



18 June 2021

Final assessment Statement of Reasons - Certification Trade Mark application 1914662 lodged by Humane Farm Animal Care

Summary of final assessment

1. In accordance with the *Trade Marks Act 1995 (TMA)* and the *Trade Marks Regulations 1995 (TM Regulations)*, the ACCC has made a final assessment of certification trade mark application 1914662 (**CTM Application**) lodged by Humane Farm Animal Care (**HFAC**). This application relates to the treatment of farm animals for food production – namely, that they have been treated ‘humanely’ from farm to slaughter.
2. The ACCC’s final assessment is that it is **not** satisfied of the matters specified in section 175(2) of the TMA and, accordingly, will not give a certificate to that effect.
3. CTMs can provide consumers with certainty about the particular characteristics of, or standard met by, a product or service. The ACCC’s role is to assess whether CTM rules meet the requirements set out in the TMA and TM Regulations, including in relation to competition and consumer protection principles set out in the *Competition and Consumer Act 2010 (Cth) (CCA)*.
4. In this instance, the ACCC considers that many Australian consumers have particular regard to positive animal welfare claims when making purchasing decisions, so credence claims such as this one have significant impacts in the market. What constitutes the ‘humane’ treatment of animals is not easily defined, evidenced by animal welfare legislation in Australia which has been undergoing review and updating for many years. However, the ACCC considers that consumers are likely to interpret a ‘humane’ mark on goods of the kind for which the CTM has been applied for, to mean that these goods have been produced in accordance with animal welfare practices that are generally higher than the minimum animal welfare requirements which apply to production processes for all such goods.
5. On 28 February 2020, the ACCC issued an initial assessment proposing to refuse to give a certificate under section 175 of the TMA in relation to the CTM Application.
6. The animal care standards that underpin HFAC’s certification scheme were created by a committee within HFAC comprised of animal scientists and veterinarians from USA, Canada, Europe and South America.
7. In its initial assessment, the ACCC noted the high degree of uncertainty about how the proposed certification scheme would practically operate in an Australian context. Interested parties also raised concerns that some of the animal standards in the Proposed CTM Rules would not match an Australian consumers’ expectations of what ‘humane’ animal treatment would comprise. There were also instances where compliance with the proposed standards would not meet minimum legislated standards in Australia – for example, permitting stocking densities which exceeded

the maximum allowed for the production of free range eggs within the National Information Standard under Australian Consumer Law.

8. In response to the ACCC's initial assessment and ongoing concerns raised by interested parties, HFAC proposed certain revisions across its various animal care standards to bring them more in line with Australian practices and consumer expectations, and introduced new processes to apply to the operation of the certification scheme in Australia. For instance, it developed four new Australian checklists (out of ten of its animal standards comprising the CTM Rules) for approved certifiers to use when conducting farm audits to assess compliance. HFAC considers all of these amendments and new processes (the **New CTM Rules**) now make its certification scheme operational for Australia.
9. HFAC has also appointed an Australian member to its committee and advises that it will increase Australian representation on the committee 'once it fully establishes its operations in Australia.'¹
10. The ACCC acknowledges the efforts made by HFAC to improve the proposed operation of its certification scheme in Australia, and to better align its standards in the New CTM Rules with Australian production practices and animal welfare requirements, and therefore, Australian consumers' expectations of humane animal treatment. While HFAC made many improvements, the ACCC considers there are still deficiencies in the New CTM Rules which risk misleading consumers for two separate, but interrelated reasons. Namely:
 - some of the standards under the New CTM Rules are unlikely to meet consumers' expectations of humane animal treatment, and
 - the underlying processes in the New CTM Rules for the certification scheme's operation in Australia create a risk that the standards could be inconsistently applied, and it would not be clear what standards actually apply in an Australian context.
11. The ACCC holds similar concerns to interested parties that the certification scheme may mislead consumers by communicating that a product bearing the mark has been produced in a manner that ensures the humane treatment of animals, when that may not be the case - for example, the New CTM Rules permit: hot and freeze branding of cattle; 'banding' castration of calves (less than seven days old) without pain relief; meat chickens to potentially be exposed to up to 72 hours of continuous light prior to slaughter.
12. Generally, CTM rules must be clear about what requirements users must meet in order to be certified. The ACCC remains concerned about the lack of clarity in the New CTM Rules for the certification scheme's practical implementation in Australia, which make it uncertain what standards would actually apply in an Australian context and therefore risk misleading consumers. For example, the latest version of the CTM rules still contains references to US-based regulations. There are also high level statements that require that, to the extent any HFAC standard or requirement is inconsistent with an Australian mandatory standard or legislative requirement, the Australian requirement should be followed. This introduces a high level of uncertainty about what certification scheme standards apply in Australia, with the New CTM Rules effectively requiring producers and approved certifiers to make their own comparison between HFAC's standards and the relevant Australian standards (if they know they exist), with the higher standard to apply. On top of this, approved certifiers have a discretion to allow producers to comply with the 'spirit' of the various standards.

¹ HFAC letter to the ACCC, response to issues raised in second public consultation, 23 September 2020, p 2.

13. Having considered the CTM application and all revised associated documents, the ACCC is **not** satisfied based on the information before it that in Australia:
- the New CTM Rules are satisfactory having regard to the principles relating to unfair practices set out in the Australian Consumer Law, in circumstances where:
 - a reasonable Australian consumer's understanding of the humane animal care representations conveyed by the Proposed CTM is inconsistent with the HFAC standards comprising the New CTM Rules and
 - the New CTM Rules are insufficiently comprehensive or certain to ensure that the Proposed CTM would not be applied to products in a way that would mislead consumers.
14. Therefore, the ACCC is **not** satisfied of the matters specified in section 175(2) of the TMA and will not give a certificate to that effect in relation to the CTM application.

HFAC's CTM Application

15. HFAC lodged the CTM Application on 21 March 2018. IP Australia forwarded the CTM Application to the ACCC on 27 February 2019.
16. The mark (the **Proposed CTM**) consists of an image bearing the words 'CERTIFIED HUMANE', and is illustrated below. Application of the Proposed CTM to goods is intended to certify that the meat, poultry, egg or dairy products have complied with HFAC's animal care standards for raising, handling and processing a wide variety of livestock and poultry.



17. The animal care standards underpinning the CTM rules cover the following animals – beef cattle, chickens, egg laying hens, dairy cows, goats, pigs, sheep (including dairy sheep), turkeys, young dairy beef and bison.
18. The Proposed CTM is currently used in other countries, including USA, Brazil, Canada, Chile, Hong Kong and Peru. The ACCC understands that there is at least one Australian beef processor currently licensed under HFAC's scheme. HFAC advises that it does not currently have sufficient producers in Australia to maintain a large team of auditors. However, as demand for HFAC's certification scheme increases, it intends to recruit more staff within Australia.²
19. On 21 June 2019, in response to preliminary issues raised by the ACCC about the CTM Application, HFAC advised of two proposed amendments to the CTM rules. The first is to include the following paragraph:

The CTM rules which are available to Australian farmers and/or suppliers are compliant with Australian Animal Welfare Standards and Guidelines and will be automatically modified in accordance with these standards.

² HFAC letter to the ACCC, response to issues raised in second public consultation, 23 September 2020, p 3.

20. The second is in relation to the process to vary the CTM rules, to include a statement to note the requirement for the ACCC's approval of any changes to the CTM rules in the future.

Background

Animal welfare in Australia

Model Codes of Practice

21. In Australia, the welfare of farm animals has been governed by national [Model Codes of Practice](#), which state and territory governments have adopted in animal welfare legislation. The animal welfare Model Codes of Practice set standards for different categories of farm animals (including cattle, poultry, pigs, goats³ and buffalo), land transport, processing and saleyard codes.⁴ The states and territories are responsible for administering and enforcing the Model Codes of Practice, and they vary in whether they have made them mandatory or voluntary. Mandatory codes are legally enforceable, whereas voluntary codes are recommended practice. In most states, compliance with the code is a defence to prosecution for cruelty or breach of duty of care under the primary legislation.⁵ As such, these codes set the minimum standard for the treatment of animals in Australia. A table detailing which codes are either mandatory or voluntary in which States and Territories is at [Annexure A](#).

Australian Animal Welfare Standards and Guidelines

22. In 2005, the Australian, state and territory governments agreed to convert the Model Codes of Practice into [Australian Animal Welfare Standards and Guidelines](#) ('**Australian Standards and Guidelines**'), which when converted, are intended to be implemented by legislation in each state and territory. The aim of the Australian Standards and Guidelines is to harmonise and streamline livestock welfare legislation in Australia, ensuring that it results in improved welfare outcomes.⁶
23. The Australian Standards and Guidelines are still in development, and to this date, have been finalised for cattle, land transport, saleyards and depots, sheep, and exhibited animals.⁷ These standards and guidelines are in force and have replaced the relevant Model Codes of Practice. Details on which states have adopted the finalised standards and guidelines, and whether they are mandatory or voluntary, is at [Annexure A](#).
24. Until Australian Standards and Guidelines are finalised for horses, poultry, goats and pigs, the Model Codes of Practice will continue to apply.⁸
25. Further, there is a [National Information Standard on free range eggs](#), which prohibits eggs from being labelled as free range unless their production complies with certain requirements (including the hens having meaningful and regular access to an

³ Animal Health Australia and the Goat Industry Council of Australia developed 'Australian Industry Standards and Guidelines for Goats' in 2015. These are currently voluntary standards and guidelines, which means they did not go out for public consultation and are not regulated by government. The guidelines are the recommended practices to achieve desirable livestock welfare outcomes. The proposed standards are intended to eventually replace the 'Model Code of Practice for the Welfare of Animals: Goats', and are intended to be used as the basis for developing consistent goat welfare management practices across Australia: this is sourced from the Australian Animal Welfare Standards and Guidelines website, <http://www.animalwelfarestandards.net.au/goat/> (viewed 21.4.21).

⁴ Productivity Commission, 2016, *Regulation of Australian Agriculture*, p 207.

