

12 May 2008

Ms Jeanette Radcliffe
Committee Secretary
Senate Rural and Regional Affairs and Transport Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Members

RE: Senate Inquiry into Meat Marketing

I am writing to you in relation to the above both as a producer of free range pork, produced in an outdoor & unconfined production system, (for the sake of distinction, I refer to this as 'truly free range') and also as a concerned consumer of meat who is keen to secure truly free range product.

I know the committee will have received a number of submissions which focus on the animal welfare aspects of truth in labelling and the inability of consumers to make an informed choice in this regard because of the current legislative and regulatory inadequacies. Of course, this is an extremely important aspect and within this context, one which forms a primary motivation for consumer choice.

I do however wish to also draw the Committee's attention to another, equally important aspect, which often appears to be overlooked. That is, the qualities and attributes of truly free range products as opposed to non-truly free range animal products. This too, constitutes a significant underlying motivation for consumers sourcing truly free range product and more often than not, for health related reasons. I have outlined some key differences with respect to the pork industry in annexure 'A' hereto.

The committee would be well aware of State and Federal Laws which regulate representations and conduct in commerce and trade. It is evident that these are grossly inadequate to address and control the current confusion in the market place, more often than not, brought about by the unethical marketing practices and representations of key stakeholders. Moreover, and with respect, the regulatory bodies that monitor and administer these laws feel disempowered or loath to take action because of these inadequacies. In this regard, I respectfully draw the Committee's attention to annexures 'B, and 'C'.

Annexure B: Draft letter to ACCC (undated). I drafted this letter for the Free Range Pork Farmers Association, the final version of which was sent the ACCC on Association letterhead. It is referred to in the response from ACCC (5.9.07) as letter 'received 29 August 2007'

Annexure C: Letter ACCC dated 5 September 2007

I do not have available the earlier correspondence, however I believe the Annexures are sufficient to demonstrate the point.

Sadly, it should also be stated that in the majority of instances, the peak bodies of meat producers are heavily geared in favour of large scale intensive meat producers whose interests are not advanced by their peak body

ensuring its members adhere to ethical marketing practices, codes and standards. Even their own standards. Self regulation is therefore not a realistic option. By way of example in this regard, I draw the Committee's attention to:

Annexure 'D': Letter Highlands Heritage Pork to APL dated 16 January 2008

Annexure 'E': Letter in reply from APL dated 6 February 2008

Annexure 'F': Letter Highlands Heritage Pork in reply dated 28 February 2008

No reply was received from APL in response to Annexure 'F'

I also wish to extend the Committee's attention to the position of producers. In the present environment, producers of truly free range products have to compete, side by side, products from non- truly free range producers who unethically describe their products as 'free range' or use misleading or confusing terminology (e.g. 'bred free range') that make it difficult for consumers to distinguish between the two. By virtue of the economies of scale and practices of more intensive farming systems, truly free range producers cannot compete on price, on what consumers are misled to believe are similar products. Consumers have a right, either for health or humane reasons, to source and secure truly free range product. However, the viable supply of such product is only possible if producers of truly free range products can compete on a level playing field, both in a marketing and business sense.

Having regard to the landscape described above, I respectfully submit that the Committee's deliberations must embody clear and strategic recommendations that ensure:

1. A legislative model which enforces labelling and terminology that accurately and unequivocally describes the production system from which products are derived.
2. A model with sufficient teeth to impose significant penalties and sanctions for breaches, by all stakeholders in the farm to consumer chain, their agents and representatives. This would include producers, wholesalers, providers, retailers (including restaurants), food processors, trade and industry bodies, etc.

It has been my direct experience that retailers, processors and wholesalers are far too ready to accept or hide behind the unsubstantiated representations of producers, even after being made aware of the significant discrepancies concerning products they stock or deal in. Retailers in particular, are at the consumer market coalface. Effective control and monitoring at this point will filter back up the entire supply chain.

There must be a legislative model that incorporates an incentive for and send a clear signal that all Stakeholders have a non delegable duty to ensure the product they sell complies with its description and standards that pertain to that description. Of course, the legislation must offer a reliable mechanism for such assessment.

3. A model that has at its core, a centralised and truly independent certification process.

In summary, there is overwhelming significant differences in the production methodologies of truly free range farming systems and the alternatives. Differences which, are expressed in terms of animal welfare and the inherent quality and attributes of the end products. It is because of these significant distinctions that a strong and growing consumer demand for truly free range products continues to be, not only a domestic phenomenon, but a world wide trend. With respect, it is incumbent on this Committee and the government generally, to ensure an environment exists in which consumers are in a position to make an informed choice, producers can satisfy that choice and the health of and diversity within the respective meat industries is fostered and protected. This is definitely not, the current situation.

