



The Animal Law Institute Inc. is a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system.

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Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA
ACT 2601

Your reference: CTM1635381 – PROOF - comment

By email: CTMs@acc.gov.au

PROOF – Pasture Raised On Open Fields. Certification Trade Mark Application No 1635381; submission from the Animal Law Institute Inc.

INTRODUCTION

1. The Animal Law Institute Inc. (**ALI**) welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission (**ACCC**) regarding Pasture Raised On Open Fields Pty Ltd's (**PROOF**) Certification Trade Mark Application. ALI understands that PROOF's Certification Trade Mark Application comprises of:
 - a. the two symbols identified in the ACCC's letter dated 29 June 2015 (the **PROOF Symbols**); and
 - b. the Certification Trade Mark Application rules proposed by PROOF, which include the core values that apply to categories of livestock, as well as the minimum requirements for farming practices relating to the production of pigs, poultry, meat sheep and beef cattle (the **PROOF Standards**)¹,
(together, the **PROOF CTM Application**).
2. ALI is a not for profit community legal centre that provides pro bono legal advice and assistance to organisations or persons whose interests and objects include the prevention of cruelty to animals, the improvement of animal welfare and the achievement of animal rights.
3. As an organisation whose core principles include protecting animals and advocating for their interests through the Australian legal system, ALI fundamentally does not support the breeding, rearing and killing of animals for human purposes, including human consumption. It is one of

¹ In this submission, we have referred to the version of the PROOF Standards available from https://consultation.accc.gov.au/mergers-and-adjudication/proof-pasture-raised-on-open-fields-ctm/supporting_documents/PROOF%20rules%20and%20standards.pdf. Please note that a reference to a rule in this submission is a reference to the rules in this version of the PROOF Standards.

ALI's core beliefs that, regardless of the farming practices adopted, animals bred and raised specifically for human use are born into exploitation and will ultimately suffer a cruel and unnecessary end.

4. Despite this, ALI supports moves to enhance the lives and welfare of animals used in agriculture and acknowledges the benefits of certification trade marks (**CTMs**) for consumers demanding more humane alternatives to traditional factory-farmed products.

EXECUTIVE SUMMARY

5. By way of summary, ALI supports the overall direction of the PROOF CTM to the extent that the PROOF Standards prescribe greater welfare standards than those found in the Australian Animal Welfare Standards and Guidelines (**Model Codes of Practice**) and similar CTMs such as the RSPCA Approved Farming scheme (**RSPCA Standards**).² ALI has identified the merits of the PROOF CTM Application in its current form in the Annexure to this submission.
6. However, ALI has concerns that the PROOF CTM Application does not meet all of the requirements in subsection 175(2) of the *Trade Marks Act 1995* (**TMA**). In particular, ALI is concerned that the PROOF Standards in their current form:
 - a. do 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. would amount to a contravention of Part 3-1 of the *Australian Consumer Law* (**ACL**).
7. On this basis, ALI is of the view that there are sufficient grounds for the ACCC to exercise its power under subsection 175(3) of the TMA to require PROOF to amend the PROOF Standards to address the deficiencies therein. In the event that PROOF does not wish to amend the PROOF Standards to accord with the recommendations made in this submission, ALI is of the view that it would be appropriate for the ACCC to reject PROOF's CTM Application.

LEGISLATIVE FRAMEWORK UNDER WHICH CTMAS ARE ASSESSED

11. Under subsection 175(2) of the TMA, the ACCC must give an approving certificate to the CTM applicant if it is satisfied that:

² In this submission, we have referred to the most recent version of the RSPCA Approved Farming Scheme Standards available at <http://rspca.org.au/sites/default/files/website/what-we-do/approved-farming-scheme/AFS_Operations_Manual_July2015.pdf>.