⁵ Productivity Commission, 2016, *Regulation of Australian Agriculture*, p 208. See for example, *Animal Care and Protection Act 2001* (QLD), s. 40; *Prevention of Cruelty to Animals Act 1986* (Vic), s 11(2); *Prevention of Cruelty to Animals Act 1979* s 34A.

⁶ *Australian Animal Welfare Standards and Guidelines* website: <http://www.animalwelfarestandards.net.au/> viewed 26 February 2021.

⁷ *Australian Animal Welfare Standards and Guidelines*, 2019, < <http://www.animalwelfarestandards.net.au/>>.

⁸ Department of Primary Industries, National Model Codes of Practice for the Welfare of Livestock, <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/general/national>.

outdoor range during daylight hours, and being subject to a stocking density of 10 000 hens per hectare or less).

26. Producers and other related enterprises are also required to comply with various other Commonwealth, state and territory legislation, such as biosecurity, food, and environmental legislation and regulations. For example, in Victoria, livestock producers are required to comply with various Victorian legislation, including the *Livestock Management Act 2010*, *Impounding of Livestock Act 2018* (and associated regulations), *Livestock Disease Control Act 1994*, and the *Prevention of Cruelty to Animals Act 1986* (and associated Regulations).
27. There are a number of other animal welfare certification schemes operating in Australia which livestock producers can choose to obtain certification under such as the RSPCA Approved Farming Scheme, the Australian Pork Industry Quality Assurance Program, Pasture Raised on Open Fields, and Humane Choice.

Public consultation process

28. All submissions received during the ACCC's consideration of this matter, including the various revisions to the CTM Rules, as well as key correspondence, are available on the ACCC's [CTM Public Register](#) for this matter.

Prior to the Initial Assessment

29. The ACCC received 19 public submissions from interested parties including: Australian Chicken Meat Federation, WoolProducers Australia, Western Australian Pork Producers Association, Vegan Australia, The Pastoralists and Graziers Association of WA, Tasmanian Farmers and Graziers Association, Stan Allen, RSPCA Australia, PETA Australia, NSW Farmers, Gary Page, Egg Farmers of Australia, Humane Society International and Humane Choice, Commercial Egg Producers Association WA, Cattle Council of Australia, Sentient, Sheep Producers Australia, and Australian Pork Ltd (**First Consultation Process**). Nearly all interested parties expressed opposition to the Proposed CTM and all of the submissions raised concerns with the CTM rules. The ACCC also received one confidential submission that raised similar concerns. Broadly, the submissions raised concerns that:
 - the Proposed CTM may mislead consumers about the nature or quality of the products bearing the mark
 - it was unclear how the certification process could practically operate in Australia, as there were references to US-based processes, legislation, regulators, standards, guidelines and organisations
 - it was also unclear how the CTM rules could be automatically modified in accordance with Australian animal welfare legislation and guidelines.
30. The ACCC requested HFAC respond to the submissions made by interested parties within four weeks. HFAC sought, and was granted, a further one month extension until 17 November 2019 to provide a response. However the ACCC did not receive a submission from HFAC in response to interested party concerns prior to its initial assessment of the CTM Application.

Public consultation in response to ACCC initial assessment

31. On 28 February 2020 the ACCC released an initial assessment proposing not give a certificate under section 175(2) of the TMA regarding the CTM Application. The initial assessment was published by IP Australia in the Official Journal of Trade Marks and also published on the [ACCC's CTM Public Register](#). The ACCC invited submissions in response to its initial assessment by 10 April 2020 (**Second Consultation**

Process). HFAC and interested parties also had one month to request a conference in relation to the ACCC's initial assessment (following its publication in the Official Journal of Trademarks). There were no submissions received from interested parties within that period, and no conference requested.

32. However, on 5 May 2020 HFAC responded to submissions received in the First Consultation Process and the issues raised in the ACCC's initial assessment. It provided a revised suite of documents comprising new CTM rules (**Version 2 of the CTM Rules**). It submitted that Version 2 of the CTM Rules now covered the specific operation of the CTM scheme in Australia, bringing them in line with Australian standards, guidelines and model codes of practice regarding animal welfare.
33. In particular, HFAC proposed amendments to certain documents comprising its CTM rules, including (and this list is not exhaustive):
- Adding a statement to the HFAC *Policy Manual (Annexure 1)* that all practices for poultry or livestock would comply with the *Model Code of Practice for the Welfare of Animals Domestic Poultry 4th Edition SCARM Report 83*; the *Model Code of Practice for the Welfare of Animals Pigs Third Edition Report*; the *Model Code of Practice for the Welfare of Animals Livestock at Slaughtering Establishments*; and *Australian Animal Welfare Standards and Guidelines*. The amended Policy Manual also states that where discrepancies between HFAC's standards and the Australian documents (listed here) exist, the Australian standards, guidelines or codes of practice will apply, unless they provide less protection to livestock and poultry than HFAC's standards.⁹
 - HFAC created inspection checklists for approved certifiers to use in Australia for 4 (out of 10) of its animal care standards – namely, sheep, meat chickens, beef cattle and laying hens.
 - HFAC proposed amendments to some of its animal care standards to tailor them to Australia's unique environmental conditions and practices, for example:
 - *Cattle (Annexure 2)* – adding specific shade requirements for cattle in open pastures and prohibiting feedlots. Bulls should be castrated as early as possible, and that immune-castration is the preferred method. Surgical castration must only be performed if no other alternatives are available, and by a veterinarian (with appropriate pain relief).
 - *Chickens (Annexure 3)* – stunning of birds shall precede neck cutting,¹⁰ and no more than 10 seconds should elapse between these procedures. Also amended to reference the Australian Standards and Guidelines and Model Codes of Practice for Poultry regarding nutrition requirements for poultry.
 - *Egg laying hens (Annexure 4)* – increasing stocking densities and time for outdoor access for 'free range' systems. Namely, the minimum amount of uncovered outdoor area required is '11.33 sq. ft. per hen'¹¹ (previously 2 sq. ft. per hen), and outdoor access must be provided for a minimum of 8.5 hours per day (previously 6 hours per day). Also

⁹ HFAC response to initial assessment, *Summary of response to ACCC Initial Assessment and Amendments to the Rules*, 16 June 2020, pp 2-3.

¹⁰ The ACCC notes the Halal Exception, specifying that electrical stunning must occur 5 seconds after neck cutting, still applies in Version 2 of the CTM Rules (P21, page 32).

¹¹ The ACCC notes that the definition of 'free range' on page 15 of Version 2 of the CTM Rules still refers to the previous minimum outdoor space requirement of '2 square feet per bird.'

amended to reference Australian Standards and Guidelines and Model Codes of Practice regarding nutritional practices for poultry.¹²

- *Goats (Annexure 6)* – amended to note that in Australia, all goats must be protected from heat stress; managers must comply with all Australian regulations, and have a copy of HFAC’s Goats standards and a copy of the Australian Model Codes of Practice for Goats; and euthanasia must be performed in accordance with the Australian Animal Welfare Standards for Goats and the Australian National Model Codes of Practice for the Welfare of Livestock.
 - *Pigs (Annexure 7)* – amended to add that during all seasons pigs must have access to the outdoors and ‘ample amounts of shade’, and that all farms must have provision for humane slaughter or euthanasia of pigs in accordance with the Australian Model Codes of Practice for Pigs. It was also amended to now prohibit ‘tail docking’ outright (it was previously allowed in exceptional circumstances). Castration of piglets less than 7 days old is still permitted but the standards now require anaesthetic and post-operative pain relief to be used. Regarding farrowing pens, HFAC’s Pigs standards now *require* them to be 3 metres by 3 metres to enable a sow to move around (these were previously preferred dimensions only).
 - *Sheep (Annexure 8)* – adding a new section which refers potential CTM users to the Australian Animal Welfare Standards and Guidelines for Sheep for preventive techniques, standards and guidelines about flystrike.
 - *Turkeys (Annexure 9)*¹³ – amended to now specify a space requirement of 11.33 sq. ft. per bird for free range systems (previously no density was specified), and turkeys must have access to range for a minimum of 8.5 hours per day (previously 8 hours).
 - *Young dairy beef (Annexure 10)* – amended to include a reference to the Australian Standards and Guidelines for Cattle regarding nutritional requirements.
 - *Bison (Annexure 11)* – amended to include a reference to the *Model Code of Practice for the Welfare of Animals: Farmed Buffalo* regarding nutritional requirements.
- Changing other practical aspects for use of the Proposed CTM in Australia, including inserting some metric measurements for temperature, distance and weight, and removing some references to US-based organisations.
34. HFAC also advised the appointment of an Australian¹⁴ to its scientific committee, who would be responsible for training potential inspectors for HFAC, as well as a local contact for certification applications, on-site inspections and any dispute matters.
35. HFAC also provided further information on various practical aspects of how the Proposed CTM would operate in Australia, including:
- How future changes to the Australian Standards and Guidelines and Model Codes of Practice will be incorporated into HFAC’s CTM rules and

¹² The ACCC notes that HFAC’s Egg Laying Hen standards (Version 2) do not reference the National Information Standard on Free Range Eggs in relation to free range systems.

¹³ The ACCC notes that no specific reference to Australian Standards and Guidelines or Model Codes of Practice has been inserted into HFAC’s Turkey standards (Version 2).

¹⁴ Dr Ellen Jongman of the Animal Welfare Science Centre, Faculty of Veterinary and Agricultural Science, University of Melbourne.

communicated to participants of the scheme – namely, the Australian member on HFAC’s scientific committee will monitor the Australian Standards and Guidelines and Model Codes of Practice for changes and will notify HFAC. HFAC will then update its CTM rules and notify all certified parties, and arrange on-site inspections to confirm compliance with the changes.

- How potential approved certifiers are engaged by HFAC.

