

31 May 2017

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By e-mail: CTMs@acc.gov.au

Dear Sir / Madam,

**Pasture Raised on Open Fields Pty Ltd (PROOF) Certification Trademark Application
Number 1784876 - Submission by Animals Australia.**

Thank you for the opportunity to provide a submission in relation to the application to register Pasture Raised on Open Fields Pty Ltd (PROOF) as a certification trademark. Animals Australia understands that the application comprises:

1. The PROOF symbol that appears on the cover of the PROOF certification rules, which includes the words 'Pastured Proof : Pasture raised on open fields'; ('PROOF symbol) and
2. The proposed PROOF certification trade mark rules, which articulate both the PROOF core values with respect to the treatment of livestock, as well as minimum standards that must be met relating to the production of cattle, pigs, poultry, and meat sheep ('PROOF standards')

As you are aware, Animals Australia is a peak animal protection organization in Australia. On behalf of our member societies and individual members and supporters we are pleased to be able to provide you with this submission.

Background

1. In 2015, Animals Australia was pleased to provide a submission to the ACCC with respect to the first edition of the PROOF certification trademark application (No: 1635381) ('2015 PROOF standards').
2. In response to the 2015 PROOF certification trademark application standards, Animals Australia submitted several concerns relating to the proposed PROOF certification standards. Those concerns pertained to:
 - a. ambiguity and inconsistencies within the PROOF standards;
 - b. a lack of independent oversight to ensure PROOF trademark certified bodies were compliant with the standards;
 - c. a lack of welfare requirements for transport and slaughter; and
 - d. a failure to ensure that all animals raised and slaughtered according to PROOF certified standards have been kept according to those standards for the entirety of their life.

3. Animals Australia understands the 2015 PROOF certification trademark application was withdrawn.

Summary

4. By way of summary with regards to the current PROOF certification trademark application, Animals Australia supports the overall direction of the PROOF certification trademark, to the extent that it contemplates the provision of higher animal welfare standards than those contemplated by other comparable frameworks.
5. However, Animals Australia remains concerned that the 2017 PROOF certification trademark standards are deficient in much the same ways that the 2015 proposed standards were.
6. Animals Australia is of the view that these deficiencies mean that the application does not meet the requirements outlined in s175(2) of the *Trade Marks Act 1995* (Cth). Specifically:
 - a. It does not adequately identify the necessary attributes a person must have to become an approved certifier to assess competently whether goods meet the certification requirements; and
 - b. the proposed PROOF standards could amount to a contravention of Part 2-1 and/or 3-1 of the *Australian Consumer Law*, which prohibit misleading and deceptive conduct.
7. Given the extent to which Animals Australia believes the proposed PROOF standards appear to contravene the *Trade Marks Act 1995* (Cth) and the corresponding *Australian Consumer Law*, Animals Australia believes that the ACCC has sufficient grounds to exercise its power under s175(3) of the *Trade Mark Act 1995* (Cth) to require PROOF to amend their certification standards in order to address these deficiencies.
8. In the event that PROOF elects not to alter the certification standards accompanying their certification trademark application, Animals Australia is of the view that the ACCC has legitimate grounds to refuse PROOF's certification trademark application.

Animals Australia's General Support of PROOF's Direction

9. Animals Australia generally supports the objectives of the PROOF certification trademark, to the extent that it contemplates the 'ethical treatment of livestock in pastured production systems'.¹ Animals Australia generally welcomes the implementation of standards that seek to provide additional animal welfare protections that exceed existing minimum legal requirements.
10. Animals Australia understands that some of the PROOF standards contemplate higher standards of animal welfare than existing minimum legal requirements. Animals Australia notes that the PROOF standards do this by, for example:
 - a. Mandating that animals range freely in open field or paddocks, and are not confined to stalls, cages or crates.²

¹ PROOF Standard 1(b)

² PROOF Core Values.

