



## **Submission to the ACCC**

**Certified Trade Mark No. 1749229**

**‘Certified Free Range Pasture Finished’**

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### **Cattle Council Background**

CCA is the Peak Industry Body representing grassfed beef producers in Australia. Cattle Council’s member are representative of all states and territories and comprises producers, RD&A providers and various stakeholders from across the supply chain.

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## Executive Summary

Cattle Council of Australia (CCA) is the peak industry body representing grassfed beef producers in Australia. The role of CCA is to provide strategic direction and oversight of expenditure of producer levies by industry service providers, and to liaison with government and industry bodies to advance the interests of Australia's beef producers.

CCA would like to take this opportunity to thank the Australia Competition and Consumer Commission for inviting comment on the proposed Certified Trade Mark (CTM) No. 1749229. Though industry consultation is not a requirement for CTM applications, the ACCC's consultation with industry to hear and understand the views of CCA and other stakeholders is welcomed.

CCA wishes to express concern regarding some elements of the application CTM No.1749229 ('the application'), and to illustrate the current work that is being undertaken by the beef industry to define key raising claims. The beef industry through the Australian Meat Industry Language and Standards Committee has been proactively working to develop definitions that have been agreed to by the whole of the supply chain. The purpose of whole of industry definitions is to give clarity on the meaning of marketing terms consistent with Australia's production systems and consumer expectations.

Although the industry definitions are yet to be finalised, there are certain definitions in the Ceres application that may be not consistent. The application utilises the term 'pasture finished', which defines a production system where grain forms a substantive percentage of an animal's diet. Industry is currently working towards developing a consensus on how to define this production system, with a focus on ensuring that it does not conflict with established terminology and ensuring that such a definition meets consumer's expectations.

A concern regarding the Ceres application is grain being a component of an animal's diet and the product being marketed using terminology associated with fully grassfed production systems.

In light of the industry work to reach consensus around definitions for beef products generated from production systems that supplement grain feeding with pasture systems, CCA believes that the Ceres application should not proceed. CCA wants to work with Ceres and other interested parties to develop terminology and generate outcomes with a broad consensus of beef producers.

## 1. Current Industry Development of Terminology

The current mechanism for determining industry definitions is through the Australian Meat Industry Language and Standards Committee ('AMILSC'). The AMILSC has representatives from across the red meat and pork supply chain industry bodies, and the federal Government. The AMILSC's responsibilities are outlined in the 1997 Commonwealth "Meat Industry and Livestock Act" effective from 1<sup>st</sup> July 1998. The Committee, under the auspices of AUSMEAT Limited, the principal body responsible for the maintenance of standards and meat industry language convenes several times a year and is tasked with gaining industry and government consensus on terminology and standards to describe meat, principally for export but also for domestic purposes.

A key focus of the Committee has been on developing clear definitions for key marketing terms to describe general beef production methods. This initiative has been driven by a desire to ensure that consumer expectations in relation to raising claims for beef products are being met. Additionally, the process has been motivated by a desire by the beef industry to ensure that Australia's industry definitions are consistent with international standards and that the terms are relevant to export markets.

These definitions are complimentary to existing Programs/Standards and where desired may be used by brand owners to further develop marketing claims. The importance of allowing brand development without hindering innovation and creativity is acknowledged by the AMILSC in the development of these definitions.

In seeking to develop the definitions, the AMILSC formed a working group comprised of a small number of its representatives. The working group identified the terms requiring definition and subsequently, undertook desktop research of international standards, protocols and export requirements that related to each of the claims. Collectively the AMILSC felt it was vital that industry agreed on single definition for these raising claims.

The strength of the agreed definitions is built through industry wide acceptance of the developed terminology and their applicability to consumer and beef industry customers' expectations. However due to the rigorous nature of the development of these standards, the process can be time consuming and outcomes are taking time to be delivered.