Public consultation on Version 2 of the CTM Rules

36. Following receipt of Version 2 of the CTM Rules from HFAC, the ACCC conducted a further public consultation process (**Third Consultation Process**), inviting interested parties to make submissions on Version 2 of the CTM Rules by 24 July 2020. The ACCC received 10 public submissions from the following interested parties: WoolProducers Australia, RSPCA, Egg Farmers of Australia, Humane Society International, Commercial Egg Producers Association WA, Cattle Council of Australia, Sentient, Sheep Producers Australia, Australian Pork Ltd, and the National Farmers Federation. These submissions are available on the [ACCC’s CTM Public Register](#). The ACCC also received one confidential submission which raised similar concerns as those contained in the public submissions.
37. Many interested parties acknowledged that Version 2 of the CTM Rules had partially addressed concerns raised in the First Consultation Process. However, in all of the submissions received by the ACCC, interested parties raised ongoing concerns. Broadly, interested parties remained concerned about how HFAC’s certification scheme can be effectively implemented in Australia and adapted to local production practices and requirements, and that Australian consumers could still be misled about the CTM’s ‘humane’ claim.
38. Some of the ongoing concerns raised by interested parties are:
 - It remains unclear how the certification processes can practically operate in Australia. Examples provided by interested parties include:
 - references with the various animal standards are still made to US regulators, organisations or resources, (for example, the Pennsylvania State University Guidance Document in the HFAC Sheep Standards and the American Meat Institute guidelines for processing livestock), rather than Australian regulators, organisations or resources
 - Version 2 of the CTM Rules state that HFAC’s standards are based on the UK RSPCA guidelines and
 - references to various environmental aspects (for example, protecting shorn sheep) are not required for Australian production systems.
 - Regarding sheep and lamb production, several aspects of HFAC’s certification scheme are based on more intensive operations which are more common in the northern hemisphere and cannot simply be transferred or applied to Australian production systems.
 - While HFAC has inserted references to the Australian Standards and Guidelines, and various Model Codes of Practice in certain sections of its various animal standards, the content of Version 2 of the CTM Rules has not been thoroughly reviewed and amended to directly incorporate Australian law or terminology.
 - There are frequent changes to legislation, Model Codes of Practice, and Australian Standards and Guidelines, and as such, the rules would need constant revision to ensure compliance with Australian requirements. It remains

unclear how Version 2 of the CTM Rules could be automatically modified in accordance with these various Australian requirements.

- Animal welfare claims made by HFAC under its standards must be demonstrably above the minimum welfare standards in Australia, otherwise consumers may be misled. Specific (but non-exhaustive) examples of where HFAC's standards do not meet or exceed minimum animal welfare standards in Australia include:
 - HFAC's Sheep standards permit tail docking (in unavoidable circumstances), and do not specify the use of any pain relief when castration or tail docking is undertaken.
 - Under the Halal slaughter exception, Version 2 of HFAC's Chickens standards still permits poultry to be stunned 5 seconds after a neck cut, effectively allowing the slaughter of a fully conscious bird. RSPCA Australia submits this practice is inconsistent with standard practices in Australia. Generally, in Australia, Halal slaughter is undertaken in the majority of chicken abattoirs. Unlike in other countries, prior stunning of the bird has become accepted by Australian Halal certifiers. Any product with a 'humane' label must ensure that production and slaughter methods are indeed humane, and therefore no exception on religious grounds should be permitted.¹⁵
39. On 26 August 2020 the ACCC invited HFAC to provide a response to the ongoing concerns raised by interested parties. HFAC provided a response on 23 September 2020, including proposing further changes to some of the documents comprising the CTM Rules (**Version 3 of the CTM Rules**).
40. An overview of some of HFAC's changes within Version 3 of the CTM Rules is provided below:
- the introduction of each of HFAC's animal standards has been amended to note that RSPCA guidelines (UK) were used as a starting point for the standards 17 years ago, and they have undergone many adaptations since then. Each animal standard also notes that they are 'living documents' that will undergo periodic updating by HFAC.
 - the Sheep standards have been amended so that pain relief is 'required', rather than 'recommended' for painful medical process. HFAC has also deleted all references to tail docking.
 - Version 3 of the Chickens standards now includes a sentence that 'stunning shall precede neck cutting', and the Halal Slaughter Exception was deleted. However, in a separate covering letter to the ACCC, HFAC provided further contradictory information that the Halal Slaughter Exception might still operate in various jurisdictions (discussed in further detail at paragraph 0 below).

¹⁵ Submission from RSPCA Australia, 16 July 2020, p. 1.

41. Further, HFAC provided the following response to ongoing concerns regarding the practical implementation of its certification scheme in Australia, including that:¹⁶
- HFAC submits that a stun after a neck cut is allowed in certain jurisdictions where the local Muslim authority will not permit it the other way around. It also submitted that it would be prepared to amend the relevant standards so that the Halal Slaughter Exception will only be permitted 'if local legislation permits.'
 - Where references to various environmental aspects within its standards are not required for Australian production systems, HFAC advises that an Australian farmer would not be required to comply. HFAC submits that the audit checklist for use in Australia, which is 'the only tool the inspectors use', will be adjusted to reflect this.
 - Regarding the concern about the requirements for lamb and sheep production being based on more intensive operations, HFAC submits that if the well-being of animals is clearly addressed to comply with the 'spirit' of the standard, a derogation will be allowed. HFAC submits that its experienced animal scientists can make these determinations.
 - HFAC submits that 'every attempt' will be made to refer to the latest guidelines and legislation in Australia in HFAC's 'Australian rules'. All HFAC trained auditors in Australia will have up to date knowledge of the legislation and guidelines in Australia.
42. The ACCC published Version 3 of the CTM Rules on its CTM Public Register, noting that it would proceed to make a final assessment of the CTM Application. The ACCC's decision has been informed by its consideration of numerous changes made by HFAC under Version 2 and Version 3 of the CTM rules (comprising the New CTM Rules), and the many submissions received from HFAC and interested parties over two extensive consultation processes. Submissions from interested parties and HFAC are discussed where relevant in the 'ACCC Final Assessment' section below.

The CTM rules

43. The rules governing the use of the Proposed CTM comprise the *Rules for the Certification Trade Mark of Certified Humane*¹⁷ and the following Annexures, which can be accessed by clicking the links below. The ACCC has compiled this list from the original CTM application, and versions 2 and 3 of the relevant Annexures, as HFAC made iterative changes to various documents comprising the CTM rules throughout the ACCC's assessment process.
- Version 2 – Policy Manual CTM Rules ([Annexure 1](#))
 - Version 3 – Beef Cattle standards ([Annexure 2](#))
 - Version 3 – Chickens standards ([Annexure 3](#))
 - Version 3 – Egg Laying Hens standards ([Annexure 4](#))
 - Version 3 – Dairy Cows standards ([Annexure 5](#))
 - Version 3 – Dairy, Fiber and Meat Goats standards ([Annexure 6](#))

¹⁶ HFAC, letter to ACCC *response to issues raised in second public consultation*, 23.9.20, available: <https://www.accc.gov.au/system/files/public-registers/other/HFAC%20-Response%20to%20issues%20raised%20in%20second%20public%20consultation%20-%202023.09.20.pdf>

¹⁷ The CTM Application, 27 February 2019, see <https://www.accc.gov.au/system/files/public-registers/other/CTM%20Rules%20-%20excluding%20annexures%29%20-%20Received%2027.02.19.pdf>.

- Version 3 – Pigs standards ([Annexure 7](#))
- Version 3 – Sheep, including Dairy Sheep standards ([Annexure 8](#))
- Version 3 – Turkeys standards ([Annexure 9](#))
- Version 3 – Young Dairy Beef standards ([Annexure 10](#))
- Version 3 – Bison standards ([Annexure 11](#))
- Version 2 – Inspector Information Manual ([Annexure 12](#))
- Version 2 – Animal Handling Guidelines (June 2017) ([Annexure 13](#))
- Version 2 – Procedures for Humane Euthanasia (updated 2013) ([Annexure 14](#))
- Version 2 – American Veterinary Medical Association Guidelines on Euthanasia (June 2007) ([Annexure 15](#))
- Version 2 - [Inspection checklist – Meat chickens, 1 May 2020](#)
- Version 2 – [Inspection checklist – Beef cattle, 1 May 2020](#)
- Version 2 – [Inspection checklist – Laying hens, 1 May 2020](#)
- Version 3 – [Inspection checklist - Fiber, meat and dairy sheep, September 2020](#)

(collectively referred to as the **New CTM Rules**).

44. The New CTM Rules contain animal welfare standards that relate to the treatment of a variety of livestock and poultry from farm to slaughter.

ACCC role in assessing CTMs

45. Certification trade marks are intended to indicate that a product or service meets a particular standard or has particular characteristics.
46. Broadly, the ACCC's CTM role involves assessing and, where appropriate, approving rules for the use of CTMs and the attributes of the approved certifiers.
47. In particular, under section 175(2) of the TMA, the ACCC must be satisfied that the:
- (a) 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;
 - (b) rules would not be to the detriment of the public (the ACCC considers, in this context, detriment to the public means 'harm to the community in addition to the consumer protection concerns and competition concerns'¹⁸); and
 - (c) rules are satisfactory having regard to regulation 16.6 of the TM Regulations which requires the ACCC to have regard to the following criteria:
 - i. the principles relating to restrictive trade practices set out in Part IV of the CCA;
 - ii. the principles relating to unconscionable conduct set out in Part 2.2 of the Australian Consumer Law as contained in Schedule 2 to the CCA (**ACL**); and
 - iii. the principles relating to unfair practices, product safety and product information set out in the ACL.

¹⁸ See *Certification trade marks – the role of the ACCC* (2011) p. 8.

48. In considering unfair practices, the ACCC assesses a proposed CTM from a consumer protection perspective. In particular, the ACCC will consider whether the CTM raises misleading or deceptive concerns, including the following:
- 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 is not reliable, or
 - while the CTM rules are consistent with what the CTM purports to indicate to consumers, the mark itself is 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.¹⁹
49. In assessing CTM applications, the ACCC may require amendments to the rules.²⁰
50. More information about the ACCC’s role in the CTM approval process can be found in the ACCC’s publication [Certification trade marks: the role of the ACCC](#).

Operation of HFAC’s CTM Rules

51. The proposed operation of HFAC’s CTM scheme was originally detailed in the [ACCC’s Initial Assessment Statement of Reasons](#). Since then, HFAC has proposed a series of amendments to the operation of its CTM scheme in Australia and provided New CTM Rules (as outlined above). The following overview of the operation of the Proposed CTM includes the subsequent changes that HFAC proposes for its operation in Australia.