- a. the attributes a person must have to become an approved certifier are sufficient to enable the person to assess competently whether the goods and/or services meet the requirements to become certified; and
 - b. the CTM rules referred to under subsection 173 of the TMA:
 - i. would not be to the detriment of the public; and
 - ii. are satisfactory having regard to:
 - the principles relating to restrictive trade practices set out in Part IV of the *Competition and Consumer Act 2010 (CCA)*;
 - the principles relating to unconscionable conduct set out in Part 2-2 of the ACL (as contained in Schedule 2 to the CCA); and
 - the principles relating to unfair practices, product safety and product information set out in Parts 2-1 and 3-1 and Part 3-3 of the ACL respectively.³
12. The relevant CCA provisions referred to above include, inter alia, a prohibition on a person, in trade or commerce:
- a. engaging in conduct that is misleading or deceptive or is likely to mislead or deceive (Sch 2 Pt 2-1 s 18);
 - b. making a false or misleading representation that goods are of a particular standard, quality, value, grade or composition (Sch 2 Pt 3-1 s 29(1)(a)); or
 - c. engaging in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for purpose or the quantity of any goods (Sch 2 Pt 3-1 s 33).
13. Under subsection 175(3) of the TMA, the ACCC may require the applicant to make amendments or modifications to the CTM rules as it considers necessary.

THE SIGNIFICANCE OF “FREE RANGE” IN THE CURRENT AUSTRALIAN CONTEXT

14. A key aspect of the PROOF CTMA is that if approved, PROOF will be able to use the PROOF Symbols, both of which include the term “free range”. This will be used in relation to the provision to consumers of “proof” that the pigs, poultry, meat sheep and beef cattle that have been raised in accordance with the PROOF Standards have been treated ethically and raised in a free range system.
15. The use of the term “free range” (or other terms relating to an animal’s ability to move freely, such as “free to roam”) have been the subject of several important cases brought by the ACCC.

³ Regulation 16.6 of the Trade Marks Regulations 1995, read as if references to *Trade Practices Act 1974* are references to the *Competition and Consumer Act 2010*.

It is apparent from the judgments in the reported cases and in relevant information reported on the ACCC website that the term “free range” or such equivalents or variants have commercial value, in that a significant subset of consumers are prepared to pay more for products sourced from animals which consumers believe are raised, kept, transported and slaughtered in “free range” conditions.

16. Moreover, representations that animals are raised, kept, transported and slaughtered in a free range environment are representations in relation to quality of the relevant product, in that the representation suggests that the product is produced in a more humane environment. Consumers buying products which are labelled as “free range”, but are in fact not from animals raised in that more humane environment have suffered a “cruel deception” as those consumers “mostly seek out [such products]...as a matter of principle, hoping to advance the cause of animal welfare by so doing”.⁴ For example, in relation to egg production, a 2015 Choice report found that:

*Consumers’ desire to back better animal welfare and support free range egg producers has contributed to free range being the fastest growing egg sector, with growth expected at eight times that of caged eggs. It is far from a niche product, with 65% of Australians buying free range eggs in the past 12 months.*⁵

While demand for more humane alternatives is particularly evident in the market for eggs, it is not exclusive to that market.

17. Given the commercial value inherent in such marketing, there is little wonder that producers have sought to capitalise on representations of “free range” to differentiate their products and charge a premium price for those products.
18. The term “free range” is not universally defined by legislation in Australia and legislative requirements around animal produce labelling are weak; yet consumers are accustomed to making value based purchasing decisions with reliance on the labelling of products. In this context, ACCC’s role is critical in ensuring that CTMs which purport to require their licensees to comply with “free range” standards meet current community expectations regarding how animals used in the agricultural industry are reared and slaughtered in accordance with those “free range” requirements.

SUBSECTION 175(2) OF THE TMA

⁴ ACCC v CI & Co Pty Ltd [2010] FCA 1511 at [31].

⁵ Choice, ‘Free Range Eggs: Making The Claim Meaningful’ (June 2015) available at <<https://www.choice.com.au/~media/619b60e5a1f04b2191d09fd9dab4c72e.ashx>> p.3.

19. ALI has concerns that the PROOF CTMA does not satisfy all of the requirements of subsection 175(2) of the TMA. ALI's concerns in relation to each of the relevant factors in subsection 175(2) of the TMA are set out below.

