



28 February 2020

## Initial assessment Statement of Reasons - Certification Trade Mark application 1914662 lodged by Humane Farm Animal Care Pty Ltd

### Summary of initial assessment

1. In accordance with the *Trade Marks Act 1995 (TMA)* and the Trade Marks Regulations 1995 (**TM Regulations**), the ACCC has made an initial 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.
2. The ACCC's initial assessment is that it is **not** satisfied of the matters specified in section 175(2) of the TMA and, accordingly, does not propose to give a certificate to approve the registration of HFAC's CTM application.
3. HFAC is a certification organisation based in the USA. The animal care standards that underpin the CTM application were created by a committee comprised of animal scientists and veterinarians from USA, Canada, Europe and South America. The Proposed CTM Rules contain references to USA-based entities, standards, guidelines and legislation only. HFAC envisages Australian farmers applying to use the CTM.
4. To inform its assessment of HFAC's CTM application, the ACCC conducted a public consultation process. A large number of interested parties raised concerns about how HFAC could effectively administer a certification program within Australia which is not based on local production systems, environmental conditions or legislative requirements.
5. In addition, many interested parties expressed concern that various animal care standards underpinning the rules governing the use of HFAC's CTM are likely to be inconsistent with reasonable Australian consumers' expectations of humane food production.
6. The ACCC invited HFAC to respond to concerns raised by interested parties. To date, HFAC has not provided a submission in response to the concerns raised.

### The mark

7. The proposed mark consists of a rectangle bearing the words 'CERTIFIED HUMANE' above an image of rolling hills. Application of the mark 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.
8. The animal care standards underpinning the Proposed 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.

9. The Proposed CTM is currently used in other countries, including USA, Brazil, Canada, Chile, Hong Kong and Peru. The ACCC understands that there is a least one Australian beef processor currently licensed under HFAC's program.

### **Assessment**

10. The ACCC has considered HFAC's application and associated documents, including the rules governing the use of the proposed CTM (**Proposed CTM Rules**).
11. In relation to the Proposed CTM Rules, the ACCC notes that, in response to initial questions from the ACCC about the proposed operation of the certification program in Australia, in June 2019 HFAC proposed an amendment to the Proposed CTM rules to include a 'general statement' that:

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.
12. CTMs provide consumers with assurance about the particular standard a product or service meets. To ensure a CTM appropriately indicates a particular standard to consumers, the mark needs to be supported by clear, robust and objective CTM rules.
13. While HFAC's certification program may be supported by clear and objective processes in the USA, the ACCC is required to assess how the Proposed CTM Rules would operate in an Australian context. In this case there is a high degree of uncertainty regarding the eligibility and ongoing requirements of HFAC's certification program for Australian producers, including how HFAC's proposal for its Proposed CTM Rules to be 'automatically modified' in accordance with Australian Animal Welfare Standards and Guidelines would be implemented by any approved certifier in Australia, or indeed HFAC officers in the USA.
14. Further, numerous interested parties have submitted there is a disconnect between certain animal handling standards in the Proposed CTM Rules and Australian consumers' expectations of humane animal treatment. Additionally, there are instances where compliance with the Proposed CTM Rules would not meet legislated standards in Australia – for example, the Proposed CTM Rules for 'free range eggs' permits outdoor stocking densities that substantially exceed the maximum outdoor stocking densities for the production of free range eggs permitted within the National Information Standard under Australian Consumer Law.
15. Having considered the CTM application and associated documents, the ACCC is **not** satisfied based on the information before it that in Australia:
  - the attributes a person must have under the Proposed CTM Rules to become an approved certifier are sufficient to enable the person to competently assess whether Australian products meet the certification requirements, and
  - the Proposed 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, in many cases, inconsistent with the HFAC standards comprising the Proposed CTM Rules and
    - the Proposed 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.

## Next steps

16. The ACCC invites submissions in response to this initial assessment by 10 April 2020.
17. HFAC and interested parties have one calendar month from the date IP Australia publishes the ACCC's Initial Assessment in the Official Journal of Trademarks to lodge written submissions and/or call a conference in relation to the initial assessment. The ACCC will advise interested parties once the initial assessment has been published by IP Australia, and of any adjustments to the submissions date.

## Background

### The Applicant

18. HFAC describes itself as, 'an international non-profit certification organisation dedicated to improving the lives of farm animals in food production from birth through slaughter.'<sup>1</sup> HFAC states that its mission is 'to improve the welfare of farm animals by providing viable, credible, duly monitored standards for humane food production and ensuring customers that certified products meet these standards.'<sup>2</sup> HFAC was established in the USA, and has operated there for some time.

### The application

19. HFAC lodged the CTM application on 21 March 2018. IP Australia forwarded the CTM application to the ACCC on 27 February 2019.

### The Proposed CTM

20. The mark (**the Proposed CTM**) bears the words 'CERTIFIED HUMANE' above an image of rolling hills and is illustrated below:



### The Proposed CTM Rules

21. The rules governing the use of CTM comprise the *Rules for the Certification Trade Mark of Certified Humane* and the following Annexures, which can be accessed by clicking the links below (together referred to as the **Proposed CTM Rules**):
  - [Program/Policy Manual, 1 October 2016](#)
  - [Beef Cattle standards, January 2014](#)
  - [Chickens standards, August 2014](#)
  - [Egg Laying Hens standards, January 2018](#)
  - [Dairy Cows standards, January 2014](#)

---

<sup>1</sup> Certified Humane, *Overview*, <https://certifiedhumane.org/how-we-work/overview/>

<sup>2</sup> Humane Farm Animal Care, *Program/Policy Manual*, p. 3.