Certification requirements

52. The New CTM Rules would permit the use of the Proposed CTM where a person is able to demonstrate compliance with the relevant HFAC animal welfare standard for the relevant category of animal (or the ‘spirit’ of the relevant standard²¹). The full list of animal care standards, included as part of the New CTM Rules, is provided at paragraph 43.
53. While each animal care standard contains different requirements according to the type of animal, the standards broadly cover the following areas:
- **Nutrition**, including in many of HFAC’s standards, reference to food and water requirements established by Australian Guidelines and Standards and/or Model Codes of Practice. In particular:
 - HFAC’s Beef Cattle standards refer to the Australian Standards and Guidelines for Cattle in relation to nutrition (including for calves).²²
 - HFAC’s Chickens and Egg Laying Hens standards refer to the Australian Model Code of Practice for Domestic Poultry and ‘Australian Animal Welfare Standards’ in relation to food and nutrition.²³ The ACCC understand the ‘Australian Animal Welfare Standards and Guidelines for Poultry’ are yet to be finalised.
 - HFAC’s Pigs standards include a general reference that pigs must be fed in accordance with the latest edition of the ‘Australian Animal Welfare

¹⁹ See *Certification trade marks – the role of the ACCC* (2011) p. 8.

²⁰ *Trade Marks Act 1995* (Cth) s 173(3) & 175(3).

²¹ HFAC response to issues raised in the second public consultation, 23 September 2020, p. 2.

²² HFAC Beef Cattle standards, May 2020, FW9, FW13.

²³ HFAC Chickens standards, May 2020, FW 1; and HFAC Egg Laying Hens standards, May 2020, FW 1.

- Guidelines and Model Codes of Practice',²⁴ but does not specify the actual document that farmers would need to comply with.
- HFAC's Goats standards include a reference that goats must be fed in accordance with 'Australian Animal Welfare Standards and Guidelines' [not specified] and the Model Codes of Practice for Goats.²⁵
 - HFAC's Sheep standards refer to sheep being fed to meet or exceed nutritional requirements within the Australian Standards and Guidelines for Sheep.²⁶
 - HFAC's Young Dairy Beef standards require calves to be fed in accordance with Australian Standards and Guidelines [not specified].²⁷
 - HFAC's Bison standards requires bison to be fed, or allowed to forage for a wholesome diet according to certain guidebooks, including the Model Code of Practice for Farmed Buffalo (from the NSW Department of Primary Industry).²⁸
 - **Environment**, including requirements regarding buildings and shelter, thermal environment and ventilation, areas and space allowances, lighting, specific provisions for newborn animals, and fencing. Some of HFAC's standards refer to Australian Standards and Guidelines and/or Model Codes of Practice for environmental aspects of animal care, namely:
 - HFAC's Cattle standards refer to the Australian Standards and Guidelines for Cattle in relation to air quality (for indoor animals).²⁹
 - HFAC's Pigs standards refer to the 'Model Code of Practice for the Welfare of Animals Pigs Third Edition PISC Report 92' in relation to space requirements for pigs.³⁰
 - HFAC's Goats standards specify that when goats are housed air quality must meet air quality standards as specified in the Australian Standards and Guidelines [not specified] and the Model Codes of Practice for Goats.³¹
 - **Farm management and handling**, including standards regarding handling and treatment of animals, record keeping, identification, inspection and equipment. HFAC's Bison standards refer to *USDA Food Safety Inspection Services* provisions and *American Meat Institute Guidelines* for handling and slaughtering animals on-farm. HFAC's Beef Cattle standards refer to the *American Meat Institute's Guidelines* only for acceptable methods of moving non-ambulatory cattle.³² A small number of HFAC's standards reference Australian standards or requirements regarding farm management and handling issues – namely:

²⁴ HFAC Pigs standards, May 2020, FW 1.

²⁵ HFAC Dairy, Fiber and Meat Goats standards, May 2020, FW 1.

²⁶ HFAC Sheep (including dairy) standards, May 2020, FW 1.

²⁷ HFAC Young Dairy Beef standards, May 2020, FW 1.

²⁸ HFAC Bison standards, May 2020, FW 1.

²⁹ HFAC Beef Cattle standards, May 2020, E12.

³⁰ HFAC Pigs standards, May 2020, E 18.

³¹ HFAC Dairy, Fiber and Meat Goats standards, May 2020, E 8.

³² HFAC Beef Cattle standards, May 2020, M 16.

- HFAC's Dairy Cow standards include links to *Australian Standards and Model Codes of Practice* for acceptable methods of moving non-ambulatory animals.³³
- HFAC's Goats standards require managers to also keep a copy of the Model Code of Practice for Goats.³⁴
- **Health care**, including health care practices and management, and processes for dealing with animals, including the *American Veterinary Medical Association Guidelines on Euthanasia*.³⁵ Some of HFAC's standards reference Australian standards or requirements regarding health care issues – namely:
 - HFAC's Beef Cattle standards refer farmers to the *Model Code of Practice for the Welfare of Animals Livestock at Slaughtering Establishments SCARM Report 79* regarding euthanasia.³⁶
 - HFAC's Dairy Cow standards refer to the *Australian Model Code of Practice for Euthanasia*.³⁷
 - HFAC's Goats standards state that euthanasia must be performed in accordance with *Australian Animal Welfare Standards for Goats and Australian National Model Codes of Practice for the Welfare of Livestock*.³⁸
 - HFAC's Pigs standards state that euthanasia must be conducted in accordance with the *Australian Model Code of Practice for Pigs* and the *Model Code of Practice for the Welfare of Animals Livestock at Slaughtering Establishments SCARM Report 79*.³⁹
 - HFAC's Sheep standards require euthanasia to be performed in accordance with the *Australian Animal Welfare Standards and Guidelines for Sheep*.⁴⁰
- **Transportation**, including requirements for loading, transport, handling, and records of transport. None of HFAC's standards under the New CTM Rules make reference to any specific Australian standard or requirement regarding land transport of livestock.
- **Slaughter and processing**, with producers being required to use slaughter plants that meet the *American Meat Institute Guidelines* in a number of HFAC's standards.⁴¹ A small number of HFAC's standards appear to attempt to reference Australian standards or requirements about slaughter and processing, namely:
 - HFAC's Dairy Cows standards includes a link to the NSW Department of Primary Industries website page which provides a full list of Australian Model Codes of Practice for a wide variety of livestock and poultry.⁴²
 - HFAC's Goats standards contain a general statement about slaughter systems that 'relevant standards govern including the Model codes of practice or standards and guidelines for livestock species, saleyards,

³³ HFAC Dairy Cow standards, May 2020, M 17.

³⁴ HFAC Dairy, Fiber and Meat Goats, May 2020, M 1.

³⁵ See HFAC's Young Dairy beef standards, May 2020, H 11; and HFAC's Bison standards, May 2020, H 11.

³⁶ HFAC Beef Cattle standards, May 2020, H 15.

³⁷ HFAC Dairy Cow standards, May 2020, H 15.

³⁸ HFAC Dairy, Fiber and Meat Goats standards, May 2020, H16.

³⁹ HFAC Pigs standards, May 2020, H6.

⁴⁰ HFAC's Sheep (including dairy) standards, May 2020, H16.

⁴¹ See for example, HFAC's Beef Cattle standards, May 2020, S 1; HFAC's Pigs standards, May 2020, S 3; HFAC's Sheep standards, May 2020, S 3; HFAC's Young Dairy Beef standards, May 2020, S 1; and HFAC's Bison standards, May 2020, S 3.

⁴² HFAC's Dairy Cows standards, May 2020, S 1; see link provided by HFAC: MCP Guidelines at <https://www.dpi.nsw.gov.au/animals-and-livestock/animalwelfare/general/nationa>

livestock processing (slaughter) establishments and the Australian Standards for the Export of Livestock'.⁴³

54. Under the New CTM Rules, use of the Proposed CTM would also require payment of an inspection fee, which will cover the cost of one full inspection per year. The New CTM Rules provide that producers in close geographic proximity may split the cost of inspection fees if inspections are scheduled so that the inspector can visit the operations during one trip.

Process for determining whether certification requirements are met

55. The requirements that must be met in order to be licensed to use the Proposed CTM are contained in the *Humane Farm Animal Care Program/Policy Manual Australia* (Version 2), which also forms part of the New CTM Rules.
56. The Proposed CTM would be available for use by either single operators, pooled product organisations, producer groups or beef marketing groups that raise, handle and/or process one of the specified livestock.
57. The process for certification proposed by HFAC includes an initial review of the paper application by HFAC, an inspection by a HFAC contracted inspector, after which HFAC will decide whether to grant a licence to use the Proposed CTM.

Initial Review

58. To obtain certification to permit use of the Proposed CTM, a person must lodge an application form and fee, which HFAC will review to determine if:
- HFAC has the capabilities to perform the certification service for the scope of certification sought, the location of the applicant's operation and any special requirements.
 - The information submitted indicates the operations in question appear to conform or are able to conform to the relevant standards.
59. If the person seeking to use the Proposed CTM fails the initial review, they may correct non-conformances and resubmit the application within 5 months from the date the initial review is notified.

Inspection

60. The New CTM Rules provide that if a person seeking to use the Proposed CTM has satisfied the requirements of an initial review, HFAC will prepare an inspection plan, and appoint an inspector to prepare a report detailing whether the operation complies with relevant HFAC standards and policies.
61. The inspector uses a checklist, provided by HFAC, to document conformance with standards, and any non-conformances are designated as either 'minor' or 'major'.
62. Following the ACCC's Initial Assessment, HFAC advised that it also developed inspection checklists for use in Australia, which will be the 'only tool inspectors use' to conduct on-farm audits.⁴⁴
63. The ACCC notes that HFAC has provided Australian checklists for the following categories of animals: meat chickens, beef cattle, laying hens, and fiber, meat and dairy sheep. HFAC did not provide Australian checklists for dairy cows, goats, pigs, young dairy beef, turkeys or bison.

⁴³ HFAC's Dairy, Fiber and Meat Goats standards, May 2020, Part 7, p. 25.

