



**Australian  
Competition &  
Consumer  
Commission**

**Final Assessment of Certification Trade Mark Application No. 799171 lodged by the Free Range Egg & Poultry Association of Victoria Inc.**

The Australian Competition and Consumer Commission (the Commission), in accordance with the requirements of the *Trade Marks Act 1995*, has completed its Final Assessment of the above Certification Trade Mark (CTM) application.

The Commission's Final Assessment is that it is satisfied that:

- (a) the applicant is competent to certify the goods in respect of which the CTM is to be registered;
- (b) the rules governing the use of the CTM would not be to the detriment of the public; and
- (c) the rules governing the use of the CTM are satisfactory having regard to the principles relating to restrictive trade practices set out in Part IV of the *Trade Practices Act 1974* (the Act); the principles relating to unconscionable conduct set out in Part IVA of the Act; and the principles relating to unfair practices, product safety and product information set out in Part V of the Act.

Signed.....*M. M. McNeil*..... (Commissioner)

Date.....*30 AUGUST 2002*.....

799171

**RULES AND CONDITIONS GOVERNING THE USE AND ACCREDITATION OF THE LOGO OF THE FREE RANGE EGG & POULTRY ASSOCIATION OF VICTORIA INCORPORATED**

1. The Free Range Egg & Poultry Association of Victoria Incorporated (FREPA) is the owner of a registered Certification Trademark (CTM) illustrated on Appendix 1 (the Code logo).
2. Accreditation to use the Code logo may be granted (or renewed) only to those applicants who satisfy the FREPA Committee of Management that:
  - They have paid the necessary membership and accreditation fees
  - They are commercial free range egg or poultry farmers
  - They have demonstrated their capability of complying with the Code as it applies to their business and
  - In all cases will abide by the rules and conditions set out in the Code and FREPA's Constitution
2. An applicant for accreditation or renewal of accreditation who is affected by and dissatisfied with a decision to refuse a licence to use the FREPA logo may appeal such a decision by notice in writing to advise FREPA of the grounds of such dissatisfaction and request FREPA to review its decision. Within two months of receipt of such notice FREPA shall review its decision and advise the Applicant of the results of that decision in writing.

In the event that FREPA maintains the decision to refuse the licence, the Applicant concerned may have the decision reviewed by a third party which is mutually acceptable to and independent of both parties and qualified to conduct such a review.

3. Demonstration of capability of compliance with the Code requires that the applicant has successfully completed an audit process (at its own expense) by an auditor accredited by a recognised auditing organisation. The audit will have no major non-compliances.
4. The accredited person or organisation must be able to meet any requirements under law or regulation for the management of the birds or the supply and/or sale of produce in Victoria and/or any other Australian State, as appropriate.
5. The granting of accreditation by the Board recognises that the accredited organisation has polices and systems in place that aim to provide reliable quality management of the birds and reliable quality products to customers. It does not imply a guarantee by FREPA for the quality of each and every product delivered by that person or organisation.
6. Upon granting the accreditation, FREPA will issue the organisation with an Accreditation Certificate
  - Valid for one year from the date of issue (unless otherwise revoked in accordance with these rules) and
  - Setting out the areas of accreditation

The time for which the Accreditation Certificate is valid may be varied from time to time by the Committee.

7. The Accreditation Certificate remains the property of FREPA and must be returned promptly upon request or termination of accreditation.

CERTIFIED TRUE COPY

*[Signature]* (for the ACCC)

12 / 9 / 02

15. An accredited person or organisation may at any time withdraw from FREPA on at least 30 days notice in writing of the intention to do so and will then immediately commence to phase out its usage of the logo and shall ensure that no material or products feature the logo at the end of the notice period.
16. In the event that an accredited person or organisation or one which has applied for accreditation
- Fails to comply with these rules and conditions or
  - Is unable to establish and maintain compliance with the Code or
  - Makes an assignment for the benefit of creditors or files a petition in bankruptcy or becomes insolvent or unable to trade or pay its debts or is placed under the control of a receiver or is otherwise liquidated or wound up

FREPA may:

- Refuse or defer the granting of accreditation
- Temporarily suspend accreditation
- Amend the extent of accreditation
- Withdraw accreditation

The decisions and the grounds for them shall be conveyed to the person or organisation in writing.