- [Dairy, Fiber and Meat Goats standards, March 2013](#)
  - [Pigs standards, January 2018](#)
  - [Sheep, including Dairy Sheep standards, March 2013](#)
  - [Turkeys standards, August 2014](#)
  - [Young Dairy Beef, January 2012](#)
  - [Bison standards, January 2014](#)
  - [Inspector Information Manual, April 2013](#)
  - [Recommended Animal Handling Guidelines and Audit Guide: A systematic Approach to Animal Welfare, June 2017](#)
  - [Procedures for Humane Euthanasia, 28 January 2013](#)
  - [American Veterinary Medical Association \(AVMA\) Guidelines on Euthanasia, June 2007](#)
22. The Proposed CTM Rules contain animal welfare standards that relate to the treatment of a variety of livestock and poultry from farm to slaughter.

*Applicant's proposed amendment to the rules*

23. On 21 June 2019 in response to preliminary issues raised by the ACCC, HFAC advised of two proposed amendments to the Proposed 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.

24. The second is in relation to the process to vary the Proposed CTM Rules, to include a statement to note the requirement for the ACCC's approval of any changes to the Proposed CTM Rules in the future.
25. A copy of the Proposed CTM Rules the subject of this initial assessment are available on the ACCC's CTM Public Register on its website [www.accc.gov.au](http://www.accc.gov.au).

**Animal welfare in Australia**

*Model Codes of Practice*

26. In Australia, the welfare of farm animals has been governed by national [Model Codes of Practice \(MCPs\)](#), which state and territory governments have adopted in animal welfare legislation. The MCPs set standards for different categories of farm animals (including cattle, poultry, pigs and sheep), land transport, processing and saleyard codes.<sup>3</sup> The states and territories are responsible for administering and enforcing the MCPs. States and territories vary in whether they have made MCPs 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.<sup>4</sup> A table detailing which codes are either mandatory or voluntary in which States and Territories is at [Annexure A](#).

---

<sup>3</sup> Productivity Commission, 2016, *Regulation of Australian Agriculture*, p. 207.

<sup>4</sup> 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.

## *Australian Animal Welfare Standards and Guidelines*

27. In 2005, the Australian, state and territory governments agreed to convert the Model Codes of Practice into [Australian Animal Welfare Standards and Guidelines \(AAWSG\)](#), which when converted, are intended to be implemented by legislation in each state and territory. The AAWSG are still in development, and to this date, standards and guidelines have been finalised for Cattle, Land Transport, Saleyards and Depots, Sheep and Exhibited Animals.<sup>5</sup> These standards and guidelines are in force and have replaced the relevant MCPs. Details on which states have adopted the finalised standards and guidelines, and whether they are mandatory or voluntary, is at [Annexure A](#).
28. Until the AAWSG are finalised for horses, poultry, goat and pigs, the MCP will continue to apply.<sup>6</sup>
29. There is also a [National Information Standard on free range eggs](#), which prohibits eggs from being labelled as free range unless they comply with certain requirements (discussed further below).
30. 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).
31. 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.

## Consultation

32. On 2 August 2019 the ACCC commenced a public consultation process in respect of HFAC's proposed rules.<sup>7</sup>
33. The ACCC received 19 public submissions, all of which are available on the ACCC's CTM Public Register on its website [www.accc.gov.au](http://www.accc.gov.au), many of which were from either agriculture industry associations or animal welfare organisations. The ACCC also received one confidential submission that raised similar concerns. Nearly all interested parties expressed opposition to the Proposed CTM and CTM Rules, for various reasons which included:
  - It is unclear how the certification process can practically operate in Australia, as there are various references to US-based processes, legislation, regulators, standards, guidelines, and organisations.<sup>8</sup>
  - HFAC's Proposed CTM Rules require significant and necessary amendments to be functionally appropriate in Australia and consistent with basic animal welfare

---

<sup>5</sup> *Australian Animal Welfare Standards and Guidelines*, 2019, < <http://www.animalwelfarestandards.net.au/>>.

<sup>6</sup> 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>.

<sup>7</sup> <https://consultation.accc.gov.au/mergers-and-adjudication/humane-farm-animal-care-ctm-1914662/>.

<sup>8</sup> Submission from Garry Page, 7 August 2019, p. 1; Submission from Humane Society International Inc, 28 August 2019, p. 1-2; Submission from Cattle Council, 28 August 2019, p. 2; Submission from Australian Pork Limited, 11 September 2019, p. 2; Supplementary submission from Wool Producers, 6 September 2019, pp. 1-2; Submission from Australian Chicken Meat Federation, 30 August 2019, 5; Submission from WA Pork Producers, 27 August 2019, p. 1.

measures in Australia. For example, some standards are based on intensive operations which are more common to the northern hemisphere.<sup>9</sup>