## 2. Applicability to Ceres Application

### 2.1 Pasturefed/Grassfed and Grassfed Grain-Assisted

The Ceres application appears to have combined the terminology of 'grassfed grain-assisted' to form the marketing terminology of 'pasture finished'.

The use of the term 'pasture finished' is an area of concern for CCA. As highlighted above the beef industry through the AMILSC is working to define this production system but consensus is yet to be reached. Clearly defining this production system to enable product to be effectively marketed is a key focus of the AMILSC. CCA believes that it is essential that there is a clear definition for consumers around production systems where grain supplementation is a significant portion of the animal diet.

Cattle Council is concerned that the use of 'pasture' within the proposed 'grainfed-grass assisted' definition will not align with industry agreed terminology, when finalised. The term

only referring to 'pasture' is not clear in identifying the other component of the animal's diet and it is CCA's preference for both components be clearly captured.

CCA would welcome Ceres working with industry in the development of the definition for 'grainfed- grass assisted' production systems.

## 2.2 Free Range

Cattle Council is concerned that the industry and Ceres definition of 'free range' will not align.

The Ceres application appears to (1) permit cattle to be kept in a confined feedlot during an 'initial socialisation period'; and (2) contains significant qualifications. An example of the qualification is permitting considerations such as regional stocking rates and nutrient balance requirements. These considerations have the potential to allow cattle in a confined in a small area if, in the producers' judgment, this is appropriate on the basis of certain factors.

There is concern that the ambiguity around the Ceres Rules and Standards, allows for confinement for feeding for the purposes of production. If such actions were to take place, this could be inconsistent with consumer's expectations.

## 2.3 Antibiotic Free and HGP Free

The applications definition of antibiotic and HGP free appear to be consistent with common understandings and meet consumer expectations.

## 2.4 Similarity to other Industry Certification programs

CCA developed and currently operates a certification program for beef produced through grassfed production systems.

The Pasturefed Cattle Assurance System, or PCAS, is a set of standards that provide a system for producers to be able to guarantee grassfed production. PCAS places emphasis on non-confinement of cattle for the purpose of feeding and instead on allowing cattle to graze freely with pasture, and non-cereal supplementation.

PCAS provides certification to producers whose production systems comply with the Rules and Standards. The key assertions of the program are compliant with consumer expectations around grassfed beef and have been upheld by supply chain stakeholders. To this end, producers have received a price premium for PCAS certified beef, which in part recognises the costs associated with producing to the standards and the additional expenditure required to maintain the required production methods.

This premium is potentially undermined by the Ceres certification system due to the likelihood of confusion between the two-certification programs.

The similarities between the PCAS program and the proposed Ceres certification system are evident. The language and outcomes of the certain modules of both standards are almost identical. The two logos are closely correlated and could be reasonably expected to be confusing to both industry and consumers. Substantively, the only significant difference between the two systems is in regards to what feedbase is appropriate for stock consumption.

## 2.5 Variations in 'Pasture-Finished' Feed Ratio

CCA's major concern with the Ceres application is the use of the term 'pasture-finished' and the lack of clarity around the acceptable diet.

The PCAS program clearly delineates expectations around diet, by providing an exhaustive list of what is included and excluded as acceptable feedstock. However the Ceres application refers only to a mixed diet of grain and pasture with no minimum threshold for pasture consumption defined. In making the claim of 'pasture-finished' beef, there must be an expectation that a minimum standard of pasture consumption in an animal's diet be defined and consistently met. If this standard cannot be defined or met, then claims around 'pasture-finishing' will be inconsistent and open to manipulation.

The PCAS program, through a strict regimen of dietary requirements, provides a constant product to market that meets consumer expectations around pastured beef. Cattle produced under the Ceres system have no minimum requirement for pasture consumption except for that appropriate to the region given environmental elements, and appropriate to the animal given dietary requirements. As such, cattle produced during certain times of the year may have considerably less pasture in their diet, with the majority of feedstock coming from grain. Other seasonal variations may also impact the program and effect the ratio of grain/pasture feed (i.e. if there was a shortage for feed grain due to climatic impacts on grain production; as would occur in a drought). This inconsistency is too variable to be accepted in a certification program, as there is significant potential for consumers to be misled in purchasing a product that varies significantly.

