

27 July 2015

Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

**By Email: [CTMs@acc.gov.au](mailto:CTMs@acc.gov.au)**

Dear Sir/Madam,

**CTM1635381 – PROOF – COMMENT**

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 trade mark.

As you may be aware, Animals Australia is a peak animal protection organisation 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.

**Summary**

In summary, Animals Australia generally supports the standards set out in PROOF and does not oppose its registration as a certification trade mark. However, prior to registration, Animals Australia urges the ACCC to ensure that PROOF amends their standards to address a number of inconsistencies and shortfalls that currently exist in the standards.

## General support for PROOF

Animals Australia generally supports the objectives of the PROOF framework, in that its main focus is the ethical treatment of livestock in free range production systems. We note that PROOF contains a range of standards that would, in most ways, ensure a higher level of animal welfare than other current standards, such as the standards contained in the Model Codes of Practice and the RSPCA certified trade mark.

Animals Australia specifically recognises the positive welfare effects that the following PROOF requirements will have for livestock animals:

- Providing living conditions which consider the needs of the animal and ensure that each animal is able to range freely in open fields or paddocks.
- The ability of each animal to interact with their herd or flock and carry out natural behaviours.
- Stocking densities which are monitored along the principles of good animal welfare, preventative disease and environmental management in mind, with no use of cages, stalls or crates.
- Prompt management of illness and injury to ensure that no animal is left to suffer.
- Providing food and water to animals that is adequate to meet their welfare needs and production requirements, including the prohibition on the routine use of antibiotics.
- The prohibition of cruel animal husbandry procedures, including tail docking, dehorning, disbudding using caustic chemicals and teeth cutting.
- The prohibition on the use of growth promoters.

Further, as expected, consumer surveys have demonstrated that consumers reasonably expect that words or accreditation logos containing references to “free range” means that the product is produced in a genuinely free range setting and in accordance with higher animal welfare standards.<sup>1</sup> Animals Australia believes that

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<sup>1</sup> See for example, CHOICE, Free range eggs – What does ‘free range’ really mean, and are consumers being misled’. Available here: <https://www.choice.com.au/food-and-drink/meat-fish-and-eggs/eggs/articles/free-range-eggs>

these PROOF standards represent more closely what many consumers would expect when purchasing 'free range' animal products.

### **Deficiencies requiring modification**

Nevertheless, Animals Australia has significant concerns about a number of inconsistencies and deficiencies in the PROOF standards, and strongly recommends the ACCC ensures that these are addressed prior to registering the PROOF accreditation scheme in order to ensure it is consistent, able to be appropriately enforced, and truly reflects consumer beliefs on what a free range accreditation scheme would represent. We note that the ACCC is able to request PROOF makes amendments or modifications to the rules pursuant to section 175(3) of the *Trade Mark Act 1995*.

### **Ambiguity within the PROOF requirements**

Animals Australia notes that the PROOF standards are in some circumstances ambiguous and lack the necessary detail to ensure those accredited are aware of the necessary requirements.

There is a number of instances throughout the rules which state that certain standards "should" be adopted instead of using the words "must". For example, Rule 6 states that 'animal husbandry *should* take into consideration the welfare of the animals, health of the animals, social structures within herds or flocks and the prevention of disease...'. Further, rule 9.6 states that 'transport times *should* not exceed 8 hours'.

Animals Australia believes that the use of the word "should" should be replaced with "must" in order to ensure that those accredited under the scheme are aware of their requirements, in addition to ensuring that consumers can be sure that the products they purchase with the PROOF accreditation definitely meet all PROOF standards, not just the compulsory ones (i.e. those which say 'must').

Further, in order to reduce ambiguity in the standards, we strongly believe that all discretion should be removed from the standards where possible and replaced with

defined requirements. For example, some stocking densities are not strictly defined in the rules, leaving discretion with the accredited person or company to determine the appropriate stocking densities. For instance, rule 3.6 states that stocking rates are to be calculated according to the size of the paddock and size and class of the animals. This means that there could easily be variations within the standards of animal welfare provided to animals despite all being marked with the same accreditation logo and words.

