

Free Range Egg Labelling Consultation Paper
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email to: AustralianConsumerLaw@treasury.gov.au

29th October 2015

Dear Australian Treasury,

Submission by Humane Society International Australia providing comments on the Consultation Regulation Impact Statement (RIS) on 'Free Range Egg Labelling'

Humane Society International (HSI) is the world's largest conservation and animal welfare organisation with 60,000 Australian supporters, and over 12 million supporters worldwide. As the representative of the highest standard of true free range producers nationally, we welcome the opportunity to comment and trust you will give our recommendations serious consideration, particularly due to the huge impact the outcome of this Consultation will have to tens of thousands of consumers throughout the country and to Australia's true free range egg producers.

There is currently a robust free range egg industry in Australia based on the Model Code¹ of 1,500 hens per hectare. Unfortunately the demand for free range eggs has driven opportunistic action by those controlling the industry at the expense of smaller businesses. True free range producers have spent 30 years developing this market and it is unacceptable for *Australian Egg Corporation Limited (AECL)* and the supermarkets to offer the fruits of their labour to the handful of large industrialists. The growth of the free range egg industry in Australia has been based on honest representation by producers to trusting consumers. HSI believes it is critical that true free range producers are represented throughout the development of this National Standard to ensure the expectations of consumers are finally met. It would be alarming if it was instead dictated by the egg industry to suit only large producers, and the consumer deception continued.

Our submission has been structured as follows:

- 1) Consumers deserve the truth
- 2) Restoring consumer confidence
- 3) HSI – The 'Food Police'
- 4) What are consumer expectations of 'free range'?
- 5) Review of Consultation Paper Policy Options
- 6) Further recommendations by HSI
- 7) Concluding comments

1) Consumers Deserve the Truth

HSI's opinions and recommendations focus on the key objective, namely to enhance consumer confidence and certainty regarding egg labelling. Our *Truth in Labelling* campaign began back in 2010 when industry decided they wanted to cash in on the increasing consumer demand for ethical

¹ Model Code of Practice for the Welfare of Animals – Domestic Poultry (4th Edition) (2002)

produce. Rather than produce what consumers expected from free range production, the big players instead moved the goal posts to redefine 'free range' to mirror their intensive systems. Despite it being blatantly obvious that people expected eggs labelled 'free range' to come from hens that *actually go outside*, the major producers had other ideas.

2) Restoring consumer confidence

Over the years the free range egg industry has become tainted as consumers lose confidence in the standards of the produce they are buying. Feedback from a number of genuine free range egg consumers has highlighted that, as a result, they look for eggs marked 'organic' as the term gave them a greater level of assurance and credibility, with rules that had to be adhered to. Some comments directly from free range egg consumers taken from our latest Consumer Survey² include:

- *"I only buy eggs labelled free range and organic"*
- *"I only buy organic or biodynamic eggs to avoid the lies"*
- *"I only buy organic eggs as free-range seems to have become a marketing tool for supermarkets and perhaps much of it is lying to the consumer about chicken welfare"*
- *"I buy organic eggs as i don't trust the free range labels"*
- *"Because we cannot currently trust the label 'free range', we also try to purchase 'organic free range' which is more likely to be truly free range"*

Not long ago the organic farming industry experienced the same journey that 'free range' producers are now going through, and the application of strict standards and mandatory guidelines brought them back on track. Ever since, they have reaped the rewards from the growth the industry has achieved through regulation, honesty, truth in labelling, and satisfied consumers. The organic industry in Australia is now valued at over \$1,72 billion, representing a 15.4 per cent compound annual growth rate since 2009³. According to Australian Organic, consumers are also "looking for reassurance" when buying organic with 70 per cent of all shoppers indicating that an organic certification mark increased their level of trust in a product. Similarly in the U.S. the higher price of organic foods and other products doesn't seem to be deterring consumers: Sales jumped 11 per cent last year according to an industry report⁴. This rapid growth has been attributed to the introduction of strict rules with products being certified organic in the United States since 2002.