- It is unclear how HFAC's Proposed CTM Rules could be automatically modified in accordance with *Australian Animal Welfare Standards and Guidelines*. While HFAC proposes that its rules will be automatically modified in accordance with Australian Animal Welfare Standards and Guidelines, the Proposed CTM Rules themselves have not been amended to comply with Australian legislation or terminology.<sup>10</sup>
  - There is no detail about who will be contracted or employed by HFAC as approved certifiers or third party auditors for its certification program in Australia, other than the education requirements for being trained as a HFAC inspector.<sup>11</sup>
  - RSPCA Australia considers HFAC's audit processes are not sufficiently rigorous, and it is important that public animal welfare claims are verified through a vigorous audit process. For example, on-farm audits only occur annually, and may be a sample audit, rather than an audit of every facility on the farm.<sup>12</sup>
  - The HFAC certification scheme may cause confusion and erode consumer confidence about animal welfare claims made under existing certification programs, such as the Australian Pork Industry Quality Assurance System, which audits farms against animal welfare standards that go above those in the *Model Code of Practice for the Welfare of Animals (Pigs)* in Australia.<sup>13</sup>
  - The use of the word 'humane' may infer that other products which do not bear any mark have not been produced with humane systems of production, even though producers have met strict animal welfare requirements, which are in some cases above HFAC's requirements.<sup>14</sup>
34. 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. To date, HFAC has not provided any response to interested party submissions.
35. Interested party submissions are discussed where relevant in the 'ACCC initial assessment' section below.

## ACCC's role in assessing CTMs

36. Under sections 174 and 175 of the TMA, the Registrar of Trade Marks must send documents relating to a CTM application to the ACCC and the ACCC must consider the application and those documents in accordance with the TM Regulations.

---

<sup>9</sup> Submission from Garry Page, 7 August 2019, p. 1; Submission from Humane Society International Inc, 28 August 2019, p. 1-2; Submission from Cattle Council, 28 August 2019, p. 2; Submission from Australian Pork Limited, 11 September 2019, p. 2; Supplementary submission from Wool Producers, 6 September 2019, pp. 1-2; Submission from Australian Chicken Meat Federation, 30 August 2019, 5; Submission from WA Pork Producers, 27 August 2019, p. 1.

<sup>10</sup> Supplementary submission from Wool Producers, 6 September 2019, p. 1; Submission from Australian Chicken Meat Federation, 30 August 2019, 2; Submission from Humane Society International Inc, 28 August 2019, pp. 1-2; Submission from Cattle Council, 28 August 2019, p. 2.

<sup>11</sup> Submission from Humane Society International Inc, 28 August 2019, p. 2; Supplementary submission from Wool Producers, 6 September 2019, p. 3.

<sup>12</sup> Submission from RSPCA, 30 August 2019, p. 1.

<sup>13</sup> Submission from Australian Pork Limited, 11 September 2019, p. 2.

<sup>14</sup> Submission from Cattle Council, 28 August 2019, p. 2, Submission from WA Pork Producers, 27 August 2019, p. 2, Submission from Australian Pork Limited, 11 September 2019, pp. 1-2.

37. The Registrar of Trade Marks can only register a CTM upon the ACCC giving a certificate under s 175(2) of the TMA.
38. The ACCC can only issue a certificate under s 175(2) where it is satisfied that:
- (a) the attributes a person must have to become an approved certifier are sufficient to enable the person to assess competently whether goods and/or services meet the certification requirements; and
  - (b) the Proposed CTM Rules:
    - i. would not be to the detriment of the public (in this context, the ACCC considers detriment to the public means ‘harm to the community in addition to the consumer protection concerns and competition concerns’) and
    - ii. are satisfactory having regard to regulation 16.6 of the TM Regulations under which the ACCC must have regard to:
      - i. the principles relating to restrictive trade practices set out in Part IV of the *Competition and Consumer Act 2010* (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, currently set out in the ACL.
39. 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.<sup>15</sup>
40. In assessing CTM applications, the ACCC may require amendments to the rules.<sup>16</sup>
41. 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 scheme

### **Certification requirements**

42. The Proposed 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 relating to the relevant category of animal. Each of these standards is included as part of the Proposed CTM Rules. The full list of standards is provided at paragraph 21 above.

---

<sup>15</sup> See *Certification trade marks – the role of the ACCC* (2011) p. 8.

<sup>16</sup> *Trade Marks Act 1995* (Cth) s 173(3) & 175(3).

43. While each standard contains different requirements according to the type of animal, the standards broadly cover the following areas:
- Nutrition, including food and water, including according to nutritional requirements established by the USA's *National Research Council*.
  - Environment, including requirements regarding buildings and shelter, thermal environment and ventilation, areas and space allowances, lighting, specific provisions for newborn animals, and fencing.
  - Farm management and handling, including standards regarding handling and treatment of animals, record keeping, identification, inspection and equipment.
  - Health care, including health care practices and management, and processes for dealing with animals, including the North American Meat Institute's *Animal Handling Guidelines & Audit Guide*.
  - Transportation, including requirements for loading, transport, handling, and records of transport.
  - Euthanasia, including HFAC's *Procedures for Humane Euthanasia*, and The American Veterinary Medical Association *Guidelines on Euthanasia*.
  - Slaughter and processing, with slaughter plants being required to meet the *American Meat Institute Guidelines*.
44. Under the Proposed CTM Rules, use of the CTM would also require payment of an inspection fee, which will cover the cost of one full inspection per year. The 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***

45. 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, which also forms part of the Proposed CTM Rules. HFAC has advised that the same operations checklists, standards and timeframes are proposed to apply to all producers seeking to use the Proposed CTM, regardless of their location in the world.
46. 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 standards.
47. 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***

48. 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.