Animals Australia therefore recommends that PROOF amends its standards in order to ensure that the requirements are clearly defined and require strict compliance.

### *Independence and enforcement*

Animals Australia believes that the standards need improvement in relation to the inspection and auditing requirements, both in terms of ensuring the process is independent and routine, in addition to being carried out by persons with appropriate qualifications.

We note that certification through PROOF requires approval from the Certification Committee, which is appointed by Pasture Raised on Open Fields Pty Ltd. Once accredited by the Committee, the standards allow for audits to be conducted by an Auditor, who is defined as *“[a] person deemed by the certification office to have the expertise and authority to inspect and audit operators...Auditors must be registered with RABQSA.”*

We note that both the Certification Committee and Auditors may not be independent persons, with the relevant and necessary qualifications to carry out their responsibilities. In particular, the standards do not require the Committee to hold any experience or qualifications at all, or to be independent from the industry or approved applicants. Further, the only qualification specifically required for an Auditor is that he or she must be registered with the RABQSA. We strongly recommend that the standards be amended to ensure that the Committee and Auditor/s are independent and hold a minimum standard of qualifications. For example, we strongly believe that

the auditor should be required to have a certain level of experience or qualifications relevant to being able to audit matters relating to animal health and welfare.

Further, the PROOF standards should be amended to ensure that the scheme is not self-regulated and that routine unannounced inspections are carried out. At present, the rules leave responsibility with the certified applicant to ensure that their operation complies with the minimum requirements and to maintain these standards at all times.<sup>2</sup> Further, Audits “*may include unscheduled audits and gap audits.*”<sup>3</sup> Animals Australia strongly believes that in order to ensure the standards are being complied with and the accredited products accurately reflect the standards, unannounced audits should be carried out on all accredited applicant premises at least once per year for each approved premise (in addition to the routine audits).

Further, we do not support the current permission for this to include “gap audits”, which can simply be a desk audit where documents are reviewed.<sup>4</sup> It is difficult to understand how a desk audit based on a review of documents would be able to detect breaches of many of the requirements contained within the PROOF rules, as they relate to animal health and behaviour. This concern is further reinforced by the fact that the present standards do not contain extensive record keeping requirements.<sup>5</sup>

### Consistency of standards

Animals Australia notes that some of the requirements contained in the standards need to be improved to ensure that *all* animals are treated with higher animal welfare in the PROOF accreditation scheme. Specifically, we note the following standards need to be improved.

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<sup>2</sup> See PROOF Rules 6a i-ii.

<sup>3</sup> PROOF Rule 2, Definitions, ‘Audit’ at pg 2.

<sup>4</sup> PROOF Rule 2, Definitions, ‘Gap Audit’ at pg 3.

<sup>5</sup> See for example rule 11, which states that ‘a record system must be in place that demonstrates compliance with each applicable section of this Standard, and may include a number of things, which are then detailed in a list.

### *Castration of cattle*

Castration of cattle under rule 6 of the Cattle Standard needs to be improved to ensure high animal welfare standards are maintained at all times throughout this procedure. We strongly recommend that the castration requirements for cattle be amended to require pain relief throughout castration procedures at all ages and that castration not occur after the age of six months, unless necessary for the individual animal's health or welfare.

We note that even the (minimum standards) *Model Code of Practice for the Welfare of Animals – Cattle* states that only under exceptional circumstances should castration be carried out after six months of age. Further, the Code notes that in some State and Territory legislation, castration over the age of six months is illegal unless undertaken by a veterinarian. We therefore hold serious concerns with the current rule 6.4 which states that 'castration after 12 months must be carried out by *or under the scrutiny of* (emphasis added) a registered veterinarian and under anaesthetic', as castration over 12 months of age merely under the scrutiny of a veterinarian could be in breach of state and territory animal welfare legislation.