Peter Multari

**WELFARE and HEALTH
DIFFERENCES****Bred Free Range Pork**

- Piglets born in a free range environment
- Piglets weaned typically at 14 to 21 days.
- Once weaned piglets transferred to an intensive growing system - pig pens or eco shelters.
- Once weaned piglets are confined. No access to pasture or the outdoors. Also, sows returned to an intensive environment.
- Intensive growing systems require the systemic use of antibiotics and other drugs.
- Not pasture fed.
- Pigs cannot exhibit their natural behaviours. They are stressed and susceptible to disease. High demand for application of drugs.
- Possible use of growth promotants to artificially accelerate growth.
- At processing, meat can be "moisture infused" i.e. injected with a brine solution in an attempt to add flavour.

***truly* Free Range Pork**

- Piglets born in a free range environment
- Piglets weaned typically at 6 to 8 weeks. (closer to natural weaning age)
- Piglets remain in free range environment all of their life.
- No confinement for piglets or sows. Access to pasture and outdoors at all times.
- No need for the systemic use of antibiotics or other drugs.
- Pasture fed. Meat is lower in saturated fats, higher in omega 3 and 6. Superior flavour.
- Pigs can exhibit their natural behaviours. No stress. Robust and healthier animals.
- Natural growth only– no growth promotants.
- Natural taste – no unnatural flavour enhancers

Australian Competition &
Consumer Commission
PO Box 10048
Adelaide Street
Post Office
Brisbane 4000

Your ref: 542549

Dear Mr Sutherland,

Re: Complaint against Gooralie Free Range Pork and Bundawarra Free Range Pork

Thank you for your letter of 27th August. I have considered the content of your letter and would respectfully request that you give further consideration to the following submissions.

I note that sections 52 and 53 of the Trade Practices Act are concerned with both misleading or deceptive conduct and false representations respectively.

Misleading or deceptive conduct – section 52

With respect to misleading or deceptive conduct, your letter uses the “average consumer” as the basis of the test to conclude that the conduct complained of may not “necessarily” be likely to mislead such a consumer.

When it comes to the concept of “consumer” it is stating the obvious that this concept must be referable to the market in which consumers are active. In this instance, that market is the market for free range pork (pork grown in paddocks), or alternatively, pork that is not grown intensively or in a confined environment. Consumers in this market (let’s call them “free range consumers) are, on average, better informed and more aware of concepts such as “free range” and “bred free range” than the consumer at large, i.e. the consumer with no particular requirements for the growing methods of the pork meat they purchase. Moreover, the free range consumers are paying a premium price on the premise the product they are purchasing has specific qualities attached to the product – not the least of which is the humanness of the “free range” growing methodology. It is imperative therefore, that they are not misled.

Of course, the most damning evidence of misleading conduct is the persistent practice of “bred free range” pork producers describing their product as “free range”. There can be only one reason for this, namely that there is a marketing benefit in doing so – i.e. a “free range” product is much more appealing to the free range consumer market than that which it actually is – “bred free range”.

I respectfully submit therefore, that free range consumers are the appropriate basis to assess the likelihood of the behaviour complained of being misleading, rather than the notion of a general consumer at large approach, which your letter appears to adopt.

Your letter also speaks of “no fixed standards against which to measure descriptions such as “free range” and “bred free range” I would refer you to the Australian Pork Limited website, which contains a definition for free range:

Free Range Pork – What is it? *Free Range Pork is pork derived from animals raised in Australia with adherence to humane animal practices as prescribed by the Model Code of Practice for the Welfare of Animals (Pigs). Throughout their lives the pigs are provided continuous free access to the outdoors and shelter from the elements furnished with bedding. This term may only be used when both the growing pigs and the sows from which they have been bred have been kept under these conditions*

The Model Code of Practice for the Welfare of Animals (Pigs) was approved by the Primary Industries Ministerial Council. The Code refers to three distinct forms of raising pigs:

1. *Indoor (including single and group housing on solid or slatted floors)*
2. *Deep litter (groups on deep litter in shelters or sheds)*
3. *Outdoor (free range, in paddocks with shelter such as arks or huts)*

The code not only recognizes significant differences in the growing methodologies between the forms, but also prescribes standards and practices peculiar for each form.