49. 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*

50. The Proposed 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.
51. 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.
52. The inspector uses a checklist, provided by HFAC, to document conformance with standards, and any non-conformances are designated as either 'minor' or 'major'.

#### *Decision regarding certification*

53. 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.
54. 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.
55. 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))*

56. 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 is 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**

57. 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 communication skills, physical abilities necessary for moving through fields, barns, and other livestock facilities, and the ability to travel.
58. 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.
59. 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.
60. HFAC also requires inspectors to comply with various standards of conduct, including relating to communication, professionalism, confidentiality, and conflicts of interest.
61. 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.
62. Regarding the proposed operation of the HFAC's certification scheme in Australia, the ACCC understands that HFAC does not have an office in Australia. HFAC has advised that it has appointed one inspector in Australia, who is based in Melbourne, but that circumstances may require HFAC to appoint a new inspector in Australia.

### **Ongoing compliance and other requirements for approved users**

63. Under the Proposed 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.
64. 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.
65. Licensees may also be subject to unannounced audits, which are used to assess an operation's continued conformance with HFAC standards and procedures.

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

## ***Dispute resolution***

### *Disputes regarding certification*

66. 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.
67. 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 order an additional inspection. 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, section D and Inspection Manual, Part 6)*

### *Disputes about any other issue relating to the Proposed CTM*

68. 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.
69. 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.
70. 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.
71. Once an investigation has been completed, the Resolution Body will communicate its decision in writing to the complainant and the subject of the complaint.
72. Specific processes apply where the dispute relates to the appointment of an investigator or about HFAC operations, and complaints about operations certified by HFAC.
73. The appeal process is the same as the appeal process for disputes regarding certification decisions (see paragraph 67).

## ACCC's initial assessment

74. The ACCC has considered HFAC's application and associated documents. While HFAC's certification program may be supported by clear and objective processes in the USA, the ACCC is required to assess how the Proposed CTM Rules would operate in an Australian context.
75. The ACCC's initial assessment is that it is not satisfied that in Australia:
- a. the attributes a person must have under the Proposed CTM Rules to become an approved certifier are sufficient to enable the person to competently assess whether products produced in Australia meet the certification requirements
  - b. the Proposed 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, in many cases, inconsistent with the HFAC standards comprising the Proposed 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***

76. 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.
77. The ACCC acknowledges that under the Proposed CTM Rules approved certifiers are, among other things, required to have appropriate tertiary qualifications and are subject to annual performance reviews by HFAC. However, HFAC has not provided any detail about how its Proposed CTM Rules would be adapted to reflect Australian production systems, or how it would practically implement any certification assessment scheme in Australia. The ACCC considers that the Proposed CTM Rules do not provide for the significant resources, training and support that would be required for a certified assessor to competently make assessments of production processes in Australia.

### *Interested Party submissions*

78. 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.<sup>17</sup>
  - 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.<sup>18</sup>

---

<sup>17</sup> Submission from WA Pork Producers, 27 August 2019, p. 1.

<sup>18</sup> Submission from Wool Producers, 16 August 2019, p. 1.

- It is unclear how HFAC inspectors would work with RSPCA and state governments, who already have some jurisdiction over animal welfare.<sup>19</sup>
- There is no detail about who will be contracted or employed by HFAC as approved certifiers or third party auditors for its certification program in Australia, other than the education requirements for being trained as a HFAC inspector.<sup>20</sup>

#### ACCC view

79. In the context of these submissions, and in circumstances where the Proposed CTM Rules have not been appropriately adapted to reflect Australian production systems or conditions, the ACCC is not satisfied that the attributes a person must have to become an approved certifier are sufficient to enable them to assess whether Australian products meet the certification requirements.
80. HFAC's proposed amendment of the Proposed CTM Rules to be automatically modified by *Australian Animal Welfare Standards and Guidelines* does not address this issue. No process has been established to monitor any changes to the *Australian Animal Welfare Standards and Guidelines* or to communicate to applicants or previously certified parties that certification requirements have changed.

#### **Principles relating to unfair practices**

##### **(i) Representations conveyed by use of the Proposed CTM**

81. Section 175(2)(b) of the TMA requires the ACCC to be satisfied that the Proposed CTM Rules are satisfactory having regard to, amongst other things, the principles relating to unfair practices set out in the Australian Consumer Law.
82. 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.
83. 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 other non-certified products generally available in the market.

---

<sup>19</sup> Submission from Wool Producers, 16 August 2019, p. 3.

<sup>20</sup> Submission from Humane Society International Inc, 28 August 2019, p. 2; Supplementary submission from Wool Producers, 16 August 2019, p. 3.

84. Accordingly, the ACCC considers that use of the Proposed CTM on a product will risk misleading Australian consumers unless the Proposed 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.
85. The ACCC is not satisfied that the Proposed CTM Rules ensure that the Proposed CTM will only be applied to products that satisfy these criteria. In particular the ACCC notes that, in many instances:
- the standards comprising the Proposed CTM Rules are inconsistent with what a reasonable Australian consumer would expect regarding the humane treatment of animals, and
  - the Proposed CTM Rules would permit the Proposed CTM to be applied to products that are produced via animal welfare practices that are not superior, and in some cases are inferior, to standard Australian animal welfare practices.
86. Examples that illustrate the ACCC's concerns are set out below.