- b. Prohibiting some (but not all) forms of painful surgical procedures without the use of adequate anesthetic or pain relief.³
- c. Placing some limits on maximum allowable transport times, though they are not mandatory.⁴
- d. Proscribing maximum stocking densities with respect to certain species that reflect recommended guidelines for outdoor systems.⁵
- e. Prohibiting the use of electric prods or goads with respect to the unloading of pigs, sheep and poultry (but not cattle).⁶

Requirements under the *Trade Mark Act 1995 (Cth)*

11. Under s175(2) of the *Trade Mark Act 1995 (Cth)*, the ACCC must give an approving certificate to the certification trade mark if it is satisfied that:

- a. the attributes a person must have to become an approved certifier are sufficient to enable the person to assess competently whether goods and/or services meet the certification requirements; **and**
- b. the rules referred to in section 173 of the *Trade Mark Act 1995 (Cth)* (i.e. the PROOF standards):
 - i. would not be to the detriment of the public; and
 - ii. are satisfactory having regard to the criteria prescribed for the purposes of this paragraph.

12. For the Purposes of 175(2)(b)(ii), the relevant criteria are set out in section 16.6 of the *Trade Mark Regulations 1995* as being:

- a. the principles relating to restrictive trade practices set out in Part IV of the *Competition and Consumer Act 2010 (Cth)*⁷
- b. the principles relating to unconscionable conduct set out in Part 2-2 of *Competition and Consumer Act 2010 (Cth)* and;
- c. the principles relating to unfair practices, product safety and product information set out 2-1, 3-1, and 3-3 of the *Competition and Consumer Act 2010 (Cth)*

13. Section 175(3) of the *Trade Mark Act* authorizes the ACCC to require PROOF to make amendments or modify their standards as the ACCC deems necessary to ensure compliance with these provisions.

S175(2)(i): Attributes of certifier not sufficiently identified

14. Under the proposed PROOF standards, an 'auditor' is a person who is deemed by the standards as having the 'expertise and authority to inspect and audit operators in regard to compliance with the PROOF standards for licensing purposes'.⁸

³ E.g. PROOF standard 8 (cattle)

⁴ E.g. PROOF standard 9.14 (cattle)

⁵ For example standard 2.2 (pigs) proscribes 20 dry sows per hectare, and 10 lactating sows per hectare. The *Model Code of Practice for the welfare of Animals : Pigs*, recommends 20-25 dry sows per hectare or 9-14 lactating sows per hectare.

⁶ PROOF standard 9.11 (pigs), 9.11 (poultry), 9.14 (meat sheep).

⁷ Note, the *Trade Mark Regulations 1995* actually refer to provisions within the *Trade Practices Act 1974*, which has been superseded by the *Australian Competition and Consumer Law 2010 (Cth)*. This submission reads the *Trade Mark Regulations* as if it refers to the current laws.

⁸ PROOF part 2: definitions.

15. In order to comply with s152(2)(i) of the *Trade Mark Act*, the attributes that must be possessed by an auditor who is responsible for certifying goods in accordance with the PROOF trademark must be sufficiently identified to ensure that the competence of the person engaging in the certification process.
16. To be deemed an 'auditor' in accordance with the PROOF standards, a person must have the following attributes:⁹
 - a. Each auditor must provide evidence of qualifications as a Lead Auditor of Quality Management or Food Safety Systems, and
 - b. An auditor must also satisfactorily demonstrate:
 - i. A practical understanding of the livestock industry or systems they will be auditing
 - ii. A practical working knowledge of the PROOF standards and any other standards relating to livestock or systems to be audited
 - iii. That they are capable of carrying out the obligations of an Auditor under the PROOF program
 - iv. That they are registered as an Auditor with Exemplar Global or an Authorized Authority
17. Animals Australia is concerned that the PROOF standards do not sufficiently identify the attributes a person must have to become an approved certifier to enable the person to assess competently whether goods and/or services meet the certification requirements as required by s175(2)(i) of the *Trade Mark Act*.
18. Specifically, Animals Australia believes that the auditor attributes prescribed by the PROOF standards do not ensure that a person responsible for certification has sufficient competence to assess animal welfare objectives that are mandated by the standards. This is of particular concern given that the primary objective of the PROOF standards is to ensure the 'ethical treatment of livestock in pastured production systems'.
19. Animals Australia also notes that in assessing compliance with the PROOF standards, an auditor must make complex assessments on animal welfare matters. For example, compliance with the PROOF standards requires an assessment to be made regarding whether the provided animal housing is 'appropriate to the physiological and behavioral needs of the animal'. Further, the PROOF standards require that 'living conditions...consider the needs of the animal'.¹⁰
20. Animals Australia is of the view that only a person with qualifications in animal behavior or animal welfare could competently assess such animal welfare matters. The PROOF standards require an assessment of both an animal's welfare needs, and an assessment of how well the given environment is meeting those needs. Animals Australia is of the view that such an assessment requires specialized knowledge. Further, an auditor should possess species-specific knowledge with respect to the health and welfare requirements of each type of animal covered by the PROOF standards.
21. Animals Australia is of the view that the fact that the PROOF standards require an auditor to provide evidence of qualifications as a Lead Auditor of Quality Management or Food Safety systems should not be read as indicator of their ability to assess matters of animal