In any event, I submit that a lack of “standards” does not constitute a bar to assessing behaviour as misleading. On a purely factual basis, there is significant differences between “free range” and “bred free range” approaches, well known in the pork industry and of which free range consumers are aware. Within this market, there is therefore, the basis for misleading conduct. In this regard, I would refer you to some producer websites such as Otway Pork (www.otwaypork.com.au/OtwayStory.htm). On this website Otway goes, some way, to describing what “bred free range” constitutes i.e. *...pigs born outdoors... reared in large straw based shelters...* This example also serves to demonstrate that the terminologies of “free range” and “bred free range” and their differences are in the market place and the importance consumers attach to them.

False or misleading representations– section 53

Whilst your letter refers to section 53, it confines itself to the issue of misleading representations and does not address the issue of falseness. In this regard, I particularly refer to sub sections 53(a) and 53(eb):

A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

(a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;

(eb) make a false or misleading representation concerning the place of origin of goods;

Sub section 53(a)

By virtue of the significant differences in the growing methodology and practices between “free range bred” pork and “free range pork”, each has its own distinctive qualities, standards and history. For example:

Qualities, standard, grade, composition

- a. “Free range” pork meat comes from pigs of which natural pasture is a significant component of their food intake. This gives the meat distinctive qualities with respect to taste and also, among other things, the saturated fat content of the meat (i.e. it is lower in saturated fats – important for some consumers). “Bred free range” pork meat comes from pigs *grown* in situations which precludes natural pasture intake and hence the aforementioned qualities.

- b. “Free range” pork producers adhere to a standard which does not permit the systemic use of antibiotics and other drugs. This is a very important characteristic of the *standard, grade and composition* of the meat. “Bred free range” producers do not adhere to this standard and hence the pork meat does not possess these qualities etc.
- c. “Free range” pork comes from pigs that are not confined and which *grow* in an environment that allows for natural pig behaviours. It is well documented that pigs grown in this manner are less stressed, less prone to disease and in better health and that this is reflected in the quality and taste of the meat. “Bred free range” pork meat is from pigs *grown* in an environment which does not allow for these qualities in the meat.
- d. A significant motivating factor for consumers purchasing “free range” pork is the humane manner in which it is grown. The plight of intensively farmed pigs is well documented and well publicised. (Even your “average consumer” is aware of this difference and I would urge you to consider this issue in relation to the misleading conduct aspect of the complaint). As outlined earlier, “free range” pork derives from pigs grown in an unconfined environment allowing for natural pig behaviour. “Bred free range” pork comes from pigs that may be born (technically conceived) in a free range environment, but which, at the age of 14 to 21 days are placed into intensive or semi-intensive environments. The free range consumer is searching for pork meat that has been derived through the application particular growing standards and levels of ‘humanness’ – standards which “bred free range” pork does not possess.

Particular history:

- a. Reference to the growing methodologies and practices of “free range” and “bred free range” pork demonstrates the significant differences in the history of the pigs that constitute the pork meat, and which embody and reflect characteristics and qualities important and central to the consumers’ decision to purchase.

All of the above (and more) characteristics and qualities are critical components to a consumer’s decision to purchase “free range” pork. For Cancer suffers for example, pork meat from pigs that have not been subjected to the systemic use of antibiotics, hormones and other chemicals, is critical to their decision to purchase “free range” pork.

Sub-section 53 (eb)

I respectfully submit that *place of origin* not only extends to a particular geographic location but equally, to the qualities, characteristics and methodologies of a particular place/environment. This is particularly so within the context of food production. For example, vegetables from China are less desirable to consumers than similar vegetables from, for example, the USA. Not because of the place of origin in itself, but because of the qualities, standards, characteristics, values and methodologies synonymous with that place and their influence on the quality and standard of the products that emanate from that place.

Again, a reference to the significant differences in the growing methodology and practices between “free range” and “bred free range” pork demonstrates a difference in the *place of origin*. “Free range pork meat’s origin is from pigs which exist and grow in a free range and natural environment with no systemic use of drugs and chemicals and adherence to standards referable and peculiar to such a *place*. “Free range bred” pork meat’s origin is from pigs which exist and grow in a confined environment where the systemic or regular application of drugs and chemicals is the norm for such a *place*.