*Egg Laying Hen Standards and Chicken Standards examples*

87. Examples from the HFAC Egg Laying Hen Standards and the HFAC Chicken Standards that demonstrate both of these points include the following:
- Chickens can have their necks cut for up to five seconds prior to being stunned.<sup>21</sup>
  - For the production of eggs certified as free range, maximum outdoor stocking densities are 0.19 square meters per hen, or 52,631 hens per hectare.<sup>22</sup>
  - Chickens are not required to have access to the outdoors.<sup>23</sup>
88. The [National Information Standard for free range eggs](#), under the Australian Consumer Law, sets out requirements that are significantly above these standards. In particular, for eggs to be represented as free range:
- Stocking densities must be below 10,000 hens per hectare.<sup>24</sup>
  - Hens must have meaningful and regular access to an outdoor range during daylight hours or laying cycle, and the ability to roam and forage on the outdoor range.<sup>25</sup>
89. Furthermore, under the *Domestic Poultry Model Code of Practice for the Welfare of Animals*, chickens must be stunned before slaughter, meaning in this respect, HFAC's chicken standards are below minimum Australian requirements.<sup>26</sup>
90. Interested parties expressed concerns with the standards relating to egg laying hens and chickens, variously submitting that under HFAC's standards:
- The stocking densities for eggs to be certified as free range are inconsistent with the [National Information Standard for free range eggs](#).<sup>27</sup>

---

<sup>21</sup> Humane Farm Animal Care Standards, *Chickens*, p. 32.

<sup>22</sup> Humane Farm Animal Care Standards, *Egg Laying Chickens*, p. 15.

<sup>23</sup> Humane Farm Animal Care Standards, *Egg Laying Chickens*, p. 13.

<sup>24</sup> *Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017* s 7(1)(c).

<sup>25</sup> *Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017* s 7(1)(a)&(b).

<sup>26</sup> *Model Code of Practice for the Welfare of Animals: Domestic Poultry*, p. 24.

- Chickens are able to be kept indoors for their entire lives.<sup>28</sup>
- Allowing a chicken to be stunned for up to 5 seconds after a neck cut constitutes un-stunned slaughter, a practice widely acknowledged and scientifically determined to be inhumane.<sup>29</sup>
- Chickens are restricted from eating mammalian or avian derived protein, when chickens are omnivores, not vegetarians.<sup>30</sup>
- Insufficient emphasis is given to shade, which is critical for Australian conditions.<sup>31</sup>

### *Pig Standards examples*

91. Under HFAC's Pig Standards:

- Pigs are allowed to be housed in stalls and crates, so long as they do not prevent pigs from turning around.<sup>32</sup>
- Teeth clipping and tail docking are permitted in certain circumstances.<sup>33</sup>
- Anaesthetic and post-operative analgesic is not required to be used when surgically castrating piglets younger than 7 days of age.<sup>34</sup>
- Pigs are not required to have access to outdoor areas.<sup>35</sup>

92. Under the Australian Pig *Model Code of Practice for the Welfare of Animals*, castration is only recommended if necessary for market and consumer requirements to be met, or as a way to address aggression issues in group accommodation. It also recommends immuno-castration as an alternative to surgical castration. In contrast, HFAC's pig standards permit surgical castration as a prescribed routine practice, meaning in this respect, it could be argued that HFAC's pig standards do not meet recommended Australian practices in some respects.<sup>36</sup>

93. The ACCC notes HFAC's pig standards are below various other pork certification schemes based in Australia, which the ACCC considers are indicative of community expectations regarding the humane treatment of pigs. For example:

- Humane Choice, Pasture Raised on Open Fields, and the APIQ Free Range Standard all require pigs to have access to the outdoors.<sup>37</sup>
- The RSPCA Pig Standard, Pasture Raised on Open Fields, and the Humane Choice certification scheme (Humane Choice) all prohibit the use of farrowing crates.<sup>38</sup>

---

<sup>27</sup> Submission from Garry Page, 7 August 2019, p. 2; Submission from Humane Society International Inc, 28 August 2019, p.1.

<sup>28</sup> Submission from Sentient, 25 August 2019, p.1; Submission from Vegan Australia, 9 September 2019, p. 3.

<sup>29</sup> Submission from the RSPCA, 30 August 2019, p. 1.

<sup>30</sup> Submission from the Australian Chicken Meat Federation, 30 August 2019, p. 2.

<sup>31</sup> Submission from the Australian Chicken Meat Federation, 30 August 2019, p. 3.

<sup>32</sup> Humane Farm Animal Care Standards, Pigs, p. 9.

<sup>33</sup> Humane Farm Animal Care Standards, Pigs, pp. 18-19.

<sup>34</sup> Humane Farm Animal Care Standards, Pigs, p. 19.

<sup>35</sup> Humane Farm Animal Care Standards, Pigs, p. 5.

<sup>36</sup> Model Code of Practice for the Welfare of Animals: Pigs, p. 14.

<sup>37</sup> Humane Choice True Free Range Standards: Pigs, p. 6; Pasture Raised on Open Fields, Pig Standard 2017, p. 2; APIQ Quality Assurance Program – Standards Manual, p. 11.

<sup>38</sup> RSPCA Approved Farming Scheme Standards: Pigs, p. 5; Humane Choice True Free Range Standards: Pigs, 7 & 13; Pasture Raised on Open Fields: Pigs, p. 6.