Paragraph 175(2)(a) – Insufficient requirements for determining the attributes of approved certifiers

20. It is ALI's view that the PROOF Standards do not adequately prescribe the attributes that an external auditor must have in order to be able to assess competently whether a particular producer or product meets the requirements for PROOF CTM certification.
21. The ACCC's guidelines on CTMs provide that the ACCC must be satisfied *"that a person or organisation that is granted approved CTM assessor status (this may include the CTM owner) will have the necessary qualifications, skills or abilities to competently assess whether or not a good and/or service meets the CTM requirements or standards set out by the CTM rules"*.⁶
22. PROOF notes that it will appoint one or several auditors certified by the Registered Accreditation Board Quality Society of Australasia (**RABQSA**) and train them in the PROOF Standards (rule 5a).
23. "Auditor" is defined in the PROOF Standards as "[a] person deemed by the certification office to have the expertise and authority to inspect and audit operators in regard to compliance with the PROOF Standard for certification purposes. Auditors must be registered with RABQSA." Notably, the membership, roles and responsibilities of the "certification office" is not described in the rules. Further, the qualities, skills or minimum technical qualifications that must be possessed by an external auditor to competently assess the merits of a proposed licensee's product are not set out.
24. In ALI's view, being a member of the RABQSA is not necessarily an "attribute" that would identify a person as being suitable for the position of approved certifier for the purposes of the proposed CTM. Furthermore, there is little substantive evidence that an auditor trained by PROOF would have the necessary qualifications, skills or abilities to competently inspect and assess the conditions at facilities which supply and raise livestock. Many of the PROOF Standards relate to animal health and wellbeing, which could only be assessed competently by a qualified veterinarian and/or animal behaviourist. The PROOF Standards, however, contain no requirement that approved certifiers have relevant veterinary or animal behaviourist qualifications.

⁶ Australian Competition and Consumer Commission, 'Certification Trade Marks – The Role of the ACCC' (2011) available at <<http://www.accc.gov.au/system/files/Certification%20Trade%20Marks.pdf>> p.7.

25. Notably, PROOF shall act upon the recommendations of the appointed auditors for the purpose of issuing a license for the use of the PROOF CTM (rule 5b). Thus it becomes the responsibility of an external auditor appointed by PROOF (who, in ALI's view, is not required to possess adequate qualifications to perform the role he or she is tasked with), to ensure the integrity of the certification system by affirming that only products satisfying the PROOF Standards will be labelled, identified or marketed using the PROOF Symbols.

Subparagraph 175(2)(b)(ii) – Reliance on the PROOF Standards could contravene the ACL

Context

26. ALI submits that some aspects of the PROOF Standards may conflict with consumer expectations and perceptions of what constitutes “free range” agricultural practices, and therefore raise concerns about whether they breach the unfair practices provisions in Part 2-1 and 3-1 of the ACL.

27. Once the PROOF CTM is applied to a product, consumers will be entitled to assume that the product has been manufactured in accordance with higher standards of animal welfare than might apply in a production method that is not free range. Accordingly, any representation that a product meets such expectations will potentially be misleading where the breeding, rearing or killing of animals is not, in fact, carried out in accordance with perceived “free range” standards.

28. In the ACCC's guide to CTMs,⁷ the ACCC notes that it considers whether the CTM raises misleading and deceptive concerns, including “*the following*:

- a. *the CTM indicates to consumers that a good and/or service meets a particular standard, but the certification requirements in the rules do not reflect this standard or the process for determining whether these requirements or standards have been met or is not reliable; or*
- b. *while the CTM rules may be consistent with what the CTM purports to indicate to consumers, the mark itself may be ambiguous, confusing or misleading – that is, it might be interpreted by consumers to mean that a good and/or service complies with a different standard.”⁸*

29. ALI is of the view that the following aspects of the PROOF Standards would be misleading in contravention of:

- a. the general prohibition on misleading or deceptive conduct in the ACL;⁹ and/or

⁷ *Ibid*, p.8.

⁸ *Ibid*.

⁹ *Competition and Consumer Act 2010*, Schedule 2, Part 2-1, section 18.

- b. the prohibition on making false or misleading representations that goods carrying the PROOF Symbols are of a particular standard or quality;¹⁰ and/or
- c. the prohibition on conduct liable to mislead the public as to the nature, manufacturing process or characteristics of goods bearing the PROOF Symbols.¹¹

30. While ALI recognises that there are other “animal welfare” CTMs available on the market and that the RSPCA Standards are not without their limitations, ALI has referred to the RSPCA Standards as the benchmark that the PROOF Standards should meet as a minimum, as the CTMs associated with the RSPCA Standards are well recognised by Australian consumers.