“Bred free range” pork producers are well aware of the differences outlined above, (and more) and the importance free range consumers place on these differences in their decision making process to purchase pork. Hence the motivation behind their practice to, (falsely) describe their pork meat as “free range” as opposed to what it actually is. This constitutes persistent, deliberate and premeditated false representations.

The actions of Gooralie Free Range Pork and Bundawarra Free Range Pork represent the tip of the iceberg and precursors to what is becoming a growing trend. As consumers who insist on truly “free range” meat products continues to grow and the market share of “bred free range” producers is threatened, the misleading conduct and false representations practiced by the aforesaid will so too continue to grow, particularly if producers of similar ilk are aware that the watchdog is not taking action. Ultimately, it is the consumer who will suffer, and in some cases with adverse affects on their health and well-beign.

I urge you to consider my submissions and to take positive action to prevent these practices and representations

I look forward to your early reply.

Lee McCosker
President
Free Range Pork Farmers Association Inc.



Australian
Competition &
Consumer
Commission

Our Ref: 542549
Contact Officer: David Sutherland
Contact Phone: (07) 3835 4666

5 September 2007

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Ms Lee McCosker
President
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Dear Ms McCosker

Re: Gooralie Free Range Pork and Bundawarra Free Range Pork

I refer to your letter received 29 August 2007 in response to my letter dated 27 August 2007.

As I understand your letter, you ask us to reconsider our decision to take no action in relation in your complaint, and you provide various arguments that might be summarised as follows:

- (i) in considering whether the conduct is misleading, this should be by reference to "free range consumers" (as described in your letter), who are better informed as to the meaning of "free range", rather than by reference to the broader community of general consumers;
- (ii) contrary to the ACCC's stated position, there are in fact fixed standards in relation to free range pork production, being those described on the Australian Pork Limited web site and, in any case, the lack of a fixed standard does not prevent the conduct being assessed as misleading, as it is well known within the pork industry and among free range consumers that there is a difference between free range and bred free range;
- (iii) our analysis did not address the issue of false representations, specifically in relation to subsections 53(a) and (eb) of the *Trade Practices Act (TPA)* concerning the qualities (etc) of goods and the place of origin of goods, respectively.

In light of the legal hurdles discussed previously and further below, our position remains that we do not propose to take enforcement action in this matter. I provide the following for your consideration.



The analysis in this matter involves three broad areas of inquiry: (1) what is the appropriate reference group in considering whether the conduct is likely to mislead?; (2) what, if anything, is the appropriate standard against which to assess whether the conduct is misleading and/or whether the representation is false?; and (3) is the conduct misleading and/or the representation false?

(1) what is the appropriate reference group?

With respect, I do not agree that the relevant reference group in this case is the group you termed free range consumers. The advertising about which you complain is in the public domain and therefore it is advertising directed to the public at large. One could perhaps exclude those who would not even consider purchasing pork or meat generally (ie, those who would not turn their minds to the meaning of the advertised claims), but otherwise it is likely a court would find that the relevant consumer group in this case includes at least people who purchase, or who would consider purchasing, pork including free range pork.

Regardless, I do not think that limiting the reference group to free range consumers would change the result of the analysis in this case, as the matter appears ultimately to turn on the issue of whether or not there is an appropriate standard against which to assess the conduct. This is discussed further below.

(2) what is the appropriate standard against which to measure free range claims?

I note your contention that the definition of free range pork on the Australian Pork Limited web site is an appropriate standard against which to determine whether or not someone's claim to being a free range producer is misleading or false under the TPA. I note also your suggestion that, regardless, in the industry and among free range consumers there is a well-known difference between free range and bred free range.

However, this does not overcome the difficulty presented by the fact that there is no mandatory standard for free range pork production or product labelling. That is not to say that the Australian Pork Limited web site standard is not useful or authoritative in a general sense but, simply, its status as a voluntary standard means that it cannot form the basis for a finding of misleading conduct or a false representation under the TPA. It is likely that courts will continue to resist making such findings until there is a legislated requirement that produce cannot be described as free range unless it meets certain specified standards (for example, as is the case with country of origin representations under Part V Div 1AA of the TPA).