- The RSPCA Pig Standard, Humane Choice, and the APIQ Free Range Standard all prohibit tail docking and teeth clipping.<sup>39</sup>
- The RSPCA Pig Standard, and the APIQ Free Range and Outdoor Bred Raised Indoors On Straw Standards all prohibit surgical castration.<sup>40</sup> Humane Choice only allows surgical castration with pain relief, regardless of the age of the piglet.<sup>41</sup>

#### *Beef cattle standards examples*

94. Under the HFAC beef cattle standards:
- Beef cattle may be kept in feedlots.<sup>42</sup>
  - Castration can be performed on calves by the application of a rubber ring up to 7 days of age without pain relief. Surgical castration is permitted with pain control for bulls under 6 months of age.<sup>43</sup>
95. Under the *Australian Animal Welfare Standards and Guidelines for Cattle*, surgical castration is only recommended if necessary and no other alternatives are available.<sup>44</sup> In contrast, HFAC's beef cattle standards permit castration as a prescribed routine practice. Therefore, it could be argued that in some respects HFAC's beef cattle standards do not meet recommended Australian practices.
96. The ACCC notes that various beef cattle livestock certification schemes based in Australia, which the ACCC considers are indicative of community expectations regarding the humane treatment of beef cattle, prohibit these practices. For example:
- Humane Choice and Pasture Raised on Open Fields prohibit feedlots.<sup>45</sup>
  - RSPCA's Better Beef Cattle Welfare vision only allows for castration with pre and post-procedure pain relief on cattle under 3 months of age.<sup>46</sup>
  - Pasture Raised on Open Fields prohibits surgical castration without pain relief.<sup>47</sup>

#### *ACCC view*

97. These are some examples of where the ACCC considers that the standards imposed in the Proposed 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, existing requirements in Australian standards and guidelines and the use of the word 'humane' in the context of other, existing, certification schemes. They also demonstrate that the Proposed CTM Rules would permit the Proposed CTM to be applied to products where the production processes involved are in some cases no better than, or even inferior to, those recommended by existing Australian animal welfare standards and practices.

---

<sup>39</sup> Humane Choice True Free Range Standards: Pigs, p. 12; RSPCA Approved Farming Scheme Standards: Pigs, p. 25; APIQ Free Range Standards, p. 11; APIQ Outdoor Bred Raised Indoors On Straw Standards, p.13.

<sup>40</sup> Humane Choice True Free Range Standards: Pigs, p. 12; RSPCA Approved Farming Scheme Standards: Pigs, p. 25; APIQ Free Range Standards, p. 42; APIQ Outdoor Bred Raised Indoors On Straw Standards, p.13.

<sup>41</sup> Pasture Raised on Open Fields, Beef Cattle Standard 2017, p. Section 3; Humane Choice True Free Range Standards: Pigs, p. 5 Pasture Raised on Open Fields: Pigs, p. 2; Humane Choice True Free Range Standards: Pigs, 7 & 13.

<sup>42</sup> Humane Farm Animal Care Standards: Beef Cattle, p. 10.

<sup>43</sup> Humane Farm Animal Care Standards: Beef Cattle, p. 25.

<sup>44</sup> Australian Animal Welfare Standards and Guidelines for Cattle, p. 21.

<sup>45</sup> Humane Choice True Free Range Standards: Cattle, p. 3; Pasture Raised on Open Fields: Cattle, p. 4.

<sup>46</sup> RSPCA, Better Beef cattle welfare: Our Vision, p. 10.

<sup>47</sup> Pasture Raised on Open Fields: Cattle, p. 7.



98. As noted at paragraph 23, in response to concerns the ACCC initially raised regarding these matters, HFAC proposed an amendment to the rules to insert a general statement that the CTM rules are 'compliant with the Australian Animal Welfare Standards and will be automatically modified in accordance with these standards'. The ACCC is concerned that this would not address many of the examples set out above. Furthermore, the ACCC is concerned that under the proposed amendment, insufficient information has been given as to how the rules either meet or exceed the *Australian Animal Welfare Standards and Guidelines*.
99. The ACCC is also concerned that it is not clear how 'automatically modifying' the Proposed CTM Rules would operate in practice. For example, the Applicant has not advised how HFAC would ensure that changes to relevant Australian standards or guidelines were monitored, how existing certified entities would be notified that the requirements have changed and how it would ensure that Australian standards and guidelines were enforced as part of the Proposed CTM Rules. Accordingly, the ACCC is not satisfied that it can rely on this 'automatic modification' of the Proposed CTM Rules to ameliorate the issues identified above.

**(ii) Unclear and incomplete certification criteria**

100. 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. This is because the ACCC cannot be satisfied that the CTM will be applied to products in a way that is consistent with any representations conveyed to consumers by the use of the CTM.