Certain rules in the PROOF Standards impose *lesser* requirements than the minimum requirements of the Model Codes of Practice

31. The PROOF Standards state that each PROOF Standard is complementary to the applicable Model Codes of Practice (refer to the introduction of each PROOF Standard).

32. However, ALI has identified a few instances where the PROOF Standard imposes less stringent obligations than those prescribed in the applicable Model Code of Practice.

33. For instance, the PROOF Standard for poultry dictates that stocking rates for Guinea Fowl shall not exceed 2,500 birds per hectare (rule 3.1.2). However, this rate is double the rate under the Model Code of Practice for Domestic Poultry,¹² which sets the maximum stocking density at 1,000 birds per hectare for a range area.¹³

34. Also, the PROOF Standard for beef cattle states that “*castration after 12 months must be carried out by or under the scrutiny of a registered veterinarian and under anaesthetic*” (rule 6.4). However, the Model Code of Practice for the Welfare of Cattle¹⁴ states that castration should only occur in exceptional circumstances, and even then, should be performed preferably by a veterinarian.¹⁵

35. As a number of states and territories have adopted certain Model Codes of Practice as minimum standards that must be adhered to by law, ALI considers it unacceptable for the PROOF Standards to be inconsistent with any of the requirements of the Model Codes of Practice.

¹⁰ *Competition and Consumer Act 2010*, Schedule 2, Part 3-1, paragraph 29(1)(a).

¹¹ *Competition and Consumer Act 2010*, Schedule 2, Part 3-1, section 33.

¹² Primary Industries Standing Committee, ‘Model Code of Practice for the Welfare of Animals Domestic Poultry 4th Edition’ available at <<http://www.publish.csiro.au/Books/download.cfm?ID=3451>>.

¹³ *Ibid*, Appendix 7, [A7.1]

¹⁴ ¹⁴ Primary Industries Standing Committee, ‘Model Code of Practice for the Welfare of Animals Cattle 2nd Edition’ available at <<http://www.publish.csiro.au/Books/download.cfm?ID=4831>>.

¹⁵ *Ibid*, [5.4.1]

Accordingly, ALI considers it appropriate for the ACCC to direct PROOF to amend the PROOF Standards to the extent that they are inconsistent with any Model Code of Practice.

The PROOF Standards do not oblige licensees to source animals from accredited suppliers

36. ALI submits that the PROOF Standards depart from consumer sentiment of “free range” farming practices in relation to the requirements regarding sourcing of animals from non-accredited suppliers.
37. There is no obligation on licensees under the PROOF Standards to source animals from third party producers who are also certified to use the PROOF CTM or an equivalent certification system. For example, weaner pigs destined to be grown out for slaughter may be purchased from any reputable and reliable source up to a maximum age of 10 weeks (rule 11.2 pig Standard), providing that the supplier is able to demonstrate that the *“pigs were born and raised under free range conditions and without the use of sow stalls and farrowing crates”* (rule 11.2 pig Standard). While the inference may be that pigs are to be sourced from suppliers that apply practices on par with those specified in the PROOF Standards, the uncertainty in the wording of the rule means that a pig whose meat is eventually sold as PROOF certified may have spent the first 10 weeks of its life under conditions that vary greatly from consumer expectations of free range. ALI notes that this rule could be strengthened by specifying that animals may only be sourced from producers who raise pigs under equivalent conditions to those required of PROOF-certified producers.
38. In a similar vein, eggs from birds that have not been sourced from a PROOF-certified supplier will be excluded from certification for a period of just four weeks from delivery on farm (rule 11.7 poultry Standard), while meat sheep that have been purchased from a non-PROOF accredited supplier must reside on the certified operator’s property and be raised in compliance with the PROOF Standards for a period of just 30 days before they can be sold under the PROOF trademark.