This problem was central to the court's reasoning in the recent *ACCC v GO Drew*¹ decision, referred to in my last letter. In that case, a company sold packaged eggs labelled as "organic" and "certified organic by NASAA", when in fact only some of the eggs were produced by a NASAA-certified farmer and the other eggs were produced by intensive farming means. The ACCC sought various court orders, including orders restraining the respondent from labelling eggs as organic if they were

¹ http://www.austlii.edu.au/au/cases/cth/federal_ct/2007/1246.html

not produced in a manner recognisable as organic farming practice. Justice Gray was prepared to make injunction orders in relation to misrepresentations concerning the NASAA certification, because that was objectively determinable: NASAA could testify that they either had or had not given their certification. But His Honour would not make orders in relation to the circumstances in which the respondent could describe their eggs as “organic”, even though, as His Honour acknowledged, there exists a mandatory standard applying to export-market organic eggs which has also become “a de facto [voluntary] standard for the domestic market”. Quoting from paragraphs 41 and 43 of the judgement:

The absence of any recognised norm by which to judge whether eggs are, or are not, organic has created difficulty for the ACCC from the outset of this case, in its attempts to frame orders that would express with sufficient precision what the respondents are to be enjoined from doing by way of repetition of their contravening conduct. Initially, the ACCC proposed injunctions prohibiting the respondents from representing falsely by the packaging of non-organic eggs that they were organic eggs. Plainly, such an injunction would be almost impossible to enforce, because of its vagueness. A similar criticism could be leveled at the ACCC’s second attempt, which was to enjoin false representations on packaging that eggs were organically produced and consequently were, at a minimum, produced without the use of artificial or synthetic fertilisers, herbicides or pesticides. In addition, this version may not have covered all the possible inputs that some might think should be considered in determining whether eggs are organic.

I am therefore of the view that the attempts to overcome the lack of a clear criterion by which it can be said that eggs are, or are not, organic have been unsuccessful.... The other paragraphs of the injunctions proposed will effectively prevent packaging and supplying eggs as organic if they were not NASAA certified or produced by a NASAA certified organic producer. It is true that the packaging might not make these representations, but might still describe the eggs as organic. If that were to occur, it would simply be an example of the problem that there is no certainty about the meaning of the term "organic" in relation to eggs, and no means whereby it can be determined with any certainty whether eggs are, or are not, organic.

(3) is the claim misleading conduct and/or a false representation?

As above, the lack of a mandatory standard for free range products makes it extremely difficult to test any allegation that a product is misleadingly or falsely labelled free range, as such. If a producer were to make very specific claims about their production practices (for example, that they were pesticide-free), and those claims were not true, then the claims would likely be both false and misleading. However, that does not appear to be the case in this instance, at least as far as I understand your allegations.

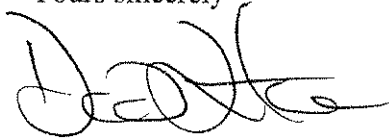
Further, with respect, your view of subsection 53(eb) does not accord with current judicial interpretations. That provision is intended to apply to representations as to geographical origin (for example, that something was produced in Australia), rather than the means of production. In any event, broadening its application would not overcome the problem of the lack of a mandatory standard for free range production.

I note your assertion that “the most damning evidence of misleading conduct is the persistent practice of ‘bred free range’ pork producers describing their product as ‘free range’. There can be only one reason for this, namely that there is a marketing benefit in doing so...” With respect, that does not constitute evidence of a contravention but, rather, a mere assertion of a contravention. Presumably, all free range producers describe their product as free range in order (at least in part) to derive a marketing benefit, and so that is not a defining characteristic of a misleading producer. One would first need to establish, to the satisfaction of a court, that there is a difference between free range and bred free range producers, so that one could say that the impugned producer’s claims to being the former when in fact they are the latter are therefore misleading or false. That difficulty is, as discussed above, apparently insurmountable at this time.

The ACCC agrees that consumers would benefit from the provision of clear and specific information concerning the manner in which the foods they purchase are produced. We also do not dispute that there may be significant and relevant distinctions between what are generally known as free range and bred free range practices. However, it is one thing to encourage producers to differentiate between means of production in their labelling, but a significantly more challenging proposition on the other hand to take legal action against them for not doing so.

If you wish to discuss this letter, please do not hesitate to contact me by return e-mail or on (07) 3835 4666.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Sutherland', written in a cursive style.

David Sutherland
Assistant Director
Queensland

16 January 2008

Andrew Spencer
Australian Pork Limited
PO Box 148
Deakin West
ACT 2600

By facsimile in the first instance: (02) 6285 2288 (6 pages inclusive)

**RE: Truth in Labeling --- Free Range - v - Free Range Bred
Budawarra Free Range Pork and Gooralie Free Range Pork**

We refer to the above issue and in particular to recent media, both print and radio, regarding the practice of free range bred pork producers describing their product and/or themselves as free range pork/free range pork producers.