*Unsuitability to Australian conditions*

101. The ACCC is concerned that the Proposed CTM Rules are comprised of standards developed with USA conditions and production systems in mind, and which refer to US statutory bodies, legislation, guidelines and standards.
102. The Proposed CTM Rules require CTM applicants to comply with numerous American standards, legislation, regulations and guidelines. For example, if the Proposed CTM were approved, pork producers would be required to:
- comply with the United States National Pork Producer Council or American Association of Swine Producers' euthanasia guides
  - complete a welfare and handling training course similar to the one provided by the United States National Pork Board, and
  - feed their pigs in accordance with the United States National Research Council's nutritional requirements, which does not exist in Australia.
103. Similarly, sheep farmers would be required to:
- feed their sheep in accordance with nutritional requirements determined by the United States National Research Council, which does not exist in Australia. Nutritional information would need to be referenced for suitability to Australian pastures and feeds,<sup>48</sup> and
  - the American Veterinary Medical Association's Guidelines on Euthanasia.
104. Similarly, beef producers would also be required to comply with the above American guidelines, as well as the American Medicinal Drug Use Clarification Act's regulations when administering pain relief.

---

<sup>48</sup> Supplementary submission from Wool Producers, 6 September 2019, p. 1.

105. Interested parties have noted that if producers were to comply with the United States referenced requirements, they may be in breach of Australian legislation and standards.<sup>49</sup>
106. Interested parties have also highlighted that the Proposed CTM Rules have not been adapted to Australian conditions.<sup>50</sup> Under the Proposed CTM Rules there are no provisions prescribing practices for farmers to prevent flystrike in sheep, which is an important animal welfare issue in Australia.<sup>51</sup> Furthermore, an interested party also noted that in HFAC's Standard for Chickens insufficient emphasis is placed on shade, which in Australia is important to ensure that chickens raised in free range production systems go outside.<sup>52</sup>
107. As a result, the ACCC is concerned that the Proposed CTM Rules are insufficiently comprehensive or certain for producers to be able to understand what is required to be certified.

*Ability to monitor and implement changes to relevant Australia regulations*

108. HFAC does not appear to have structures or processes in place to enable it to keep up to date with changes to Australian animal welfare standards, guidelines, and legislation and regulations, which will likely be industry specific and may vary across the numerous jurisdictions within Australia – for example, between different states and territories. In particular:
- As an interested party submitted, there is no indication of who would monitor changes in relevant Australian standards, guidelines, regulations and legislation, which is required to ensure that products which are certified are compliant with Australian legislation, regulations, standards, or guidelines.<sup>53</sup>
  - There is no description of how existing CTM users would be notified that any relevant legislation has changed, and processes for ensuring compliance with any new standards that apply in Australia.
  - There is no guidance for licensees in how to manage the intersection of the Proposed CTM Rules and Australian standards, guidelines, legislation, or regulations.

*Interested party submissions*

109. Interested parties raised strong concerns with the references to American standards in the standards, submitting that:
- The manuals do not refer to Australian legislation, regulations, standards, or guidelines.<sup>54</sup>
  - Areas of the CTM rules would require substantial amendments in order for them to be functionally appropriate for use in Australia.<sup>55</sup>

---

<sup>49</sup> Supplementary submission from Wool Producers, 6 September 2019, p. 2; Submission from Australian Pork, 11 September 2019, p. 2.

<sup>50</sup> 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.

<sup>51</sup> Supplementary submission from Wool Producers, 16 August 2019, p. 3; Submission from Humane Society International Inc, 28 August 2019, pp. 1-2.

<sup>52</sup> Submission from Australian Chicken Meat Federation, 29 August 2019, p. 3.

<sup>53</sup> Submission from WA Pork Producers, 27 August 2019, p. 1.

<sup>54</sup> Submission from Garry Page, 7 August 2019, p. 1; Submission from Humane Society International Inc, 28 August 2019, pp. 1-2; Submission from Cattle Council, 28 August 2019, p. 2; Submission from Australian Pork Limited, 11 September 2019, p. 2; Submission from Wool Producers, 16 August 2019, p. 1; Supplementary submission from Wool Producers, 6 September 2019, pp. 1-2; Submission from Australian Chicken Meat Federation, 30 August 2019, 5; Submission from WA Pork Producers, 27 August 2019, p. 1.

- The USA standards referenced are designed around conditions that apply in the USA, which are quite different than those in Australia.<sup>56</sup>
- HFAC's committee does not have an Australian expert on it.<sup>57</sup>

#### ACCC view

110. The ACCC acknowledges HFAC's submission that animal welfare standards may be formulated in ways that are different to, and go beyond, what is contained in any particular jurisdiction's laws. However, the ACCC considers it important that CTM rules which govern the use of a CTM to be applied to products produced in Australia are appropriate for that context.
111. While the ACCC notes that aspects of the Proposed CTM Rules which refer to American standards may not be inconsistent with Australian standards, it is important that, where they are, this is identified and addressed in the requirements for certification in the Proposed CTM Rules.
112. Consequently, the ACCC is concerned that under the Proposed CTM Rules, due to the lack of application to an Australian context, there is a risk that products would be certified that do not meet minimum Australian standards, guidelines, legislation and regulations. Furthermore, the Proposed CTM Rules lack clarity regarding the requirements for use of the Proposed CTM in Australia. As such there is a real risk that the CTM may be applied to products in ways that would result in consumers being misled. Accordingly, the ACCC considers the Proposed CTM Rules are not satisfactory having regard to the principles relating to unfair practices set out in the Australian Consumer Law.

#### Conclusion

113. The ACCC's initial assessment of CTM 1914662 is that it is not satisfied of the requirements under section 175 of the TMA and as such, does not propose to give a certificate under that section.
114. Without a certificate from the ACCC, the Registrar of Trade Marks must reject the CTM Application.