The person or organisation may appeal such decisions to a third party which is acceptable to both parties and qualified to judge.

17. FREPA may require the accredited the person or organisation or one which has applied for accreditation to pay its costs which are incurred by the amendment, suspension or withdrawal of accreditation.
18. The Board has approved the use of the accreditation logo for use as follows:
- The logo may be used on correspondence, advertising and promotion material in conjunction with the accredited person's or organisation's name or emblem/logo, but not in connection with activities/services to which the accreditation does not apply
  - The logo shall not be used in any manner which implies approval of a product or service
  - When notified in writing, the accredited person or organisation will discontinue any use of the logo that is unacceptable to the Board and any form of statement used in conjunction with the logo which maybe misleading. The accredited person or organisation will also undertake any other action requested by the Board with respect to the unacceptable use of the logo
  - When accreditation is suspended, the accredited person or organisation undertakes to immediately discontinue the use of the logo until the accreditation is re-commenced
  - When accreditation is terminated or withdrawn, the accredited person or organisation undertakes to immediately discontinue the use of the logo and to deliver to FREPA or destroy under supervision all stock of labels, packaging and other materials featuring the FREPA logo.
  - If the use of the logo is not discontinued forthwith, FREPA will be entitled to seek an injunction to restrain its use by the previously accredited person or organisation and/or will be entitled to advise the public or others of such suspension, termination or withdrawal.
19. The Board will from time to time undertake such activities which it deems appropriate to promote the adoption, recognition and relevance of the logo and the Code.

**CODE OF PRACTICE**

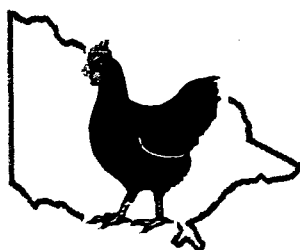
**FOR**

**ACCREDITATION**

**BY**

**FREE RANGE EGG AND POULTRY IN VICTORIA**

© FREPA Vic Inc. 2001



**FREE RANGE EGG & POULTRY  
ASSOCIATION OF VICTORIA INC.**

**PO BOX 37, MARONG, 3515, Tel: 0500 537 372**

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## **1.0 INTRODUCTION.**

### **1.1 This Document**

The Free Range Egg and Poultry Association was formed in 1993 after Government deregulation in the Victorian Egg Industry. Deregulation enabled the establishment of independent egg and poultry farms which marketed their own produce in line with consumer concerns and interests.

The intent of this Code is to demonstrate to the public and government that FREPA's methods of poultry husbandry represent best practice poultry care and biosecurity, safe food quality and sustainable extensive farming practices.

This Code of Practice is inclusive of the current editions and successors of the Codes of Practice et al already in existence viz.:-

Welfare - Code of Practice - Domestic Poultry, current edition appropriate for the State of operation

- the Land Transport Code for Domestic Poultry, current edition appropriate for the State of operation

Food Safety - Code of Practice - Shell Egg Production, Grading, Packing and Distribution

- Code of Practice for Manufactured Product
- Poultry Meat Code.

Packaging - General Requirements on Pre-Packed Articles for Retailers/Manufacturers / Packers, as revised

Health - Food Act, as revised

Biosecurity - Biosecurity Code of Practice for the Egg Industry, current edition

Quality Assurance - the Egg Production Assurance Program

### **1.2 Free Range Definition.**

There is not a current definition of Free Range production in the Trade Practices Act.

### **1.3 Sunset Clause.**

All FREPA egg and poultry farmers with pre-existing rights which are in existence because of situations which pre-date FREPA membership will have to comply with the government-endorsed codes or government legislation.