The PROOF Standards do not adequately identify the applicable minimum procedures that must be followed in the “manufacturing process”

39. The PROOF Standards fail to give guidance on some crucial aspects of the production process, including on-farm euthanasia and slaughter.
40. First, it should be noted that the PROOF standards outline *“the minimum requirements for farm practices relating to production of livestock including, pigs, poultry, sheep and cattle, and the use*

of the *PROOF Pasture Raised On Open Fields (PROOF) Trademark*". The main focus of the Standards is "the ethical treatment of livestock in free range production systems". Significantly, the coverage of the PROOF Standards ceases at the transport of animals to abattoirs. The Standards do not provide any guidance in relation to the slaughter of animals, including effective shackling, stunning and subsequent bleeding out, use of CCTV in abattoirs and appropriate record-keeping of the slaughtering process. The PROOF Standards also fail to deal with other important welfare issues such as acceptable practices around on-farm euthanasia of injured or severely sick animals.

41. In contrast, the RSPCA Standards give guidance on all aspects of the production chain from sourcing of animals to slaughter, thereby setting minimum welfare standards at all stages of the production process. The Humane Choice True Free Range Standards also set minimum welfare standards in relation to slaughter.¹⁶ It is ALI's view that consumers demanding "free range" products expect that enhanced animal welfare standards will be applied not just at certain stages of the production chain or with respect to particular procedures, but consistently throughout the lives of animals used in the production process. In this sense, allowing a product to carry the PROOF CTM, which is deficient with respect to the matters above, is misleading to the extent that it provides consumers with a (false) assurance of "free range" production systems that is not commensurate with community expectations. The PROOF CTM may, in fact, lead to confusion in product selection or make it more difficult for consumers to make informed purchasing decisions, thereby reducing confidence in "free range" labelled products.

Some rules are ambiguous and aspirational, rather than obligatory, which creates uncertainty

42. ALI submits that some of the certification requirements set out in the PROOF Standards are so imprecise that it would be difficult to establish whether or not they were satisfied. This difficulty stems, in part, from the nature of the certification rules which are, broadly, more grounded in principle than detailed directives.
43. For instance, one of the Core Values of the PROOF Standards is that "[p]astured free range should be environmentally, economically and socially sustainable". First, terms such as "should" do not enable approved users or licensees to determine exactly what standards they are required to meet in order to apply the PROOF CTM to their products. In addition, the PROOF Standards deliver no further guidance as to how environmental, economic and social

¹⁶ A full copy of the Humane Choice True Free Range Standards can be found here: http://www.humanechoice.com.au/certified_humane_choice_standards

sustainability in relation to free range farming is to be achieved, and provides only the following nebulous direction:

Paddock rotation and pasture management should take into consideration the local environment, seasonal variations in climate and rainfall, soil conservation and nutrient management, production capability, pasture health and existing eco systems. Stocking densities need to be monitored and adjusted as necessary to achieve good outcomes (rule 5 in the beef cattle, pig, poultry and meat sheep PROOF Standards).

44. Taking the beef cattle PROOF Standard as an example, the rules state that “[s]tocking rates for livestock must be appropriate for the region taking into consideration feed production capacity, health of the pasture, size of paddocks, the species, health and size of the animals, the soil structure, soil erosion, nutrient balance and environmental impact” (rule 3.1), and that “[s]tocking rates must be calculated according to the size of the paddock, size and class of animals.” (rule 3.6). What this example demonstrates is that the PROOF Standards fail to instruct, in any meaningful way, potential or approved users about stocking densities of beef cattle that would be acceptable for the purposes of meeting the CTM requirements.
45. In addition, rule 9.4 of the beef cattle PROOF Standard states “[p]rocedures that have the potential to cause suffering should only be performed by a stockperson that can demonstrate competency in that procedure.” Again, the use of the word “should” rather than “must” creates uncertainty as to the minimum requirements to be satisfied under the CTM. Nor are there any guidelines as to the level of competency that must be demonstrated by the stockperson, or any appropriate qualifications that they must hold.

The auditing and monitoring requirements are inadequate to effectively ensure compliance with the PROOF Standards

46. First, the mechanisms to make decisions and review licenses under the PROOF Standards are insufficiently detailed. It is proposed that a “Certification Committee” is appointed by PROOF to make decisions regarding certification of operations and properties. It is noted that the rules do not set out any detail regarding the constituency of this Committee or the qualifications that its members must hold, or the method of appointing Committee members. The PROOF Standards state that the Committee will use audit reports and “other means” to make these decisions, but again, no further detail is provided.
47. Second, the PROOF Standards are markedly brief in describing the auditing process, providing no guidance on the form the audits must take or level of examination to be undertaken.