For your convenience we enclose copies of some of those media events as follows:

1. Sydney Morning Herald (SMH) page 3 article - by Julian Lee in the 18 September 2007 issue,
2. Radio interview, ABC radio - Virginia Trioli with Lee McCosker, President Free Range Pork Farmers Association, 18 September 2007.
3. Choice Magazine article - December 2007 issue

We understand that these media events and the matters surrounding and leading up to them, are well within the knowledge of APL. In deed, we understand APL wanted a "right of reply" with respect to the above radio interview, but that this did not proceed.

It is apparent, *inter alia*, from the responses of Bundawarra Free Range Pork (Bundawarra) and Gooralie Free Range Pork (Gooralie) that their growing methods do not adhere to free range practices and more particularly, APL's own definition of what constitutes free range. In fact, we have first-hand knowledge of Bundawarra's practices, having visited their premises about two years ago. On that occasion, Bundawarra related to us that APL had involvement in the development of their business model and significant knowledge of the nature and method of their operations.

This issue is now firmly in the public arena and as such requires affirmative and prompt action.

We are concerned that this situation brings the industry into disrepute whilst confusing and alienating consumers by undermining their ability to make an informed choice and a choice they can feel comfortable and confident about.

As the peak body for pork producers in Australia, we submit it is incumbent upon APL to build, foster and maintain the integrity of the pork industry, healthy public relations and consumer confidence - for the benefit of the industry as a whole and for all its members. Therefore, as members of APL and free range pork producers, we request you supply answers to the following as a matter of urgency:

Ph: (02) 4868 2509

Mob: 0418 169499, 0418 116904

Fax: (02) 4868 2031

Address: Level 1, 98-100 Moore St, Liverpool 2170

1. What course of action does APL propose to take in relation to Bundawarra and Gooralie and others, describing their product as 'free range' when it is apparent that their growing methods do not comply/are not consistent with free range practices and more particularly, with APL's own definition of free range?
2. What action does APL propose to take to address the confusion/likely confusion this practice presents consumers and to regain/ensure public confidence in all aspects of the industry?
3. What is APL's practice for auditing and/or monitoring APL member compliance with APL guidelines; more specifically your free range guidelines/definition?
4. Does APL condone the description of 'free range bred' pork as 'free range pork' and if so, what is the rationale behind this, given the significant differences in the methodologies, practices and meat characteristics between the two, the predisposition for consumer confusion and loss of confidence and APL's own definition of 'free range'.
5. Does APL condone 'free range bred pork' producers describing themselves as or holding themselves out as 'free range pork' producers and if so, what is the rationale behind this, given the significant differences in the methodologies, practices and meat characteristics between the two, the predisposition for consumer confusion and loss of confidence and APL's own definition of 'free range'?
6. What measures does APL propose to put in place and a time line for this, to protect the interests and public profile of its 'free range pork' producer members against the above practices?
7. What procedures exist and what action does APL propose to undertake to ensure the information and representations it makes to the public, on behalf of its members, specifically its representations to consumers on what constitutes 'free range pork', accurately reflect the practices of members who claim to be free range pork producers?
8. What measures and actions has APL undertaken and proposes to undertake and a time line for this, to ensure that a free range definition true to free range practices is incorporated into legislation?

We look forward to your urgent reply.

Yours faithfully,

Pasquale Multari
Cindy Bowman

'Free range' tag on pork creates a real stink

Julian Lee
Marketing Reporter

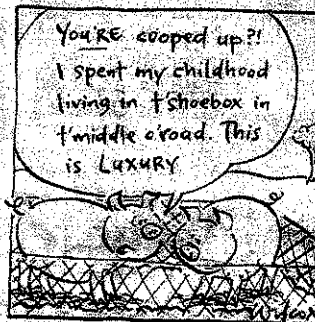
A BITTER row over what defines a free range pig is threatening to tear apart the potentially lucrative free range pork industry.

Farmers have been thrown into turmoil after the competition regulator ruled that there was little difference between pigs that spent their entire lives outdoors and those that were born free but were then reared in intensively farmed conditions.

Consumers were unable to distinguish between the production methods of "free range" and "bred free range", so both were equally legitimate, the Australian Competition and Consumer Commission ruled in its dismissal of a complaint.

Both sides of the fledgling free range pork industry insist that its interpretation of free range is the more accurate. There is no legal definition of free range pork.