This clause will only apply to farms in which these rights are not major non-compliances in the audit process.

## **2.0 POULTRY CARE**

### **2.1 Animal Care**

- a) All egg farms should complete and retain for inspection records which demonstrate their compliance with: the current edition of the Code of Practice for the Welfare of Animals - Domestic Poultry, the Code of Practice for the Land Transport of Poultry, this Code and FREPA's system.

## **6.0 MANAGEMENT OF CODE**

### **6.1 Management Committee**

Management will be vested in a FREPA Code management committee comprising of:

- One chairman who is President of FREPA
- One secretary who is the executive officer of FREPA (non-voting)
- 4 farmer nominees - at least one farmer to be an egg farmer and at least one to be a chicken meat farmer

The Chairman may exercise a casting vote.

### **6.2 Term of Appointment**

Apart from the Chairman and Secretary, appointments are to be made a selection committee chaired by the Immediate Past President of FREPA for a twelve month term.

### **6.3 Conflict of Interest**

Should a complaint concern a member person or organisation represented by a member of the Management Committee, that member will, for that investigation, disqualify himself or herself and the Chairman will appoint a representative of another member to act as a temporary member of the Management Committee.

### **6.4 Quorum**

Three members of the Management Committee will constitute a quorum provided that there is a representative of egg or chicken meat as appropriate to the complaint.

### **6.5 Management Committee Terms of Reference**

These include:

- Mediation and determination of disputed cases of alleged non-conformity to the Code
- An annual review of complaints and their status
- A review of the Code, as necessary, to assess the need for changes.

## **7. COMPLAINT HANDLING PROCEDURE**

Allegations of a breach of the Code must, initially, be pursued by the person or company making the complaint directly with the person or company alleged to have breached the Code.

### **7.1 Alleged Breach of Code**

The procedure which shall be followed is:

- The complainant shall notify the respondent (of whom the breach is alleged) in writing within 21 days of the date of the complainant becoming aware of the incident:
  - Specifying the breach
  - Requiring that the breach be remedied
  - Requiring that a reply in writing which includes the following be given to the complainant in 21 days from receipt of the notification by the respondent
    - Acknowledging receipt of the complainants notice
    - Admitting or denying the breach
    - And if admitting the breach setting out steps taken or proposed to remedy the breach

- If :
  - There is no reply by the respondent within the time limit
  - The respondent denies the breach
  - The complaint is not resolved

the dispute maybe referred by either party to the Management Committee.

### **7.2 Referral of Dispute to Management Committee**

If the complainant refers the dispute to the Management Committee, the complainant must send to the Secretary of the Management Committee:

- A copy of the notice given under 7.1
- A copy of the reply if any given by the respondent
- Notice sitting out the clauses of the Code alleged to have been breached
- A request that the dispute be referred to the Management Committee
- A fee of \$500.00.

### **7.3 Documents referred to Respondent by Secretary**

The secretary shall send copies of the documents referred to in 7.2 to the respondent and require the respondent to within 14 days of receipt of the documents to in writing send to the secretary:

- Acknowledgment of receipt of the copies of the documents
- Any response the respondent desires to make

When the Secretary receives the documents in 7.3 or after 21 days of sending the documents in 7.2, whichever occurs first, the Secretary shall refer the dispute to the Management Committee.

### **7.4 Management Committee Options**

Its options are to:

- Attempt to resolve the dispute through mediation. The Chairman of the Management Committee shall obtain the consent of all parties to the mediation before commencing
- Request the complainant or the respondent to provide such further information as the Committee may require
- Co-opt the services of appropriate experts as required. Such co-opted experts will have not voting rights. The costs incurred will be covered by the parties to the dispute on a basis pre-determined by the Management Committee and agreed in writing by the parties prior to the co-opting of the experts.

If the dispute cannot be resolved within 28 days through mediation, it will be reviewed by the Management Committee which will decide whether to refer the matter to arbitration.