⁹ PROOF standard 5(g)(i)-(iv).

¹⁰ E.g. PROOF standard 3.1 (Poultry)

welfare. Experience in auditing food safety or quality management systems is not synonymous with experience in auditing matters pertaining to animal welfare.

22. Animals Australia notes that an auditor must have 'practical knowledge' of livestock systems and the PROOF standards. However, Animals Australia re-iterates that practical knowledge does not amount to a sufficient level of expertise in animal welfare of the kind required to competently assess compliance with the PROOF standards with respect to the various species that it governs.
23. For these reason, Animals Australia is of the view that the attributes of a person competent to assess compliance with the PROOF standards, which primarily relate to matters of animal welfare, are not adequately identified. Animals Australia believes animal welfare can only be competently assessed by persons who possess qualifications and display expertise in the fields of animal health and/or welfare. Such persons could possibly include a veterinarian or an animal behaviorist, but do not include persons trained in food safety or quality management systems.
24. Animals Australia recommends that the attributes identified under the PROOF standards be modified to include the additional, fundamental requirement that an auditor possess specialized qualifications in matters pertaining to animal welfare, animal health and/or animal behavior. Until such modification is made, Animals Australia is of the view that the PROOF standards fail to meet the requirements of s175(2) of the *Trade Marks Act*.

S175(2)(ii): Reliance on the PROOF Standards could contravene Australian Consumer Law

25. Animals Australia is of the view that reliance upon some of the PROOF standards could amount of a contravention of Australian Consumer Law.
26. Australian Consumer Law makes three general prohibitions that Animals Australia is concerned may be breached by a reliance on the PROOF standards:
 - a. The prohibition on misleading and deceptive conduct¹¹
 - b. The prohibition on making false or misleading representations as to goods being of a particular quality or standards¹²
 - c. The prohibition on conduct liable to mislead the public as to the nature, manufacturing process or characteristics of goods bearing certain symbols.¹³
27. Animals Australia believes any or all of these prohibitions could be contravened by the PROOF standards, because they are:
 - a. Too ambiguous to impose clear, mandatory standards that consumers can rely upon
 - b. Not subject to sufficient mechanisms to ensure ongoing compliance
 - c. Silent on key animal welfare issues that consumers would reasonably expect to be covered by a trademark that offers consumers a guarantee that livestock have been treated ethically
 - d. Do not require that animals sold under the PROOF trademark have been bred and raised in accordance with PROOF standards for the entirety of their lives, which consumers would reasonably assume they have.

¹¹ Part 2-1 of the Australian Consumer Law, section 18.

¹² Part 3-1 of the Australian Consumer Law, section 29.

¹³ Part 3-1 of Australian Consumer Law, section 33.