Typically, bred free range pigs are born outdoors and spend the first few weeks of their lives free to roam in paddocks. At about



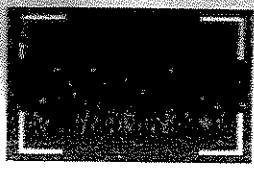
three weeks old they are weaned and transferred to huts with other pigs until they are slaughtered at about five months.

Purists say pigs should spend their entire lives roaming in paddocks to qualify for the free range tag.

The Free Range Pork Farmers Association had accused two pig producers of misleading and deceptive conduct for claiming to be free range. The competition regulator acknowledged the different methods but said shoppers would be unable to make the distinction.

"If a claim such as free range does nothing more than confuse the average consumer as to its meaning, then the claim is not misleading," the assistant director of the regulator's Queensland branch, David Sutherland, wrote.

One of the accused producers, Stephen Roberts of Bundawarran Free Range Pork said that until a strict definition was reached, he was free to call his product free range. The other, Gooralie Free Range Pork in Goondiwindi, Queensland, uses both terms in its marketing.



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Free-range or free-range bred?

Is your gourmet free-range pork what you think it is? CHOICE takes a look at the difference between free-range and free-range bred pigs.
Online 12/07

Will your Christmas pork be free-range or free-range bred? Not sure what the difference is? As far as the Australian Competition and Consumer Commission (ACCC) is concerned, you just don't need to know.

The ACCC was asked to investigate a complaint about misleading advertising by two pork producers, who promoted their products as 'free-range'. Free-range bred piglets are born outdoors, to mothers that live in the open, but once weaned at about three weeks they're moved into sheds or shelters to be fattened up as they start their journey to your dinner plate.

According to the **Free Range Pork Farmers Association**, the definition of 'free-range' is that the pigs should have the freedom to forage on the land, and not be hindered by cages, stalls, tethers or confined yards.

The pigs should be able to, among other things, "graze on pasture during the day, experience sun, rain and wind, be free to express instinctive behaviour, be free from fear and distress, and be free from hormones, growth promotants and antibiotics".

While free-range pork producers agree that free-range bred is a humane method of raising pigs, they think consumers are entitled to know the difference and know exactly what they're buying.

Supporters of more conventional farming methods argue that it's not in the interest of the pigs to farm them free-range all the time. They think it's better for them to be protected from the elements.

Wherever consumers stand on the issue of free-range versus conventional farming practices, CHOICE thinks they have a right to know what they're buying — and this requires proper labelling.

Unfortunately, the ACCC has decided that consumers aren't savvy enough to understand the difference between the terms 'free-range' and 'free-range bred'.

CHOICE agrees that while 'free-range bred' may be strictly accurate, it's not a term that's instantly understandable, and we think consumers would benefit from a more meaningful description. Not to be told at all that there's a difference between the two terms removes the ability of consumers to make a choice.

[Back to News](#)



6 February 2008

Mr P Multari & Ms C Bowman
Highlands Heritage Pork
Level 1, 98-100 Moore St
LIVERPOOL NSW 2170

Dear Ms. Bowman and Mr. Multari

Subject: Your letter of 16th January 2008 – Free Range vs Free Range Bred

Thanks for the above mentioned letter. I am familiar with the issue that you raise regarding the labeling and standards pertaining to free range production methods.

Rather than go through all of the points and questions on your letter, I make my own points below which I believe will make the position of APL clear:

- In principle, I believe that it is very much in the interests of the overall pork industry in Australia that we have a range of product types able to meet the needs of today's discerning consumer. Production systems are one of the areas where preferences are expressed by consumers for reasons of health, welfare of animals or others. In this context a healthy free range pork industry is something that I would encourage.
- Unfortunately today we are heading for a free range industry which is not only divided on "what means what" with the terminology, but through claim and counter-claim being played out in the media are potentially damaging their own image with their customers.
- Whilst no clear and agreed standards exist for what is "free range" and what is "free range bred" accompanied by a relevant validation system, it is pointless to try to regulate or police the way free range products are labelled. As of today, we have alongside probably a number of private understandings of what "free range" or "free range bred" means, standards available from the Free Range Pork Farmers Association (FRPFA) and the RSPCA, brief definitions from APL and importantly a ruling from the ACCC. As far as I am concerned, no one body can claim to own "the truth" with respect to what free range or free range bred means.
- I believe that it would certainly be in the interests of the free range industry to be able to agree on these standards and validation systems so that they can speak with one voice and get down to the more important job of promoting the benefits of their product. APL would be happy to try to facilitate such a process, but is unable to on its own dictate what standards should be. What is needed is some leadership from the

free range industry, and willingness amongst free range producers to work together to bring some unity to this developing industry sector.