⁴⁴ HFAC response to issues raised in the second public consultation, 23 September 2020, p. 2.

64. The inspection process comprises:
- Interviews by the HFAC appointed inspector with farm managers and employees to verify their knowledge of HFAC requirements, and their roles and responsibilities.
 - Inspection of documents and farm records, including information provided by veterinarians, feed suppliers, and other parties who provide goods and services to the farm. The inspector also investigates the records used to document the types of products used in the management of the operation as well as the records used to trace animals.
 - Verification of conformance with HFAC standards and policies through observation of procedures for managing and caring for stock.
65. For inspection processes in Australia, HFAC advises that:
- Farmers would not have to comply with any environmental requirements under its standards, like ‘any other local variances’, if they are not relevant for Australian production practices. The Australian inspection checklists will be ‘adjusted to reflect this’.⁴⁵
 - If lamb or sheep production systems do not meet the specific written requirements of the standard, ‘but the well-being of the animals is clearly addressed to meet the ‘spirit’ of the standard, a derogation is allowed.’⁴⁶
66. Further, HFAC advises that ‘every attempt will be made to refer to the latest guidelines and legislation [...] in HFAC’s Australian rules. All HFAC trained auditors will have an up to date knowledge of the legislation and guidelines.[...] The farmer being inspected is also welcome to advise an auditor of what is required by law or contest a non-compliance [...] with something out of date.’⁴⁷
67. Within the four available Australian inspection checklists, the ACCC notes:
- The checklists for beef cattle and laying hens contain HFAC’s standards for auditors to assess compliance. However, the checklist also notes that local, state and federal laws must be adhered to regarding animal welfare, and if the HFAC standards do not meet or exceed these domestic regulations, the later will take precedence.⁴⁸
 - The checklist for fiber, meat and dairy sheep requires inspectors to use HFAC’s Standards for Sheep when assessing onsite compliance. However, it states that ‘there will be variations from region to region and country by country so a customised checklist for the specific area you are inspecting should be used.’ This checklist also identifies some of the production practices or environmental requirements which might not be applicable in Australia.⁴⁹
 - The checklist for meat chickens directs inspectors to assess compliance against HFAC’s Standards for Chickens. It does not contain a similar statement about the application of domestic animal welfare regulations.⁵⁰

⁴⁵ HFAC response to issues raised in the second public consultation, 23 September 2020, p 2.

⁴⁶ HFAC response to issues raised in the second public consultation, 23 September 2020, p 2.

⁴⁷ HFAC response to issues raised in the second public consultation, 23 September 2020, p 3.

⁴⁸ Inspection Checklist (Version 2 of CTM Rules) – Beef Cattle, p 1; Inspection Checklist (Version 2 of CTM Rules) - Laying Hens, p 1.

⁴⁹ Inspection Checklist (Version 3 of the CTM Rules) – Fiber, meat and dairy sheep, p. 1, 2 and 8.

⁵⁰ Inspection Checklist (Version 2 of the CTM Rules) – Meat Chickens, p 1.

Decision regarding certification

68. HFAC will then evaluate the operation against relevant standards, and certification will be granted if HFAC determines that HFAC policies and standards relevant to the business are satisfied.
69. If a business seeking to use the Proposed CTM has one or more minor non-conformances with respect to HFAC policies or standards, HFAC may grant conditional certification (which must be addressed within 30 days), which allows the operation to use the Proposed CTM while making corrective actions. If the business has one or more major non-conformances, certification will be denied.
70. HFAC will provide the operator written notification of the certification decision, which includes an inspector report, a certification mark licence agreement, and a certificate.

(See *Humane Farm Animal Care Program/Policy Manual*, section D and *Inspection Manual*, Part 3(C))

71. There are different certification requirements for Pooled Product Operations, Product Manufacturing Operations, Producer Groups, and Beef Marketing Groups:
 - A Pooled Product Operation is a HFAC certified operation that buys products from individual product operators which have been found to conform with HFAC standards but not certified individually, and that sell the pooled product under the name of the Pooled Product Operation.
 - A Product Manufacturing Operation is a business that produces products containing animal-based raw materials, possibly in combination with other types of ingredients.
 - Producer Groups are groups of producers that use similar production practices, market their products in common, and are managed by an internal control system.
 - A Beef Marketing Group is a company that purchases beef animals raised in compliance with HFAC standards from large and small beef producers.

Approved certifiers

72. The HFAC *Inspector Manual* sets out the requirements to become an inspector for HFAC. Qualifications for inspectors include a Bachelor's Degree in Animal Science, Life Science or related field, training and education in Animal Science, Veterinary Science, or other relevant backgrounds, and completion of HFAC training programs and apprentice inspections. Inspectors must also have excellent written and oral communication skills, physical abilities necessary for moving through fields, barns, and other livestock facilities, and the ability to travel.
73. Inspectors are also required by the HFAC Inspector Manual to comply with various behavioural requirements, for example using open-ended questions and knowing their own biases.
74. HFAC's Executive Director evaluates inspectors after each audit, with records kept of performance. The inspector's performance is reviewed annually at a minimum, and if corrective actions are needed to improve the inspector's performance, HFAC's Executive Director may suggest additional training, performance of additional inspections supervised by an experienced Inspector, or other methods to correct the problem.
75. HFAC also requires inspectors to comply with various standards of conduct, including relating to communication, professionalism, confidentiality, and conflicts of interest.

76. Qualified inspectors will then be allocated by HFAC in particular instances based on the regional location of the inspection, the species expertise required, the training status of the inspector, and the availability of staff.
77. Within Australia, the Australian member⁵¹ of HFAC's scientific committee will initially be responsible for training potential inspectors for HFAC, as well as being the local contact for certification applications, on-site inspections and any dispute matters. HFAC intends to train a larger team of qualified auditors in Australia, as demand for the certification scheme increases.

Ongoing compliance and other requirements for approved users

78. Under the New CTM Rules, licensees must, amongst other things:
- continue to meet the relevant requirements
 - notify HFAC of any changes to operational or management practices that may potentially affect conformance with the certification requirements
 - only apply the CTM to products produced in conformance with HFAC standards and by parties with HFAC certification
 - not make inaccurate claims about the HFAC program, standards or policies
 - discontinue use of certification claims and return the certificate if certification is revoked, and
 - not disclose confidential information.
79. Licensees are required to renew their licence to use the CTM annually, and pay an annual Application Fee to cover the administrative costs of processing the application. This process is similar to the process for initial certification.
80. Licensees may also be subject to unannounced audits, which are used to assess an operation's continued conformance with HFAC standards and procedures.
81. For the Proposed CTM's operation in Australia, HFAC advises that its New CTM Rules would be automatically modified in accordance with Australian Standards and Guidelines. In practice, this will involve HFAC's Australian member on its scientific committee:⁵²
- monitoring the Australian Standards and Guidelines and Model Codes of Practice for changes
 - advising HFAC about these changes, which will then update the relevant documents within its New CTM rules
 - notify all certified entities about these changes, and
 - schedule on-site inspections for each certified entity to confirm compliance with the changes.

(Also see *Humane Farm Animal Care, Program/Policy Manual, Parts 2, 3 and 4*)

⁵¹ Dr Ellen Jongman of the Animal Welfare Science Centre, Faculty of Veterinary and Agricultural Science, University of Melbourne.

⁵² HFAC *Summary of response to ACCC initial assessment and Amendments to the Rules*, 16 June 2020, p 2.

Dispute resolution

Disputes regarding certification

82. If an applicant disagrees with HFAC's decision to refuse certification to use the Proposed CTM, they must send HFAC reasons in writing with evidence in support of their claims. HFAC must receive the letter within 30 days from the date HFAC sends the letter refusing certification to the applicant.
83. HFAC must make a decision regarding the appeal within 30 days from the date of receipt of the letter. Applicants may lodge an appeal if they disagree with HFAC's decision, which will be reviewed by HFAC's Appeals Committee. The Appeal Committee will either agree with the initial decision or determine that new evidence warrants a new reconsideration of the original decision. If reconsideration of the decision is justified, the Chair and Appeals Committee members will conduct an Appeals hearing, which may include an additional inspection of the operation.
84. If the Appeals Committee does not think that a new ruling is warranted, or if the appellant is dissatisfied with the Appeals Committee's ruling on the appeal, the appellant may request that the HFAC Board reviews the decision, or lodge proceedings in the court nearest to the HFAC office.

(See *Humane Farm Animal Care Program/Policy Manual*, Part 6, Resolving Conflicts)

Disputes about any other issue relating to the Proposed CTM

85. Complaints about any other issue relating to the Proposed CTM must be submitted in writing to HFAC and supported by documentary evidence. The CEO will perform a preliminary assessment of the complaint's validity and determine whether or not to proceed with a full investigation.
86. If the CEO determines that the complaint is valid, the President of the HFAC Board of Directors will appoint an Investigator and three person Resolution Body, who must be free of commercial, financial, and other pressures which might influence complaint process or decisions.
87. If the CEO determines that the complaint is invalid or irrelevant, the complainant will be given 30 days to substantiate the validity of the complaint.
88. Once an investigation has been completed, the Resolution Body will communicate its decision in writing to the complainant and the subject of the complaint.
89. Specific processes apply where the dispute relates to the appointment of an investigator or about HFAC operations, and complaints about operations certified by HFAC. The appeal process is the same as the appeal process for disputes regarding certification decisions (see paragraph 83).

ACCC Final Assessment

90. The ACCC has considered HFAC's application and associated documents, including the rules governing the use of the CTM and the various revisions to these rules that HFAC has provided during the assessment process. The ACCC has had regard to all the matters specified in the TM Regulations for the purpose of making a decision under section 175 of the TMA.⁵³
91. The ACCC acknowledges that following its initial assessment, HFAC has taken steps to improve the proposed operation of its certification scheme in Australia, such as developing Australian inspection checklists for some of its animal welfare standards, and appears to have a genuine ongoing interest in improving animal welfare outcomes. HFAC has also proposed amendments to its CTM rules in response to

⁵³ Rr 16.5 and 16(6) of TM Regulations.

certain examples where practices permitted under its certification scheme were identified by interested parties as being unlikely to align with an Australian consumer's expectation of the humane treatment of livestock.

