a working knowledge of the factors that drive and support the organic industry and of the size of the industry in money terms in Australia and internationally, which I have derived in the course of that role by communicating with members of the organic industry in Australia and internationally.

I have read the contents of this, my further supplementary witness statement, and the documents referred to in it, and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

**Janet Denham**

Dated: 4 February 2014

Amended: 17 February 2014