Ambiguity in proposed PROOF standards

28. Animals Australia is concerned that some of the PROOF standards are imprecise and ambiguous. As such, Animals Australia is of the view that it will be unduly difficult to determine whether PROOF certified producers appropriately satisfy these provisions. Consumers could therefore easily be misled or deceived where ambiguous and imprecise provisions fail to meet their expectations with respect to how animals are raised and processed in PROOF certified systems.
29. For example, the standards make use of ambiguous terms and phrases in order to detail their requirements. The words and phrases 'should', 'are encouraged', 'should be avoided', 'must endeavor to' and 'may be' used in the following examples are of particular concern to Animals Australia:
- a. 'Paddock rotation and pasture management *should* take into consideration the local environment, seasons variations in climate and rainfall...'¹⁴
 - b. 'Stockpersons *should* be assessed for competency in the handling of the animals in their care'¹⁵
 - c. Replacement breeder stock *may be* purchased from a reputable external source'.¹⁶
 - d. 'Sudden changes in the type or quantity of feed provided *should be avoided*'¹⁷
 - e. 'Transport times *should not* exceed 8 hours'¹⁸
 - f. Procedures that have the potential to cause suffering *should* only be performed by a stockpersons that can demonstrate competency in that procedure'¹⁹
 - g. 'Egg producers *must endeavor to* purchase point of lay pullets that have not had their beaks trimmed'²⁰
30. Animals Australia is of the view that the language used in the above examples is too vague and imprecise, and does not proscribe a mandatory standard. Such language therefore fails to ensure that producers and processors accredited under the PROOF trademark are all meeting the same standards. This could confuse and mislead consumers who would reasonably assume that all PROOF certified enterprises are meeting the exact same standards.
31. Animals Australia also notes the use of the word 'shall' and 'will' throughout the standards, in contrast to the use of the word 'must'. For example, the standards state:
- a. 'Vegetative cover of the range areas *shall* be managed through paddock rotations...'²¹
 - b. 'Animals *will* have permanent access to paddocks and pasture'.²²
32. Animals Australia is of the view that the terms 'shall' and 'will' could reasonably be construed as referring to a possible *future* action, as opposed to mandating a standard that must be immediately met to ensure compliance with the PROOF standards. Legal writing expert Bryan Garner, editor-in-chief of all current editions of *Black's Law Dictionary*,

¹⁴ PROOF Standard 1

¹⁵ PROOF Standard 9.3

¹⁶ PROOF Standard 3.7

¹⁷ PROOF Standard 7.5 (Cattle)

¹⁸ PROOF standard 9.10 (Pigs)

¹⁹ PROOF standard 9.4 (Pigs)

²⁰ PROOF standard 8 (Poultry)

²¹ E.g. PROOF standard 1.1 (cattle)

²² E.g. PROOF standard 3.2 (cattle)

has advocated for the word 'shall' to be eradicated from legal use for the reason that it 'violates the presumption of consistency'.²³

33. Animals Australia also notes that The *Macquarie Dictionary*, which is routinely employed by the High Court of Australia to interpret statutes, provides the following ordinary and natural meanings of the terms:

- a. 'Shall' *verb* : indicating future likelihood ²⁴
- b. 'Will' *verb*: indicating future likelihood ²⁵

34. Animals Australia also notes that the context in which the terms 'shall' and 'will' are used could be taken into consideration in determining their meaning. Australian case law provides precedent for this approach, indicating that the task of statutory interpretation of terms such as 'shall' must always be performed with reference to the context in which the terms are used.²⁶

35. In the context of the PROOF standards, Animals Australia is concerned that the juxtaposition between the words 'must' on the one hand, and 'shall' and 'will' on the other, could be illustrative of an intention to set discretionary, rather than mandatory standards. If the terms 'shall' and 'will' do refer to a requirement to take *future* action, Animals Australia is of the view that the requisite time frame for performing such an action should be clearly stipulated.

36. In general however, Animals Australia believes that the PROOF standards should not offer discretion to producers and processors, but rather should detail precise, mandatory minimum requirements. Discretion in the standards leads to uncertainty, which could mislead or deceive customers as to what the PROOF standards actually require.

37. For example, the stocking rate standards for cattle leave stocking rates at the discretion of producers: 'Stocking rates for livestock must be appropriate for the region taking into consideration feed production capacity, health of the pasture, size of paddocks, the breed, health and size of the animals, the soil structure, soil erosion, nutrient balance and environmental impact'.²⁷ Further, 'stocking rates must be calculated according to the size of the paddock, size and class of the animals...'.²⁸ These provisions do not detail minimum animal welfare requirements with respect to stocking densities, and therefore lack precision with respect to what is required in order for a producer to be considered to have satisfied these provisions. Animals Australia also notes that the PROOF standards make clearer requirements with respect to the stocking densities for pigs²⁹ and some poultry,³⁰ but not for cattle (or sheep). Animals Australia recommends that the PROOF standards be remedied to address this deficiency.