92. While HFAC's certification scheme may be supported by clear and objective processes in the USA, the ACCC is required to assess how the New CTM Rules would operate in an Australian context.
93. The ACCC remains concerned that use of the Proposed CTM on a product will risk misleading Australian consumers because the New CTM Rules do not ensure that the product has actually been produced in a manner:
 - a. consistent with a reasonable Australian consumer's understanding of 'humane' animal production processes, and
 - b. that is 'more humane' – that is, using superior animal welfare practices than the minimum animal welfare requirements that products generally must comply with.
94. While HFAC has proposed many improvements to its various animal care standards that better align to Australian production practices and requirements, and therefore, Australian consumers' expectations of humane animal treatment, the ACCC considers there are still some deficiencies in the New CTM Rules that have not been addressed – for example, the New CTM Rules permit: hot and freeze branding of cattle; 'banding' castration of calves (less than seven days old) without pain relief under the Dairy Cow standards; meat chickens to potentially be exposed up to 72 hours of continuous light prior to slaughter.
95. The ACCC considers the New CTM Rules lack sufficient clarity for the proposed certification scheme's practical implementation in Australia. For example, approved certifiers would not have an Australian inspection checklist to use when assessing compliance against HFAC's dairy cow, goat, pig, young dairy beef, turkey or bison standards. There are also remaining references to overseas organisations and regulations in some of HFAC's standards, and which the New CTM Rules would require producers and approved certifiers to make their own assessment about how they align with local standards (if they know they exist), and ultimately apply the higher standard.
96. The ACCC's final assessment is that it is not satisfied under section 175(2) of the TMA that in Australia:
 - a. the New CTM Rules are satisfactory having regard to the principles relating to unfair practices set out in the Australian Consumer Law, on the basis that:
 - i. a reasonable Australian consumer's understanding of the representations conveyed by the Proposed CTM is inconsistent with the HFAC standards comprising the New CTM Rules;
 - ii. the requirements for use of the Proposed CTM, and circumstances in which it could be used, are insufficiently clear to ensure that consumers will not be misled by its use.

Attributes required to become an approved certifier

97. Section 175(2)(a) of the TMA requires the ACCC to be satisfied that 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 certification requirements.
98. In its initial assessment, the ACCC was not satisfied that the attributes a person was required to have to become an approved certifier were sufficient to enable them to

competently assess whether Australian products met the certification requirements under HFAC's CTM rules. The ACCC no longer has this concern.

99. The ACCC acknowledges that under the New CTM Rules approved certifiers are, among other things, required to have appropriate tertiary qualifications and are subject to annual performance reviews by HFAC. In Australia, HFAC proposes that approved certifiers will all be initially trained by the Australian member of its scientific committee, who is also responsible for ongoing monitoring of animal welfare developments in Australia and for initiating any corresponding revisions to HFAC's suite of animal welfare standards.

Submissions – prior to the initial assessment

100. The ACCC received submissions from a number of interested parties that emphasise the importance of an approved certifier having a thorough knowledge of Australian animal welfare standards and Australian conditions, submitting that:
- HFAC has provided no evidence of an Australian management structure that is sufficient to keep up to date with reforms and changes, which are often subtle and easily over-looked unless an organisation is close to the industry.⁵⁴
 - The *Inspector Information Manual's* application forms would need to be relevant to Australia production systems, and align with state/territory animal health, welfare and biosecurity legislation.⁵⁵
 - It is unclear how HFAC inspectors would work with RSPCA and state governments, who already have some jurisdiction over animal welfare.⁵⁶
 - There is no detail about who will be contracted or employed by HFAC as approved certifiers or third party auditors for its certification scheme in Australia, other than the education requirements for being trained as a HFAC inspector.⁵⁷

Submissions - after the initial assessment

101. In response to the ACCC's initial assessment, **HFAC** submits:⁵⁸
- It has developed specific checklists for its Australian auditors to use when conducting on-site audits.
 - The Australian member of its scientific committee will monitor changes in Australian Standards and Guidelines and Model Codes of Practice, and will be responsible for ensuring that the New CTM Rules are modified in accordance with these changes, and for scheduling new on-site inspections to monitor compliance with any standards.
 - As demand for HFAC's certification scheme in Australia grows, it will increase its resources in Australia.
102. In addition, HFAC submits that its Australian auditors will have an up to date knowledge of local legislation and guidelines. However, the farmer being inspected may also advise an auditor of what is required by law or contest a non-compliance, if it is a requirement which is out of date.⁵⁹

⁵⁴ Submission from WA Pork Producers, 27 August 2019, p. 1.

⁵⁵ Submission from Wool Producers, 16 August 2019, p. 1.

⁵⁶ Submission from Wool Producers, 16 August 2019, p. 3.

⁵⁷ Submission from Humane Society International Inc, 28 August 2019, p. 2; Supplementary submission from Wool Producers, 16 August 2019, p. 3.

⁵⁸ HFAC *Summary of response to ACCC initial assessment and Amendments to the Rules*, 16 June 2020, p 2.

⁵⁹ HFAC response to issues raised in the second public consultation, 23 September 2020, p 3.

103. While not disputing the credentials of HFAC's Australian member, the **Cattle Council of Australia** submits that HFAC's proposal to appoint a single Australian to its scientific committee is 'unsatisfactory for covering the country's practical needs.'⁶⁰
104. Similarly, **Sheep Producers Australia** is concerned that only one of HFAC's 40 member scientific committee is Australian. It submits that knowledge of our unique production systems that are adapted to suit our environment and climate is essential to ensure that any standards required to be followed under HFAC's certification scheme meet Australian animal welfare laws and regulations.⁶¹
105. The **National Farmers Federation** also observes that HFAC has 'included just one Australian on its Scientific Committee, which informs the development of animal care standards that underpin the CTM application.'⁶²

ACCC view

106. The ACCC acknowledges HFAC's official appointment of an Australian to its scientific committee, and that this role carries responsibility for training auditors and supporting the practical operation of the certification scheme in Australia. Further, the ACCC notes HFAC's commitment to train a larger team of qualified auditors in Australia, as demand for the certification scheme increases.
107. Based on the information currently before it, the ACCC still has some reservation that the New CTM Rules do not provide for the significant resources for training and support that would be required for approved certifiers to make assessments of production processes in Australia. From the commencement of the CTM Rules, they would purport to certify a wide range of animal welfare requirements from production to slaughter, across 10 different livestock and poultry categories of animals. This will be challenging in an environment where HFAC has not developed Australian inspection checklists for over half of its animal care standards.
108. HFAC also submits it will update its New CTM Rules to be consistent with evolving Australian Standards and Guidelines and Model Codes of Practice. However, under new processes proposed under the New CTM Rules, HFAC expects that producers will be able to advise approved certifiers during on-farm audits about what the applicable Australian law is, or tell an auditor if a particular requirement is out of date.
109. The ACCC considers that approved certifiers would likely have appropriate qualifications and receive training from HFAC's Australian member of its scientific committee, and therefore be competent to conduct animal welfare assessments of farming operations against HFAC's standards. Therefore, the ACCC now considers the attributes of approved certifiers in Australia are likely to be sufficient to allow them to competently assess animal welfare standards.
110. However, HFAC's new processes introduce a lack of clarity about what standards would apply under HFAC's CTM Rules in an Australian context, which raises other concerns about the CTM Rules and this issue is discussed later in this Assessment.

⁶⁰ Submission from the Cattle Council of Australia, 22 July 2020, p 2.

⁶¹ Submission from Sheep Producers Australia, 24 July 2020, p 1.

⁶² Submission from National Farmers Federation, 31 July 2020, p 2.

Principles relating to unfair practices

(i) Representations conveyed by use of the Proposed CTM

111. Section 175(2)(b) of the TMA requires the ACCC to be satisfied that the New CTM Rules are satisfactory having regard to, amongst other things, the principles relating to unfair practices set out in the Australian Consumer Law.⁶³
112. Many Australian consumers have regard to positive animal welfare claims when distinguishing between available products and making purchasing decisions. For this reason, animal welfare claims can be a powerful marketing tool, and producers can use animal welfare claims in order to differentiate themselves and their products from their competitors, including by acquiring the right to apply marks such as the Proposed CTM.
113. The ACCC considers that a reasonable Australian consumer is likely to understand the Proposed CTM when applied to a product to mean that:
 - a. the production processes used to make the product were 'humane', and
 - b. the product is the result of production processes that are 'more humane' – that is, involve superior animal welfare practices than the minimum animal welfare requirements that products generally must comply with.
114. Accordingly, the ACCC considers that use of the Proposed CTM on a product will risk misleading Australian consumers unless the New CTM Rules ensure that the product has actually been produced in a manner:
 - a. consistent with a reasonable Australian consumer's understanding of 'humane' animal production processes, and
 - b. that is 'more humane' – that is, using superior animal welfare practices than other non-certified products generally available in the Australian market.
115. In its initial assessment, the ACCC was not satisfied that the Proposed CTM Rules would be applied to products that satisfied the above mentioned criteria. In particular, the ACCC provided a non-exhaustive list of examples of where:
 - the standards comprising the proposed CTM Rules were inconsistent with what a reasonable Australian consumer would expect regarding the humane treatment of animals – for example, allowing a chicken to be stunned up to 5 seconds after its neck was cut under a 'Halal slaughter exception'; teeth clipping and tail docking were permitted for pigs in certain circumstances; anaesthetic and post-operative analgesic was not required to be used when surgically castrating piglets younger than 7 days of age; and castration could be performed on calves by the application of a rubber ring up to 7 days of age without pain relief, and
 - the proposed CTM Rules would permit the Proposed CTM to be applied to products that are produced via animal welfare practices that were not superior, and in some cases are inferior, to standard Australian animal welfare practices – for example, free range requirements in HFAC's Egg Laying Hens Standard did not meet or exceed the [National Information Standard](#) for free range eggs in relation to stocking densities.

⁶³ Section 175(2)(b) of the TMA and r 16.6(c) of TM Regulations.