### **7.5 Arbitration**

If referred to arbitration, the independent arbitrator agreeable to both parties shall be appointed by the Management Committee. Both parties will agree to abide by the decision of the arbitrator and to meet the full costs of the arbitrator.

The arbitrator's decision will be final and binding on both parties.

FREE RANGE EGG & POULTRY  
ASSOCIATION OF VICTORIA INC

AGREEMENT FOR USE OF TRADEMARK

Free Range Egg and Poultry  
Association of Victoria Inc P0 Box 37  
MARONG VIC 3515



- (2) Unless otherwise agreed in writing the User shall whenever any of the Trademark is used accompany such use with words indicating that the Trademark is the registered Trademark of the Proprietor.

### ***Similar Marks***

- 6 The User shall not use in its business any other Trademark or logo which is similar to or substantially similar to or so nearly resembles the Trademark as to be likely to cause deception or confusion among the public.

### ***Maintenance of Value***

- 7 The User shall use its best endeavours to preserve the value and validity of the Trademark and in particular shall:
- (a) use the Trademark in accordance with the Proprietor's standards as set out in Schedule 3 to this Agreement;
  - (b) not use the Trademark accompanied by words describing the Goods or services or any of them unless the Trademark is distinguished from the descriptive surrounding and adjacent text.

### ***Marketing Materials***

- 8 The Proprietor shall provide the User with such marketing and sales materials as are in its possession when reasonably requested by the User.

### ***Infringement Proceedings***

- 9 (1) The User undertakes to the Proprietor that it shall do all things reasonably necessary for  
the protection of the Trademark against deregistration or infringement.
- (2) In the event that:
- (a) the User receives notice of any infringement or threatened infringement of the Trademark or any common law passing off by reason of imitations of get up or otherwise;
  - (b) any third party alleges or claims that the Trademark is liable to cause deception or confusion to the public,
- the User shall forthwith notify the Proprietor giving particulars and shall

capacity to authorise the User to use the Trademark;

- (c) the Proprietor has no knowledge of prior use of the Trademark by any other proprietor.

**Notices**

- 13 Every notice required or permitted under this Agreement will be in writing signed by or on behalf of the party giving it and will be deemed to have been received by the intended party when copies are delivered personally to that party or when they are faxed to its registered office (as stated herein or subsequently notified to the other party). Proof that the notice was properly addressed and posted or faxed will be sufficient evidence of service.

**Jurisdiction**

- 14 This Agreement will be governed by and construed in accordance with the laws of the State of Victoria and the parties submit to the jurisdiction of the Courts of that State.

**Charges**

- 15 All stamp duties and governmental charges arising out of this Agreement shall be the responsibility of, and payable by, the User.

**Non-Exclusive Rights**

- 16 The rights granted by this Agreement to the User are non-exclusive.

**Inspection**

- 17 The User must give the Proprietor (or anyone authorised in writing by the Proprietor) access to the User's property at any reasonable time for the purpose of ensuring that the Proprietor's requirements as set out in Schedule 3 to this Agreement are being complied with by the User.

The COMMON SEAL of FREE RANGE EGG )      *Affix common seal here*  
& POULTRY ASSOCIATION OF )  
VICTORIA INC was affixed, in accordance )  
with the provisions of its rules, in the presence of )

X .....  
*President*

X.....  
*Secretary*

**SCHEDULE 1**

200

1. **The date of Agreement is:**

2 **The Proprietor is:**

**FREE RANGE EGG AND POULTRY  
ASSOCIATION OF VICTORIA INC  
P0 Box 37  
Marong Vic 3515**

3 **The User is:**

**Name: \***

**ACN NO: \*  
(if company)**

**Registered office: \*  
(if company)**

**Business address: \***

**Telephone: ( )**

**Facsimile: ( )**

4 **Licence fees:**

**(a) \* cents per label/item  
and/or**

**(b) Annual fee of \$\* based on a lay rate  
of\***