²³ See Garner's article here: http://www.abajournal.com/magazine/article/shall_we_abandon_shall

²⁴ Available online here:

https://www.macquariedictionary.com.au/features/word/search/?word=shall&search_word_type=Dictionary

²⁵ Available online here:

https://www.macquariedictionary.com.au/features/word/search/?word=will&search_word_type=Dictionary

²⁶ See for example: *Hatton v Beaumont* (1978) 20 ALR 314 at 591-592. Note, section 9(2) of the *Acts Interpretation Act 1901* (NSW) provides that *prima facie*, the term 'shall' should be read as creating a mandatory requirement. This provision however, does not override the common law position that mandates the context of the term be taken into account in determining the meaning of the term.

²⁷ PROOF standard 2 (cattle)

²⁸ PROOF standard 2.5 (cattle)

²⁹ PROOF standard 2 (Poultry)

³⁰ PROOF standard 2.2 (pigs)

38. Animals Australia also notes that the 2015 PROOF standards offered the additional guiding principle that a 'decrease in stocking rates may be necessary to achieve' all of the above.³¹ Animals Australia is concerned that this important guiding principle has been removed from the current PROOF standards, from what is already a broad, discretionary standard.
39. With respect to stocking densities for poultry, the proposed PROOF standards are less explicit than the first edition of the PROOF standards as they were proposed in 2015. The 2015 edition prescribed maximum stocking densities for layer hens, meat chickens, ducks, turkeys, geese and guinea fowl.³² The current PROOF standards only prescribe maximum stocking densities for layer hens, meat chickens, and ducks. Animals Australia is concerned about the lack of prescribed maximum stocking densities for turkeys, geese and guinea fowl under the current proposed PROOF standards. Animals Australia believes that in order to ensure consistent standards for compliance with the PROOF standards, discretion must not be afforded to producers on these fundamental animal welfare matters.
40. In order to ensure clarity and certainty in the PROOF standards, Animals Australia believes all of the PROOF standards should be phrased as mandatory requirements. As such, Animals Australia believes that the vague and imprecise terms that have just been identified by replaced with the term 'must'. Animals Australia believes the consistent use of the word 'must' throughout the PROOF standards would ensure that all producers and processors accredited under the PROOF trademark were being held to the same standards. Such clarity and transparency is integral in ensuring that consumers are not unfairly deceived or misled regarding the standards that PROOF certified producers and processors are required to meet.

Inadequate Mechanisms to Ensure Compliance

41. Animals Australian is concerned that the PROOF standards fail to articulate adequate mechanisms to ensure compliance with the standards. This could mean that PROOF certified systems are not in actuality meeting the requisite PROOF standards, which would mislead and/or deceive consumers.
42. Animals Australia is concerned that the standards do not adequately proscribe the level and type of training that must be undertaken by all persons handling or managing animals within a PROOF certified system.
43. Further, Animals Australia is concerned that the auditing process detailed by the PROOF standards are inadequate to ensure both initial and ongoing compliance with the PROOF standards. In particular, Animals Australia is concerned about the extent to which the PROOF standards rely upon self-audits and desk-audits to establish compliance, which are inadequate to assess animal welfare matters.

Lack of Staff Competency Requirements

44. Animals Australia is concerned about the extent to which the PROOF standards fail to establish sufficient standards in regards to the competency of staff, contractors or any other persons whom are handling or managing animals in PROOF accredited establishments.