If PROOF standards are to be truly reflective of their stated core values of providing high animal welfare, they should go much further than what is prescribed in model codes and should especially ensure all animal welfare legislation is complied with by those accredited under PROOF. Consumers purchasing products certified by PROOF would reasonably expect that the products came from animals which were afforded higher animal welfare, above the minimum standards set out in codes of practice. Anything less than this would be misleading to consumers.

### *Castration of sheep*

In order to ensure that animals are not subjected to painful procedures, especially where completely unnecessarily, Animals Australia recommends that rule 6.2 within the Sheep Standard be amended to only require castration of lambs (with pain relief) if the lamb is to be kept into adulthood. We see no use of subjecting a lamb to this

invasive procedure if it is to be slaughtered at a young age prior to being able to reproduce.

Further, we strongly believe that, similar to other animals under the rules, sheep should be provided with pain relief when castration is performed, where there is an appropriate registered product available. We note that Meloxicam will be registered by late 2015 for this purpose,<sup>6</sup> and that another pain relief device (for tail docking and castration) 'Numnuts' will likely be registered and available in 2016.<sup>7</sup>

In addition, we strongly believe that tail docking and dehorning of sheep should only be carried out with pain relief. To allow these otherwise painful procedures to be carried out without pain relief would likely be in contradiction of PROOF's main focus of ethical treatment of animals and core value that surgical treatments that inflict unnecessary pain are not permitted, and could result in consumers being misled.

Further, we strongly believe that, similar to castration of lambs, tail docking should only be carried out if the lamb is going to live on to adulthood and/or would therefore be present through high risk seasons for blowfly strike.

### *Ensuring high animal welfare throughout the entire life of the animal*

Animals Australia believes that consumers purchasing PROOF accredited products would reasonably believe that the animals were afforded the high level of animal welfare at all stages of their lives. However, we note that this may not be the case under the current standards for two reasons.

First, we note that the slaughtering process (including transport to slaughter) is not appropriately covered by PROOF standards, and that only the minimum standards which apply to all animals in Australia is required. We believe that implementing appropriate standards for slaughter of PROOF accredited animals is necessary to

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<sup>6</sup> Beef Central, 'Oral pain relief product for livestock set for release', 23 April 2015. Available at: <http://www.beefcentral.com/production/stock-handling-and-animal-welfare/oral-pain-relief-product-for-livestock-set-for-release/>

<sup>7</sup> Stock and Land, 'Numnuts good for sheep and producers' 1 June 2015. Available at: <http://www.stockandland.com.au/news/agriculture/sheep/general-news/numnuts-good-for-sheep-and-producers/2733293.aspx>

ensure that the representation that PROOF's main focus of ensuring high animal welfare is accurately reflected in the slaughter process.

Short of implementing a full slaughter standard under the rules, we strongly believe that as a minimum, PROOF should adopt some key requirements to ensure that PROOF certified animals are afforded a higher level of animal welfare than that required for all animals being slaughtered for consumption in Australia. We submit that these matters should include, for example, the following:

- Maximum times that animals can be withheld from food and water prior to slaughter.
- Maximum time that it takes to transport animals between farm to slaughter and/or a maximum holding time at the abattoir.
- Improved slaughter practices to ensure high animal welfare is maintained, for example, for poultry slaughter, slaughter be carried out with gas stunning/killing instead of traditional electrical stunning.

Overall, we support the PROOF accreditation scheme and believe that the core values and focus of it is laudable and in most circumstances reflects what consumers would reasonably believe 'free range' and 'ethical' products to be. However, we strongly recommend that the above inconsistencies and deficiencies should be addressed by PROOF prior to ACCC approval.

Please contact me if you require further information or explanation.

Yours sincerely,



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