#### Next steps

115. The ACCC invites submissions in response to this initial assessment by 10 April 2020.
116. IP Australia will formally publish the ACCC's initial assessment in the Journal of Trademarks (see also [IP Australia Trade Mark Search > CTM Application Number > View details > History](#)). Parties then have one calendar month from that date to lodge a submission with the ACCC and/or request that the ACCC hold a formal conference. The ACCC will advise interested parties once the initial assessment has been published by IP Australia, and of any adjustments to the submissions date.

---

<sup>55</sup> Submission from Garry Page, 7 August 2019, p. 1; Submission from Humane Society International Inc, 28 August 2019, pp. 1-2; Submission from Cattle Council, 28 August 2019, p. 2; Submission from Australian Pork Limited, 11 September 2019, p. 2; Supplementary submission from Wool Producers, 6 September 2019, pp. 1-2; Submission from Australian Chicken Meat Federation, 30 August 2019, 5; Submission from WA Pork Producers, 27 August 2019, p. 1.

<sup>56</sup> Submission from Garry Page, 7 August 2019, p. 1; Submission from the Cattle Council, 28 August 2019, p. 2; Submission from WA Pork Producers, 27 August 2019, pp. 1-2; Supplementary submission from Wool Producers, 6 September 2019, pp. 1-2.

<sup>57</sup> Submission from WA Pork Producers, 27 August 2019, pp. 1-2.

117. Submissions may be sent to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or to:
- General Manager
  - Adjudication
  - Australian Competition and Consumer Commission
  - GPO Box 3131
  - Canberra ACT 2601
118. The ACCC will provide HFAC with a copy of each submission received and will invite HFAC to make a submission in response.
119. After considering any submissions, including those made at a conference (if one is called), the ACCC will proceed to make its final assessment.
120. If the ACCC is satisfied that the relevant criteria in s 175(2) of the TMA are met, the ACCC will provide a certificate stating that it is so satisfied to HFAC and the Registrar. A certified copy of the rules will also be provided to the Registrar and HFAC.
121. If the ACCC's final assessment is that it is not be satisfied that the relevant criteria are met, the ACCC must notify HFAC and the Registrar of its decision not to give a certificate. The Registrar must publish the matter in the Official Journal in accordance with the Regulations.
122. An application may be made to the Administrative Appeals Tribunal to review a decision by the ACCC not to give a certificate.

## ANNEXURE A

Livestock/ State/Territory	QLD <sup>58</sup>	NSW <sup>59</sup>	Vic <sup>60</sup>	Tas <sup>61</sup>	SA <sup>62</sup>	WA <sup>63</sup>	ACT <sup>64</sup>	NT <sup>65</sup>
<b>Cattle</b>	MCP (vol)**	AAWSG* (vol)	MCP (vol)	MCP (vol)	AAWSG (man)** *	MCP (vo)	MCP (vol)	MCP (vol)
<b>Land Transport</b>	AAWSG (man)	AAWSG* (vol)	AAWSG (man)	AAWSG (man)	AAWSG (man)	MCP (vol)	AAWSG (man)	AAWSG (man)
<b>Saleyards and Depots</b>	MCP (vol)	MCP* (vol)	MCP (vol)	MCP (vol)	MCP (man)	MCP (vol)	MCP (vol)	MCP (vol)
<b>Sheep</b>	MCP (vol)	AAWSG* (vol)	MCP (vol)	MCP (vol)	AAWSG (man)	MCP (vol)	MCP (vol)	MCP (vol)
<b>Poultry</b>	MCP (partly man)	MCP* (vol)	MCP (vol)	MCP (vol)	MCP (man)	MCP (vol)	MCP (vol)	MCP (vol)
<b>Goat</b>	MCP (vol)	MCP* (vol)	MCP (vol)	MCP (vol)	MCP (man)	MCP (vol)	MCP (vol)	MCP (vol)
<b>Pigs</b>	MCP (partly man)	MCP* (vol)	MCP (man)	MCP (vol)	MCP (man)	MCP (vol)	MCP (vol)	MCP (vol)

\*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.

\*\* Vol = voluntary

\*\*\* Man = mandatory

<sup>58</sup> Queensland Government, *Animal Welfare*, 2019 <<https://www.business.qld.gov.au/industries/farms-fishing-forestry/agriculture/livestock/animal-welfare/codes/compulsory>>

<sup>59</sup> 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>>

<sup>60</sup> 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>>

<sup>61</sup> Department of Primary Industries, Parks, Water and Environment (Tas), *Animal Welfare Guidelines*, 2019 <<https://dpiwve.tas.gov.au/biosecurity-tasmania/animal-biosecurity/animal-welfare/legislation-standards-guidelines/animal-welfare-standards-guidelines/animal-welfare-guidelines>>

<sup>62</sup> 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](https://www.environment.sa.gov.au/managing-natural-resources/plants-and-animals/animal-welfare/Codes_of_practice/animal-welfare-codes-of-practice)>

<sup>63</sup> 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>>

<sup>64</sup> ACT Legislation Register, *Animal Welfare Act 1992: Regulations and Instruments*, 2020 <<https://www.legislation.act.gov.au/a/1992-45/di.asp>>

<sup>65</sup> Department of Primary Industry and Resources (NT), *Animal Welfare Advisory Committee*, 2019 <<https://dpiir.nt.gov.au/boards-and-committees/animal-welfare-advisory-committee>>