48. An audit is defined as “[a] *systematic and functionally independent examination, and reporting to a designated review committee, to determine whether activities comply with planned objectives and requirements of relevant Standards. This may include unscheduled audits and gap audits.*” Rule 6a.ix requires a licensee to allow an auditor onto the premises to confirm compliance with the PROOF Standards, but the rules do not stipulate how often such audits will take place, or any detailed requirements around regular monitoring or spot checks to ensure all-year-round compliance with the PROOF Standards.
49. Also, the rules specify that a “Gap audit” is conducted where the operator may require modification to plans or practices prior to certification or prior to addition of areas or products for certification. Such audits may either occur by document review and/or on-site assessment. It is ALI’s view that desk audits are an insufficient means of determining whether the certification requirements are satisfied, and that on-site assessments should be carried out in all circumstances.
50. In addition, the ambiguity in the wording of the certification requirements creates uncertainty in the process for determining whether products meet the certification requirements. A certification requirement described as one that “should” as opposed to “must” be fulfilled by an approved user will inevitably cause uncertainty as to whether an auditor must apply that particular criterion. Where auditors are left with discretion as to apply or not apply certain certification requirements, overall uncertainty and inconsistency is created as to the quality of the final product that enters the market.
51. Third, the PROOF Standards give little instruction by way of record-keeping obligations. Rule 11 of the beef cattle, pig, poultry and meat sheep Standards states that records must be available to the auditor during inspection, however, fails to give any guidance as to how often records must be kept or the detail in which they are to be kept. The rule simply states that “[a] *records system must be in place that demonstrates compliance with each applicable section of this Standard and may include (emphasis added)*” a set of listed items. Though the ACCC’s guidelines stipulate that the process for determining whether goods meet the certification requirements “*should be thoroughly documented in the CTM rules*”,¹⁷ the foregoing has the potential to adversely impact on an auditor’s ability to review a licensee’s compliance with the PROOF Standards, jeopardising the overall integrity of the certification system. By way of contrasting example, the RSPCA Layer Hen Standard requires that records in the form of an Animal Care

¹⁷ Australian Competition and Consumer Commission, ‘Certification Trade Marks – The Role of the ACCC’ (2011) available at <<http://www.accc.gov.au/system/files/Certification%20Trade%20Marks.pdf>> p.8.

Statement and Veterinary Health Plan be reviewed on an annual basis.¹⁸ In addition, records must be kept of, inter alia, bird deaths, bird culls, weekly mortality rates per laying facility over the life of the flock, and feather score cover,¹⁹ and the RSPCA must be notified of any major event (including unexpected incidences of mortality, disease outbreaks, pest animal incursions or equipment failure) which impacts on flock health and welfare.²⁰ It is submitted that similar requirements would, at minimum, be needed under the PROOF rules to ensure that animal health and wellbeing is being maintained to the requisite standards.

52. Fourth, the scheme appears to operate on a largely self-regulated basis. It is left to each certified farm unit to ensure that their operation complies with the minimum requirements set out in the PROOF Standards and to maintain these standards at all times (rule 6a.i-ii). There is no “responsible person” or other such designation provided in the PROOF Standards. By way of contrasting example, the RSPCA Layer Hen Standard requires that “[e]ach enterprise nominate a designated person (or persons) who has responsibility for the operation of the farming enterprise [and] responsibility for overseeing the management and application of the requirements of the Scheme. The owner of the birds raised under the RSPCA Approved Farming Scheme has, at all times, the final responsibility for ensuring the welfare of the birds and on-going compliance with these Standards.”²¹

STATUS OF THE PROOF STANDARDS

53. Lastly, ALI notes that the PROOF Standards (or at the very least the Core Values in the PROOF Standards) appear to be in draft form.
54. For example, paragraph 1.9 of the Core Values in the pig PROOF Standards states that “de-beaking of poultry is not acceptable”. While this is a minor point, ALI considers it appropriate for the Core Values to be adapted to suit the particular animal that each PROOF Standard applies to.
55. Accordingly, the ACCC may consider it necessary to review a final version of the proposed PROOF Standards before making any final decision on whether to approve or reject the PROOF CTMA.