³¹ 2015 PROOF standard 3.4 (cattle)

³² See 2015 PROOF standards 3.1-3.6

45. The proposed standards only require persons handling or managing animals to receive a copy of the PROOF standards and to demonstrate understanding of the standards.³³ Whilst all such persons are required to comply with the standards, the standards pay inadequate attention to the implementation of training systems to ensure such compliance takes place.
46. Animals Australia notes that the PROOF standards require a 'suitable' training program to be in place to ensure compliance,³⁴ but is concerned about the lack of detail provided as to what may constitute such a 'suitable' program. Animals Australia understands that in the 2015 edition of the PROOF standards contained some further detail, which has been deleted from the current proposed standards. Specifically, the 2015 Proof Standards contained the requirement that the 'suitable training program' in place detail both the 'method and frequency of the training'.³⁵ Animals Australia is concerned about the deletion of this requirement from the current PROOF standards, and believes that this requirement and more, are required to ensure that any training systems are effective in facilitating ongoing compliance with the PROOF framework.
47. Any training system mandated by the PROOF standards should be more adequately detailed, to proscribe the type and quantity of training that should take place. Such training systems should mandate regular training 'refresher' courses or other mechanisms to ensure an ongoing commitment to the PROOF standards.

Self Assessment in Initial Certification Application

48. Animals Australia is concerned that the auditing requirements under the PROOF standards are inadequate to ensure compliance. Under the PROOF standards, Animals Australia notes that the process for obtaining certification with PROOF in the first instance requires an operator to:
- a. Apply for and enter into a PROOF licensing agreement,³⁶ and
 - b. Complete a self-assessment (internal audit) and declaration questionnaire,³⁷ and
 - c. Satisfy PROOF that the operator will comply with these standards.³⁸
49. Animals Australia is concerned about reliance upon a 'self-assessment (internal) audit' and declaration questionnaire as the application process for certification under the PROOF standards.³⁹ This is particularly so since the PROOF standards do not require any independent audit or assessment of the operator's establishment prior to granting certification approval.
50. Reliance on self-assessments of compliance, especially in the first instance are problematic because they may mean that:
- a. Operators who have a direct, personal interest in achieving certification and are therefore biased, are responsible for assessing their own compliance with the PROOF standards, and

³³ E.g. PROOF standard 9 (sheep meat)

³⁴ E.g. PROOF standard 9.2 (cattle)

³⁵ 2015 PROOF standard 9.2 (cattle), 10.2 (pigs), 10.2 (meat sheep). The 2015 PROOF standards did not make the same requirement for poultry.

³⁶ PROOF standard 4(e)(i)

³⁷ PROOF standard 4(e)(ii)

³⁸ PROOF standard 4(e)(iii)

³⁹ PROOF Standard 4(e)(ii)

- b. Assessments as to compliance with the PROOF standards are being made by persons who do not meet the requirements of an 'auditor' under the PROOF standards. Such assessments may thus be being made by persons who are not competent to assess their own compliance with the PROOF standards. Animals Australia maintains that *any* assessment for compliance should be made by a person who can provide evidence of competence to make assessments of compliance. Unless an operator is also approved as an auditor under the Standards, they cannot reasonably be expected to possess the requisite qualifications to make determinations pertaining to their own compliance.

51. As such, Animals Australia is concerned that the use of self-assessments to establish compliance could result in operators that are not actually compliant with the Standards being certified with the PROOF certification trademark.

52. Animals Australia understands that the operator must 'satisfy PROOF' as to their compliance. However, it is not clear what this requirement may entail. Animals Australia is of the view that this provision should be far more detailed, to establish precisely how an operator can satisfy an independent assessor as to their compliance with the PROOF standards. A perusal of the PROOF licensing process implies that the completion of the declaration questionnaire, as well as the provision of detail pertaining to 'business structure and the livestock or systems' that the operator wishes to certify may be sufficient for an application to be approved.

53. Animals Australia notes that a 'desk audit' will be used to make a final assessment and may result in an approval for a license being granted to use the PROOF trademark.⁴⁰ Animals Australia however is deeply concerned about the reliance upon a 'desk audit' to monitor animal welfare issues, particularly given that robust animal welfare assessments clearly require the observation and consideration of individual animals and the environment in which they are kept.

54. Animals Australia also notes that the assessment process for initial certification may include a request for 'further documentation or evidence' to assist in assessment.⁴¹ While this provision could reasonably enable a person assessing an initial certification application to gather further evidence of compliance, Animals Australia is concerned that the collection of such evidence is discretionary and not mandatory.