Submissions – after the initial assessment

116. In response to the ACCC's initial assessment, and to address animal welfare concerns raised by interested parties, HFAC subsequently proposed two tranches of amendments to some of its animal care standards. HFAC's proposed revisions are summarised in more detail at paragraphs 33 and 40. They include:

- HFAC's Sheep standards have been amended so that pain relief is 'required', rather than 'recommended' for painful medical processes.
- All references to 'tail docking' of lambs has been deleted and it no longer appears to be permitted. Similarly, painful processes such as beak trimming, teeth clipping and tail docking is no longer permitted under HFAC's proposed amendments to its Pigs and Chickens standards within the New CTM Rules.
- Anaesthetic and post-operative pain medication is now also required for castration of piglets under the New CTM Rules.
- The Beef Cattle standards now state that immuno-castration is preferred. Surgical castration is only recommended if necessary and no other alternatives are available, and must be performed by a veterinarian using sedation or local anaesthesia, anti-inflammatory medication for pain control, and provisions for controlling bleeding.
- HFAC's Chickens standards now includes a sentence that 'stunning shall precede neck cutting', and the 'Halal Slaughter Exception' was also deleted. However, as outlined at paragraph 119, it is not clear whether chicken meat bearing the Proposed CTM could still be made available in Australia where the bird has not been rendered unconscious prior to slaughter.
- HFAC's 'free range' production requirements under its Egg Laying Hens standards have been revised and now meet or exceed stocking density requirements⁶⁴ under Australia's National Information Standard for free range egg production claims.

117. However, the ACCC notes that other concerns raised by interested parties about whether the HFAC animal care standards meet or exceed minimum Australian standards, or permit practices that might not match Australian consumers' expectations of 'humane', were not addressed in subsequent revisions contained in the New CTM Rules. Examples include:

- **The Cattle Council of Australia** – there is no reference in HFAC's standards to the Australian Welfare Standards and Guidelines for Land Transport of Livestock, and HFAC's Beef Cattle standards refer to a body condition score of 1-9 (a North American scale) and Australia uses a different scale.⁶⁵
- **The Humane Society International (HSI)** submits:⁶⁶
 - It does not support the practices of hot and freeze branding of cattle, currently permitted by HFAC's Cattle standards, and considers these practices should only be permitted if required by a regulatory authority.
 - 'Pair housing' of calves in HFAC's Dairy Cows standards should be 'required', not just 'recommended'. HSI submits that calves are highly social, playful animals, and while dairy production has inherent welfare

⁶⁴ Under the Australian National Information Standard, free range production is subject to, among other things, a stocking density of 10 000 hens per hectare or less. HFAC's revised stocking density under Version 3 of its Egg Laying Hens standards allows 1 hen per 11.3 sq. ft, which is equivalent to 9 526 hens per hectare.

⁶⁵ Submission from the Cattle Council of Australia, 22 July 2020, p 2.

⁶⁶ Submission from Humane Society International, 22 July 2020, p 2.

problems because the calves are taken away from the cows immediately following birth, some of this trauma can be mitigated by housing young calves together.

- Banding for castration of calves (less than 7 days old) is still currently permitted under HFAC's Dairy Cow standards without pain relief. HSI submits this procedure causes long term pain.
- **Sentient** submits that under HFAC's Chickens standards, meat chickens could be exposed to 72 hours of continuous light prior to slaughter, significantly interfering with their ability to sleep, which is a form of torture.⁶⁷
- **Sheep Producers Australia** – HFAC's Sheep standards require producers to use processors who follow American Meat Institute guidelines for processing livestock. It also notes that HFAC's Sheep standards state that lambs must not be weaned before 5 weeks of age. Sheep Producers Australia advises that the Australian Standards and Guidelines for Sheep do not stipulate an age for weaning. However, the Australian standards do require that weaned lambs gain weight, are supplementary fed prior to weaning so they learn to accept supplementary feed, and that early weaning is an acceptable drought mitigation strategy.⁶⁸

ACCC view

118. The ACCC acknowledges that HFAC has proposed a number of revisions under the New CTM Rules in response to specific animal welfare concerns identified in the initial assessment and subsequent submissions from interested parties. As noted above, interested parties had raised other animal welfare concerns in submissions which HFAC did not address. For this reason, the ACCC considers that there are still examples (listed at paragraph 117) of where the standards imposed in the New CTM Rules would not accord with a reasonable Australian consumer's expectation of requirements for the humane treatment of animals as informed both by consumer understanding of what the practices involve, and existing requirements in Australian standards and guidelines.

119. In addition, the ACCC notes there is some uncertainty regarding the proposed operation of the 'Halal Slaughter Exception' under HFAC's Chicken standards. While HFAC eventually amended these standards (in Version 3) to delete the exception and add the words that 'stunning shall precede neck cutting', HFAC also separately advised the ACCC that:⁶⁹

The stun after cut is an exception in certain jurisdictions where the local Muslim authority will not permit it the other way around. HFAC is prepared to amend this [its standards] to say this will only be permitted if local legislation permits. Where a pre-stun is legally required, there are no exceptions or work arounds permitted.

120. Regarding humane animal welfare claims in this context, Sentient submits that:⁷⁰

Per the Australian Veterinary Association's policy – a policy that Australian consumers would deem to be an appropriate guideline – 'The slaughter of animals for food must be carried out in a humane manner. Regardless of religious or cultural beliefs, animals must be humanely rendered unconscious via stunning prior to slaughter.'

⁶⁷ Submission from Sentient, 25 August 2019, p 1.

⁶⁸ Submission from Sheep Producer Australia, 24 July 2020, pp 2- 3.

⁶⁹ HFAC, response to issues raised in second public consultation, 23 September 2020, p 3.

⁷⁰ Submission from Sentient, 23 July 2020 p 1.

121. Under the *Domestic Poultry Model Code of Practice for the Welfare of Animals*, chickens must be stunned before slaughter.⁷¹ As outlined at Annexure A, this Code of Practice is currently only mandatory in one Australian state, South Australia, however the ACCC notes RSPCA Australia's submission (outlined in further detail at paragraph 38) that Halal slaughter undertaken in the *majority* of chicken abattoirs, generally includes prior stunning because Australian Halal certifiers have been allowing it. A review of all Australian Halal certifiers' regulations is beyond the scope of the assessment of the Proposed CTM, but it appears that stunning birds after slaughter, rather than before slaughter, could still be permitted if the local Halal certifier requires it.
122. The ACCC considers it is therefore not without risk that chicken meat certified as 'humane' under the New CTM Rules, could still be subject to slaughter practices that are inconsistent with the recommended practice under the *Domestic Poultry Model Code of Practice for the Welfare of Animals*, and inconsistent with accepted Australian veterinary policies and reasonable consumer's expectations.
123. The lack of complete application to an Australian context within the various animal welfare requirements across the full suite of HFAC's standards is also a remaining concern. Interested parties have highlighted where the New CTM Rules still contain references to US-based organisations or regulations. Additional examples where the New CTM Rules still reference US-organisations or regulations are listed at paragraph 53. The ACCC considers this demonstrates that HFAC's CTM Rules are unlikely to be fully applicable in an Australian context (as it submits), and may not meet minimum Australian standards. Under the CTM Rules, HFAC acknowledges that there might be differences between standards within its CTM Rules and local standards, and permits local standards to apply where they exceed HFAC's standards. The ACCC considers this aspect of the CTM Rules, where various local and overseas standards are cross referenced throughout the CTM Rules for potential users to compare, reduces the clarity of the CTM Rules themselves, which is discussed later in this assessment.
124. For the above mentioned reasons, the ACCC is not satisfied that the New CTM Rules ensure that the Proposed CTM would not be applied to products in a way that would mislead consumers by communicating that a product bearing the mark has been produced in a manner that ensures the humane treatment of animals, when that may not be the case.
125. As such, the ACCC considers there are still instances where the standards comprising the New CTM Rules do not exclude practices that a reasonable Australian consumer would consider to be inhumane. 'Certified Humane' means better than just complying with the bare minimum legal requirements of animal welfare, and there are instances where the rules require compliance with practices that would not meet this consumer expectation.

(ii) Unclear and incomplete certification criteria

126. Unless CTM rules are comprehensive and clearly state the requirements that potential and approved users must meet in order to be certified, it will be difficult for the ACCC to be satisfied that the rules are satisfactory having regard to principles relating to unfair practices. A lack of clarity in HFAC's New CTM Rules for the certification scheme's practical implementation in Australia makes it uncertain what standards apply in an Australian context.

⁷¹ Model Code of Practice for the Welfare of Animals: Domestic Poultry, p. 24.

127. In its initial assessment the ACCC considered that the Proposed CTM Rules were not sufficiently comprehensive or certain for producers to be able to understand what is required to be certified.
128. In particular, the Proposed CTM Rules comprised of standards developed with US conditions and production systems in mind, and which referred to US statutory bodies, legislation, guidelines and standards. The Proposed CTM Rules also required CTM applicants to comply with numerous American standards, legislation, regulations and guidelines.
129. Interested parties noted that if producers were to comply with the US referenced requirements, they may be in breach of Australian legislation and standards.⁷²
130. Interested parties also highlighted that the Proposed CTM Rules were not adapted to Australian conditions.⁷³ For example, under the Proposed CTM Rules there were no provisions prescribing practices for farmers to prevent flystrike in sheep, which is an important animal welfare issue in Australia.⁷⁴

Submissions - after the initial assessment

131. In response to the ACCC's initial assessment and concerns raised by interested parties, HFAC proposed various amendments across its ten different animal care standards, including to cross reference relevant Australian Standards and Guidelines and/or Model Codes of Practice for some of its animal welfare categories within the New CTM Rules. These revisions are summarised in detail at paragraph 53.
132. In addition, HFAC also proposed a number of amendments to some of its animal care standards in response to interested party concerns that HFAC's standards needed to be adapted to suit Australia's unique environmental conditions and production techniques. HFAC's proposed amendments in this regard are summarised at paragraphs 33 and 400 and include, for example a new section in HFAC's Sheep standards which cross references potential CTM users to the Australian Animal Welfare Standards and Guidelines for Sheep for preventive techniques, standards and guidelines about flystrike.
133. While acknowledging that HFAC had taken steps which partially addressed previous concerns, many interested parties expressed ongoing concern that HFAC did not appear to have engaged fully with the extensive network of Australian legislation, Codes of Practice, Standards and Guidelines that apply to livestock production in Australia, and 'has not appropriately translated their rules to accommodate the Australian operating environment.'⁷⁵
134. In response, HFAC submits that:
 - It has developed specific checklists for its Australian auditors to use when conducting on-site audits.⁷⁶
 - The Australian member of its scientific committee will monitor changes in Australian Standards and Guidelines and Model Codes of Practice, and will be responsible for ensuring that the New CTM Rules are modified in accordance

⁷² Supplementary submission from Wool Producers, 6 September 2019, p. 2; Submission from Australian Pork, 11 September 2019, p. 2.