¹⁸ Rule 7.08 and 8.04 of the RSPCA Layer Hen Standard available at <<http://www.rspca.org.au/sites/default/files/website/what-we-do/working-with-farming-industry/RSPCALayerhensStandards.pdf>>.

¹⁹ Rule 7.18 of the RSPCA Layer Hen Standard.

²⁰ Rule 7.16 of the RSPCA Layer Hen Standard.

²¹ RSPCA layer hen standard, p.7.

ALI thanks the ACCC once again for the opportunity to make this submission. Should the ACCC have any questions regarding this submission, please do not hesitate to contact ALI via email at policy@ali.org.au.

Yours sincerely

The Animal Law Institute Inc.

ANNEXURE

MERITS OF THE PROOF CTMA

1. ALI supports the overall objectives of the PROOF Standards and its focus on “*the ethical treatment of livestock in free range production systems*”. It is ALI’s view that the Core Values set out in each of the beef cattle, pig, poultry and meat sheep standards are laudable (if somewhat aspirational in nature) and that the PROOF Symbols have merit as indicators of goods produced to a certain standard and quality to the extent that the PROOF Standards prescribe greater animal welfare outcomes than are currently found in the Model Codes of Practice and RSPCA CTM.
2. The PROOF Standards provide for a higher standard of animal welfare through:
 - a. Mandating that animals range freely in open fields or paddocks, and not be kept in cages, stalls or crates (Core Values). PROOF Standards for pig and poultry prescribe that animals will have access to paddocks and pasture for a minimum of 8 hours each day (rule 2.2), while the beef cattle and meat sheep standards provide for animals to have permanent access to paddocks and pasture (unless adverse conditions prevail). In contrast, the RSPCA Standards for pigs, layer hens, turkeys and meat chickens do not require that animals have access to an outdoor or range area, and indoor systems where animals are kept in a fully covered environment may bear the RSPCA Approved Farming Scheme logo where the specifications of the Standards are satisfied;
 - b. Prescribing minimum requirements for the rearing of beef cattle, for which there is currently no RSPCA Standard;
 - c. Prohibiting painful procedures such as teeth clipping in pigs (rule 6.1 pig Standard), de-beaking in poultry (rule 6.1 poultry Standard) and mulesing of sheep (rule 6.1.1 meat sheep Standard). In contrast, the RSPCA Standards and/or Model Codes of Practice permit non-routine teeth clipping for pigs,²² beak trimming for layer hens and turkeys in some circumstances,²³ and mulesing of sheep;²⁴

²² See rule 5.7 of ‘Pigs: RSPCA Approved Farming Scheme Standards’ (August 2011) available at <<http://www.rspca.org.au/sites/default/files/website/what-we-do/working-with-farming-industry/RSPCAPigsStandards.pdf>> (**RSPCA Pig Standard**) and rule 5.6.11-5.6.13 of Primary Industries Standing Committee, ‘Model Code of Practice for the Welfare of Animals – Pigs’ (2008, 3rd ed) available at <<http://www.publish.csiro.au/Books/download.cfm?ID=5698>> (**Model Code of Practice for Pigs**).

²³ See rule 8.13-8.15 of ‘Layer Hens: RSPCA Approved Farming Scheme Standards’ (March 2015) available at <<http://www.rspca.org.au/sites/default/files/website/what-we-do/working-with-farming-industry/RSPCALayerhensStandards.pdf>> (**RSPCA Layer Hen Standard**); rule 6.14-6.15 of ‘Turkeys: RSPCA Approved Farming Scheme Standards’ (May 2013) available at <http://www.rspca.org.au/sites/default/files/website/what-we-do/working-with-farming-industry/RSPCATurkeyStandards_May2013.pdf> (**RSPCA Turkey Standard**); and rule 13.2 of Primary