55. Animals Australia firmly believes that in addition to the existing elements of the licensing process, an on-site assessment by an appropriately qualified expert in animal welfare should be a mandatory part of the licensing process to ensure that an operator is in actuality compliant with the PROOF standards.

Ongoing Compliance

56. Animals Australia is also concerned that the auditing processes provided by the standards to ensure ongoing compliance are insufficient.

57. Firstly, Animals Australia again notes the heavy reliance on 'internal audits' (i.e. self-assessments) as a satisfactory method of assessing renewal of a license agreement (unless the licensee is a processor).⁴² Animals Australia is concerned that the Standards only contemplate on-farm audits of 20% of licensed operations each calendar year,

⁴⁰ PROOF standard 4(k)

⁴¹ PROOF standard 4(l)

⁴² PROOF standard 4(aa)(i)-(ii).

suggesting that the remainder of audit assessments are done internally. It also contemplates therefore the unacceptable situation that a licensee that is not a processor will on average only be audited (on site by an accredited auditor) once each 5 years (or more for some).

58. Animals Australia notes that a person assessing a self-audited renewal application may require 'photographic evidence or a live video tour of the operation' to aid the assessment.⁴³ Animals Australia also notes however that the provision of such additional material is at the discretion of the person making the assessment, and is not mandatory. Animals Australia is further concerned that photographic or video evidence are inadequate to fully capture the level of detail required to make a thorough examination of the extent to which an operation complies with the PROOF standards, and may be influenced by the motivation of the licensee to retain the license, thus avoiding display of problematic issues.
59. Further, Animals Australia is concerned about the use of 'desk audits', which appear to be the primary method of ongoing auditing contemplated by the standards. As already stated, Animals Australia is of the view that desk audits are inappropriate and ineffective in ensuring compliance with standards that require complex animal welfare assessments. Animals Australia is of the view that such animal welfare matters can only reasonably be assessed by a site visit by competent persons, which the standards only require be carried out with respect to 20% of sites per annum.⁴⁴

Unannounced Audits Require Suspicion of Wrongdoing

60. Animals Australia is also concerned that the PROOF auditing bodies have inadequate power to perform unscheduled inspections. Specifically, Animals Australia notes that unscheduled inspections may only occur if 'concerns arise about the compliance status of any licensee that may be the result [of] a bona fide complaint or referral by a reliable third party'.⁴⁵
61. Animals Australia is concerned that requiring 'proof' of non-compliance to legitimate an unscheduled audit may mean that ongoing non-compliance has not been identified until some time after the non-compliance began.
62. Animals Australia is of the view that producers and processors should be subjected to a reasonable number of unscheduled audits to ensure compliance per annum. Animals Australia does not believe that suspicion of wrongdoing should be a pre-requisite for such audits.

Silence on Key Animal Welfare Matters

63. Animals Australia is concerned that the PROOF standards are silent with respect to some key animal welfare issues that consumers would reasonably be expected to be covered by a certification system that purports to ensure the 'ethical' treatment of animals. As such, the PROOF certification trademark may mislead or deceive customers as to what it guarantees.
64. Specifically, Animals Australia is concerned that the PROOF standards make no provision for on-farm euthanasia or slaughter of animals raised according to the PROOF standards. Animals Australia also notes that PROOF standards make no provision with respect to animal slaughter at slaughterhouses.

⁴³ PROOF standard 4(s)

⁴⁴ PROOF standard 4(w)

⁴⁵ PROOF standard 4(x)

65. Given that the PROOF certification trademark may apply to both producers and ‘processors’, it is reasonable for consumers to expect that PROOF standards make requirements that pertain to the slaughter of animals. The PROOF standards define a ‘processor’ as a ‘food service establishment preparing or packaging food for consumption from meat supplied by or purchased from a licensed PROOF producer’.⁴⁶
66. A ‘processor’ could thus reasonably be interpreted to include a slaughterhouse that slaughters animals from PROOF accredited farms. As such, Animals Australia is concerned that the PROOF standards make no requirements whatsoever with respect to the slaughter and relevant animal welfare matters at the time of slaughter. Specifically, the standards fail to address:
- a. Holding times and conditions prior to slaughter
 - b. Stunning Requirements
 - c. Acceptable slaughter restraints
 - d. Acceptable slaughter methods
 - e. Record keeping requirements
67. Animals Australia is of the view that consumers would reasonably expect that a PROOF certified processor is required to meet certain ethical standards when slaughtering animals from PROOF certified producers. The fact that the PROOF standards do not address animal welfare issues at the time of slaughter is likely to mislead consumers into believing that PROOF certified processors are meeting a higher ethical standard during slaughter than other non-certified processors.