⁷³ Supplementary submission from Wool Producers, 16 August 2019, p. 3; Submission from Humane Society International Inc, 28 August 2019, pp. 1-2; Submission from Australian Pork, 11 September 2019, p. 2; Submission from Australian Chicken Meat Federation, 29 August 2019, p. 2.

⁷⁴ Supplementary submission from Wool Producers, 16 August 2019, p. 3; Submission from Humane Society International Inc, 28 August 2019, pp. 1-2.

⁷⁵ Submission from National Farmers Federation, 31 July 2020, p 2.

⁷⁶ HFAC *Summary of response to ACCC initial assessment and Amendments to the Rules*, 16 June 2020, p 2.

with these changes, and for scheduling new on-site inspections to monitor compliance with any standards.⁷⁷

- Australian auditors will have an up-to-date knowledge of local legislation and guidelines. However, HFAC also submits that the farmer being inspected may also advise an auditor of what is required by law or contest a non-compliance, if it is a requirement which is out of date.⁷⁸
- Producers would not have to comply with any environmental requirements under its standards, like ‘any other local variances’, if they are not relevant for Australian production practices. The Australian inspection checklists used by approved certifiers will be ‘adjusted to reflect this’.⁷⁹
- If lamb or sheep production systems in Australia do not meet the specific written requirements of HFAC’s standard, ‘but the well-being of the animals is clearly addressed to meet the ‘spirit’ of the standard, a derogation will be allowed.’⁸⁰

ACCC view

135. Despite HFAC making many improvements within its New CTM Rules, the ACCC remains concerned that they are not comprehensive in an Australian context, or do not objectively state the requirements that users must meet in order to be certified under the certification scheme.
136. HFAC has introduced references to Australian Standards and Guidelines or Model Codes of Practices in its animal welfare standards, but only under some categories of its certification requirements (as outlined at paragraphs 53). As considered above, these Australian standards and guidelines set out minimum animal welfare requirements, which would not always be what Australian consumers are likely to consider ‘humane’. Further HFAC has not provided an Australian inspection checklist for 6 of its animal welfare standards, despite its advice that these checklists will be fundamental to the scheme’s operation in Australia, and an essential tool for approved certifiers to use when assessing compliance against relevant animal welfare requirements.
137. As previously identified, some HFAC standards within the New CTM Rules still refer to US organisations or requirements. For example, if the New CTM Rules were approved, CTM applicants would still be required to refer to the following documents:
- Cattle farmers would need to refer to the *American Meat Institute’s Guidelines* for acceptable methods of moving non-ambulatory cattle.⁸¹
 - Young dairy beef and bison famers would be required to refer to the *American Veterinary Medical Association Guidelines on Euthanasia*.⁸²
 - Cattle, pig, sheep, bison and young dairy beef farmers would be required to use meat processors that meet the *American Meat Institute Guidelines*.⁸³
138. While the ACCC notes that aspects of the New CTM Rules which refer to US standards may not necessarily be inferior to Australian standards, this is not sufficiently clear to potential users of the HFAC CTM or approved certifiers. In

⁷⁷ HFAC *Summary of response to ACCC initial assessment and Amendments to the Rules*, 16 June 2020, p 2

⁷⁸ HFAC response to issues raised in the second public consultation, 23 September 2020, p 3.

⁷⁹ HFAC response to issues raised in the second public consultation, 23 September 2020, p 2.

⁸⁰ HFAC response to issues raised in the second public consultation, 23 September 2020, p 2.

⁸¹ HFAC Beef Cattle standards, May 2020, M 16.

⁸² See HFAC’s Young Dairy beef standards, May 2020, H 11; and HFAC’s Bison standards, May 2020, H 11.

⁸³ See for example, HFAC’s Beef Cattle standards, May 2020, S 1; HFAC’s Pigs standards, May 2020, S 3; HFAC’s Sheep standards, May 2020, S 3; HFAC’s Young Dairy Beef standards, May 2020, S 1; and HFAC’s Bison standards, May 2020, S 3.

addition, HFAC's New CTM Rules effectively require a producer or approved certifier to make their own comparison between HFAC's standards (including references to US regulations) and the relevant Australian standards (if they know they exist), with the higher standard to apply. The ACCC considers this aspect of the New CTM Rules introduces a high degree of uncertainty about what animal care standards would actually apply in an Australian context.

139. Consequently, the ACCC remains concerned that under the New CTM Rules, due to the lack of a clear application in an Australian context as identified above, there is a risk that products would be certified that were produced using processes that are not consistent with Australian consumers' expectations of humane animal care, and possibly do not meet minimum Australian animal welfare standards.
140. The New CTM Rules also allow approved certifiers to exercise discretion such that they can allow the Proposed CTM to be used where production practices 'meet the spirit' of the standard. This creates the real potential for differences in assessment processes between parties permitted to use the Proposed CTM. HFAC's proposal for producers to ultimately inform approved certifiers about current animal welfare legislation or requirements in Australia also contributes to this lack of clarity in HFAC's New CTM Rules. The ACCC considers this creates the potential for inconsistent interpretation of the New CTM Rules by both CTM applicants and approved certifiers across Australia. As such there is a real risk that the Proposed CTM may be applied to products in ways that would result in consumers being misled.

Conclusion

141. The ACCC's final assessment of CTM 1914662 is that it is not satisfied of the requirements under section 175(2) of the TMA and has decided not to give a certificate under that section.
142. An application may be made to the Administrative Appeals Tribunal to review a decision by the ACCC refusing to give a certificate.

Dated this 18th day of June 2021



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Mick Keogh
Deputy Chair
Australian Competition & Consumer Commission

ANNEXURE A

Livestock/ State/Territory	QLD ⁸⁴	NSW ⁸⁵	Vic ⁸⁶	Tas ⁸⁷	SA ⁸⁸	WA ⁸⁹	ACT ⁹⁰	NT ⁹¹
Cattle	MCP (vol)	AAWSG* (vol)	MCP (vol)	MCP (vol)	AAWSG (man)	MCP (vol)	MCP (vol)	MCP (vol)
Land Transport	AAWSG (man)	AAWSG* (vol)	AAWSG (man)	AAWSG (man)	AAWSG (man)	MCP (vol)	AAWSG (man)	AAWSG (man)
Saleyards and Depots	MCP (vol)	MCP* (vol)	MCP (vol)	MCP (vol)	MCP (man)	MCP (vol)	MCP (vol)	MCP (vol)
Sheep	MCP (vol)	AAWSG* (vol)	MCP (vol)	MCP (vol)	AAWSG (man)	MCP (vol)	MCP (vol)	MCP (vol)
Poultry	MCP (partly man)	MCP* (vol)	MCP (vol)	MCP (vol)	MCP (man)	MCP (vol)	MCP (vol)	MCP (vol)
Goat	MCP (vol)	MCP* (vol)	MCP (vol)	MCP (vol)	MCP (man)	MCP (vol)	MCP (vol)	MCP (vol)
Pigs	MCP (partly man)	MCP* (vol)	MCP (man)	MCP (vol)	MCP (man)	MCP (vol)	MCP (vol)	MCP (vol)

MCP = Model Code of Practice

AAWSG = Australian Animal Welfare Standards and Guidelines

Vol = voluntary

Man - mandatory

- * The NSW Codes are adopted by reference into the General Regulation under the *Prevention of Cruelty to Animals Act 1979*. This means it is not an offence if animals are not kept precisely as specified in the Codes, but that the Codes are admissible in proceedings for a related offence in the Act or Regulations.

⁸⁴ Queensland Government, *Animal Welfare*, 2019 <<https://www.business.qld.gov.au/industries/farms-fishing-forestry/agriculture/livestock/animal-welfare/codes/compulsory>>

⁸⁵ Department of Primary Industries (NSW), *National Model Codes of Practice for the Welfare of Livestock*, 2019 <<https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/general/national>>

⁸⁶ Agriculture Victoria, *Victorian codes of practice for animal welfare*, 2019 <<http://agriculture.vic.gov.au/agriculture/animal-health-and-welfare/animal-welfare/animal-welfare-legislation/victorian-codes-of-practice-for-animal-welfare>>

⁸⁷ Department of Primary Industries, Parks, Water and Environment (Tas), *Animal Welfare Guidelines*, 2019 <<https://dpi.pwe.tas.gov.au/biosecurity-tasmania/animal-biosecurity/animal-welfare/legislation-standards-guidelines/animal-welfare-standards-guidelines/animal-welfare-guidelines>>

⁸⁸ Department for Environment and Water (SA), *Animal welfare codes of practice*, 2019 <https://www.environment.sa.gov.au/managing-natural-resources/plants-and-animals/animal-welfare/Codes_of_practice/animal-welfare-codes-of-practice>

⁸⁹ Department of Primary Industries and Regional Development (WA), *Animal welfare codes of practice*, 2019 <<https://www.agric.wa.gov.au/animalwelfare/animal-welfare-codes-practice>>

⁹⁰ ACT Legislation Register, *Animal Welfare Act 1992: Regulations and Instruments*, 2020 <<https://www.legislation.act.gov.au/a/1992-45/di.asp>>

⁹¹ Department of Primary Industry and Resources (NT), *Animal Welfare Advisory Committee*, 2019 <<https://dpi.nt.gov.au/boards-and-committees/animal-welfare-advisory-committee>>