- d. Limiting maximum transport time to 8 hours, unless animal welfare is a risk (rule 9.6 pig and poultry standards; rule 9.10 meat sheep standard; 8.12 beef cattle standard);
- e. Prescribing maximum stocking densities that are lower for pigs in outdoor systems than under the RSPCA Standards or Model Codes of Practice (rule 3.2). The PROOF Standards set maximum stocking densities at 20 dry sows per hectare, 10 lactating sows per hectare and 75 grower pigs per hectare, compared to 30 breeding pigs (boars, lactating sows and gestating gilts/sows) per hectare under the RSPCA Standards and 20-25 dry sows per hectare and 9-14 lactating sows with piglets per hectare under the Model Code;²⁵
- f. Setting a maximum period of three days for the confinement of farrowing sows in an overnight farrowing hutch (rule 4.4. pig Standard). In contrast, the RSPCA Pig Standard does not set a limit on the length of time a pig may be confined to a farrowing crate, while the Model Code of Practice allows confinement for up to 6 weeks in any one reproductive cycle;²⁶
- g. Limiting maximum stocking densities for layer hens in outdoor systems to 1,500 hens per hectare (rule 3.1.1 poultry Standard). The RSPCA Layer Hen Standard allows a stocking density of up to 2,500 birds per hectare of outdoor area for systems with rotational range management strategies in place,²⁷ while the Model Code of Practice for Poultry allows for a maximum stocking density greater than 1,500 birds per hectare for a free range system incorporating regular rotation of birds onto fresh range areas;²⁸
- h. Prescribing a maximum stocking rate for turkeys and geese of 800 birds and 600 birds per hectare respectively (rules 3.4.1 and 3.5.1 of poultry Standard);
- i. Setting maximum indoor stocking densities for meat chickens and other birds for overnight housing to densities lower than those set out in the RSPCA Standards (rule 4.8 poultry Standard). For example, PROOF Standards prescribe a maximum stocking density of 16kg of birds per square metre for meat chickens and 25kg per square metre

Industries Standing Committee, 'Model Code of Practice for the Welfare of Animals – Domestic Poultry' (2002, 4th ed) available at <<http://www.publish.csiro.au/Books/download.cfm?ID=3451>> (**Model Code of Practice for Poultry**).

²⁴ Chapter 7 of Animal Health Australia, 'Australian Animal Welfare Standards and Guidelines for Sheep' (May 2014, 1st ed) available at <<http://www.animalwelfarestandards.net.au/files/2011/02/Sheep-Standards-and-Guidelines-for-Endorsement-May-2014-080714.pdf>> (**Model Code of Practice for Sheep**). Note this standard is subject to Government endorsement.

²⁵ Rule 3.1 of the Model Code of Practice for Pigs.

²⁶ Rule 4.1.7 the Model Code of Practice for Pigs.

²⁷ Rule 6.04 of the RSPCA Layer Hen Standard.

²⁸ Rule A2.1.4 of the Model Code of Practice for Poultry.

for all other birds (excluding layer hens). The stocking density for turkeys under the RSPCA Standards is between 28kg and 35kg per square metre depending on the ventilation system employed and birds' live weight, and for meat chickens is either 28kg or 34kg per square metre;

- j. Prohibiting the acquisition of day-old chicks, ducklings, goslings and poults that are de-beaked, de-snooded or have toes clipped and requiring meat birds to be raised on farm from chicks (rules 11.1 and 11.2 poultry Standard); and
 - k. Permitting the acquisition from a third party supplier lambs destined to be grown out for slaughter only where the supplier can demonstrate that the animals were born and raised under free range conditions and that all animal husbandry practices comply with the PROOF Standards (rule 11.2 meet sheep Standard).
3. It is ALI's view that, in relation to the matters outlined above, the PROOF Standards more closely align with consumer expectations and perceptions of "free range" farming practices than the existing requirements of the RSCPA Standards or Model Codes of Practice. ALI strongly believes that consumers who seek out "free range" products do so with the expectation that animals have been treated more humanely at every step of the production process – that is, not only that they are raised in less crowded, less confined conditions, but also that they are, for example, spared from painful, unnecessary husbandry practices custom to traditional factory farming. To this end, ALI supports the PROOF CTMA to the extent that products bearing PROOF Symbol will have been derived from animals raised in conditions that are, at least in some respects, more broadly commensurate with true 'free range' conditions.
4. Nevertheless, ALI holds some reservations in regards to the PROOF CTM's adherence to the legislative requirements in the TMA, as discussed above in the body of this submission.