Failure to Ensure a Lifetime of ‘Ethical’ treatment in line with PROOF standards

68. Animals Australia is concerned that the provisions within the PROOF standards which enable PROOF certified producers to purchase animals from ‘reputable external sources’ are inadequate to ensure that *all* animal products sold under the PROOF trademark have been raised for the entirety of their lives (or as close as is reasonably practicable) in accordance with the PROOF standards. Specifically, Animals Australia is concerned that animals may be purchased from non-PROOF certified farms (with lower standards) and then later used to breed from and/or grown to then become PROOF certified products.
69. For example:
- a. With respect to pigs, ‘replacement breeder stock’ may be purchased from a ‘reputable external source’ which is not defined by the standards.⁴⁷ Animals purchased from such a source need only live on a PROOF certified farm for six months before they may be sold as PROOF certified. Animals Australia believes this provision could deceive customers, since they would rightfully believe that PROOF certified products come from animals who have been subjected to PROOF standards for the entirety of their lives. Animals Australia does not believe that living in accordance with PROOF standards for only 6 months warrants the use of the PROOF trademark which indicates the customers that the animal has been subjected to the standards which purport to ensure the ethical’ treatment of animals. Animals Australia notes the 2015 PROOF standards prohibited the selling of replacement breeder stock as PROOF certified free range, regardless of how long they have lived on a PROOF certified farm.⁴⁸

⁴⁶ PROOF standard 2 (definitions)

⁴⁷ PROOF standard 3.5 (pigs)

⁴⁸ 2015 PROOF standard 11.1 (pigs)

- b. The poultry standards make no requirements as to where day-old poult or goslings may be purchased from, or how they must have been treated. The 2015 proposed standards required that poult and gosling be purchased from a 'reliable source' and must not have been de-beaked, de-snooded or have had their toes clipped.⁴⁹ Animals Australia queries why this provision has been removed from the current standards. Animals Australia notes that the PROOF standards do not permit the purchase of day old chicks or ducklings that have been de-beaked (defined by PROOF as removal of a substantial portion of the beak, not just the tip), but is concerned that no similar provisions occur to protect poult or gosling. It therefore seems possible that gosling or poult may be purchased by PROOF operators even if they have been subjected to painful surgical procedures such as dubbing or de-snooding that are routinely performed promptly following hatching.
- c. The cattle and meat sheep standards only require that bought in weaners be born and raised under outdoor conditions. It does not however, proscribe the type of outdoor conditions, or the stocking density of those conditions. Animals Australia notes the 2015 PROOF standards required cattle and meat sheep be purchased from 'free range' conditions,⁵⁰ which appeared to ensure greater continuity between the standards maintained by external vendors and PROOF purchasers that the proposed standards do.

70. Animals Australia is concerned that the fact that PROOF producers may source animals from 'external sources' that do not meet the PROOF standards themselves may mislead consumers who would rightfully be entitled to believe that animal products sold as PROOF certified products came from animals that had lived their entire lives in accordance with the PROOF standards.

Overall, Animals Australia commends the general direction of the PROOF certification scheme to the extent that its predominant focus is on the ethical treatment of animals who are raised for slaughtered for human consumption. However, in their current form, Animals Australia believes the PROOF standards are inadequate to meet the legal requirements under the *Trade Mark Act* and *Australian Consumer Law*. Animals Australia believes the inadequacies detailed above are sufficient grounds for the ACCC to use their power to require the PROOF standards to be modified prior to approval.

If you require any further information or clarification, please do not hesitate to contact me.

Yours sincerely,



Glenys Oogjes
Executive Director

⁴⁹ 2015 PROOF standard 11.1 (poultry)

⁵⁰ 2015 PROOF standard 10.2 (cattle), 11.2 (meat sheep)