## 3. Consumer Protection

CCA is concerned that the Ceres trademark could mislead consumers. False or misleading impression, issues will arise under the Australian Consumer Law (ACL), which forms part of the *Competition and Consumer Act 2010* (Cth) – specifically Section 18 which relates to misleading and deceptive conduct.

When assessing whether a person has contravened the above sections of the ACL, consideration must be given to not only what is actually written, but also what is implied through the use of words or images i.e. logos. In practical terms, this means considering the overall impression that will be created in the minds of ordinary members of the target audience and the broad conclusions that they will draw.

The proposed Ceres certification system, when assessed as a whole, would allow beef brands to provide the perceptions that (1) the product is in some way related to pasture production and (2) that the product can be considered like to pastured produce on the market.

Cattle Council is concerned by the use of the term 'pasture' in the Ceres CTM application. The use of the term 'pasture' is the dominant term to describe the production system in the application and there is no terminology around the use of grain. CCA is concerned that the use of 'pasture' and the absence of 'grain' has the potential to mislead and confuse consumers about the product being purchased.

CCA does acknowledge that the logo within the application implies the use of grain in the animal's production. However, the logo's use of a grain graphic is unlikely to indicate to consumer that grain has been used in the production system and some consumers may be confused into purchasing the product, believing it to be grassfed, due to the use of the term 'pasture'.

Maintaining consumer trust in grassfed claims on beef products is essential to the Australian industry as there has recently been a rapid increase in the consumer demand for grassfed product, both domestically and internationally. This demand is being driven by consumer perceptions that grassfed production systems offer superior environmental, animal welfare and nutritional outcomes. These perceived qualities have provided premiums for grassfed products and it is essential the consumer trust in the claim be retained. The Ceres application has the potential to reward producers certified with through the proposed system, due to the association with 'grassfed' production systems, without offering the same value proposition to the market.

### 3.1 Credence Claims

CCA is of the position that Ceres is attempting to make a credence claim designed to attract customers to purchase branded beef underpinned by the Ceres production system. Credence claims, in the context of food, may include claims relating to the origin, quality or characteristics of food products, such as 'free range', 'pasture finished' etc.

Consumers place weight on these credence claims, and have evidenced a willingness to pay a premium for such goods i.e. PCAS Beef. However, as consumers cannot independently verify or check the credence claim for themselves there must be trust in the supplier and rigorous standards in place to protect consumers from being misled. Further, because consumers cannot assess the accuracy of such claims, suppliers and the broader beef industry have a duty of care to ensure such claims can be substantiated.

## 4. Conclusion

Cattle Council has recently approached Ceres to explain the current work of industry to develop industry agreed definitions. Industry will be working with Ceres to ensure that the combined grass-grain production system is clearly defined.

Cattle Council has a number of concerns with the current Ceres application. Namely the Committee is working to develop clear industry definitions and the definitions within the Ceres application may not be consistent with those that are developed by industry.

The use of the claim 'pasture finished' in the application is unlikely to align with consumer expectations as to the farming practices being used. It accordingly would most likely create confusion and give rise to potential issues under the ACL. In particular, due to the premium placed on 'grass fed' beef by consumers and the potential competitive advantage created by such labeling, credence claims relating to whether cattle are pasture fed/finished should be treated cautiously.

Cattle Council supports the beef industry creating brands and quality assurance systems, which add value to the industry. To ensure effectiveness we strongly advocate for a single definition for each of the common raising claims being used in the sector. This will protect

the long-term integrity of raising claims made on beef products and ensure that consumers are not confused or misled.