- Consistent with this, a meeting has been tentatively arranged for March of this year between APL and the FRPFA hopefully as a start to this process. Other interested bodies will need to be given the opportunity to contribute if the initiative is to be successful in gaining agreement on standards and processes for free range production systems. I would encourage you also to contribute to this process.

I hope this gives you a clear understanding of our position. Please don't hesitate to contact me by phone if there are any areas that you would like to discuss further.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Spencer", written in a cursive style.

Andrew Spencer

28 February 2008

Andrew Spencer
Australian Pork Limited
PO Box 148
Deakin West
ACT 2600

By facsimile in the first instance: (02) 6285 2288 (1 page inclusive)

**RE: Truth in Labeling --- Free Range - v - Free Range Bred
Budawarra Free Range Pork and Gooralie Free Range Pork**

We refer to your letter of 6 February 2008.

With respect, your response does not address the issues raised in our letter of 16 January last.

Regrettably, we continue to be amazed but unfortunately not surprised, by APL's approach to issues such as this i.e. vague, ambiguous, evasive, noncommittal and token.

FACT: APL's website puts forward to the public a definition of free range pork.

FACT: APL has direct knowledge that some of its members who describe their system and/or product as free range, do not comply with that definition.

FACT: When consumers searching for free range product read that definition they are led to believe that those same members comply with APL's publicised definition.

In our view APL is complicit in misleading consumers.

In plain, unambiguous and direct language; what does APL propose to do about this so that, as your letter puts it, *discerning consumers can express their preferences on an accurate and sound basis AND so a healthy free range pork industry is ... encouraged.*

We await your urgent response.

Yours sincerely,

Pasquale Multari
Cindy Bowman

A porky dilemma for consumers

Last Update: Tuesday, September 18, 2007. 4:29pm AEST

Most of us believe that the term "free range" equals happy pigs that live outdoors and play in the mud before they become our Sunday roast.

But the Australian Competition and Consumer Commission, ACCC, still has no standards for the use of the term "free range" when it comes to pork.

This means that pigs being reared indoors without sunlight or access to green pastures are being sold under the term "bred free range".



Mary the pig.

Virginia Trioli spoke to Lee McCosker, President of the Free Range Pork Farmers Association.

The association are concerned that the industry in general is trying to push for a description or a standard for "free range" that also includes pigs that are raised indoors.

"The ACCC has said that people can't distinguish between "free range" and "bred free range". And if the general consumer is unaware that there is a difference, how can they be misled?", says McCosker. She says that the pork that you are eating under the "bred free range" label is not raised "free range" at all.

Even though the sows live outdoors and give birth outdoors, the piglets are usually weaned by 21 days of age and then moved into large sheds and raised indoors. These sheds generally have straw beddings but over a cement floor. They don't have access to sunlight, soil or pastures.

"I can't classify that as free range", says Lee McCosker.

A pig that has been reared under the requirements of the Free Range Pork Farmers Association standards is free to graze pastures and exhibit all natural behaviours.

**People can't distinguish
between free range and bred
free range**

"They should be free to experience natural mating and just generally do what pigs like to do: Running, playing and rolling in mud".

Even though the term "bred free range" means rearing pigs indoors. McCosker still believes it is a better alternative than other methods used in the industry.

"We just wish they would sell their product for what it is and not palm it off as "free range" when clearly it's not".

Virginia Trioli asked Lee McCosker if consumers were really getting such a different product if they buy "free range" instead of "bred free range". She said:

"The beautiful flavour that comes from "free range" pork comes from the soil and the pasture that those pigs consume and also being out in the sunshine and being happy to start with".

"An animal that has been raised on a concrete floor does not have the same flavour".

Last Updated: 18/09/2007 4:29:52 PM

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Free Range Pork

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Free Range Pork – What is it?

Free Range Pork is pork derived from animals raised in Australia with adherence to humane animal practices as prescribed by the Model Code of Practice for the Welfare of Animals (Pigs). Throughout their lives the pigs are provided continuous free access to the outdoors and shelter from the elements furnished with bedding. This term may only be used when both the growing pigs and the sows from which they have been bred have been kept under these conditions

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