3) HSI – The 'Food Police'

As part of our campaign for *Truth in Labelling* of 'free range' eggs, in March 2011 HSI alerted the *Australian Competition and Consumer Commission (ACCC)* to serious concerns about AECL's application for a Certification Trademark (CTM). If approved it would have allowed them to increase the outdoor stocking density for free range layer hens from 1500 hens per hectare (as recommended by the Model Code of Practice) to a staggering 20,000 hens per hectare. If our complaint had not been lodged we dread to think what would have eventuated – it is likely that several small farmers could have lost their livelihoods altogether and thousands of consumers would have lost all confidence in the free range industry. AECL is the industry-owned peak body, funded by mandatory levies paid by producers and Federal Government monies. Its board includes major players in the industry.

² HSI Free Range Egg Labelling Consumer Survey – October 2015 (Survey Questions and Results)

³ *'Australia's appetite for organic foods at record levels'* – Australian Food News (10 December 2014) - <http://ausfoodnews.com.au/2014/12/10/australias-appetite-for-organic-foods-at-record-levels.html>

⁴ *'Consumers buying more organic products despite high prices'* – Daily Mail Australia (16 April 2015) - <http://www.dailymail.co.uk/wires/ap/article-3040214/Consumers-buying-organic-products-new-data-show.html>

HSI requested that the CTM be denied. Fortunately the ACCC called for public submissions on the matter and listed the issue as one of their priorities. A gruelling eighteen months of investigations and interviews resulted in the ACCC issuing its scathing assessment, producing a damning report stating that they believe that AECL's proposed standard may mislead or deceive consumers about the nature of eggs described as 'free range'. Every move made by AECL in this debate has been to increase the profits of the large intensive egg producers, the very agricultural industrialists who make up their Board, and to bow to the pressure from Australia's two biggest supermarkets.

HSI gives huge credit to the ACCC for their thorough and comprehensive work, particularly over the past 3-4 years, to help create transparency in regards to free range legislation and to determine consumer expectations of the term 'free range'.

In the meantime HSI continues to act as the 'food police', sending complaints to the ACCC on individual egg producers and their false and misleading advertising, some of which have made it into the Federal Courts. The recent deceptions by industry insiders such as AECL demonstrate the level the industry is being controlled by the large producers and how far they will go in order to manipulate the market to their own advantage. In May this year three of the directors of AECL faced court when the ACCC took action against them, alleging they tried to set up an egg cartel, encouraging egg producers to cull hens to boost egg prices. The AECL requested that its producers "curtail ongoing egg production" and suggested 450,000 hens should be killed to reduce the eggs available for sale. At a meeting in February 2012, AECL allegedly attempted to induce producers to reduce hen numbers with some producers reporting they were pressured into the culling. The outcome of this case is yet to be announced.

Further, following a complaint made by HSI to the ACCC in 2012, one of Australia's largest egg producers is now in court over falsely labelling eggs as 'free range'. Last year NSW egg producer Pirovic was fined \$300,000 when they lost a similar ACCC case. Pirovic met the standards set by AECL and displayed their 'Egg Corp Assured' stamp. The ACCC's allegations of attempted cartel conduct and the recent debacle over free range hen stocking rates highlight how easily potentially corrupt behaviour can infiltrate an industry left to self-regulate.

This year the Queensland eggs producer behind Darling Downs Fresh Eggs was fined \$250,000 after the Federal Court ruled that it had purposely mislead consumers and labelled its eggs as free range when its hens were kept inside. The ACCC has also instituted proceedings in the Federal Court against Derodi Pty Ltd and Holland Farms Pty Ltd alleging that their use of 'free range' was false and misleading – their eggs are sold nationally under the Ecoeggs label, and under the labels Port Stephens and Field Fresh Free Range Eggs in New South Wales. We hope these examples will help assist the Consumer Affairs Ministers arrive at an acceptable legislated National Standard.

4) What are Consumer Expectations of 'free range'?

At the very centre of this whole debate lies the consumer, and it should be up to industry and the government to ensure that they are no longer mislead. For years they have been deceived, buying eggs labelled 'free range' which often came from hens that never even stepped outside. The consultation paper has defined the main problem as follows: *Do production system claims for eggs such as 'free range' sometimes mislead consumers?* The answer is undoubtedly "yes" as our work, and that of the ACCC, over the past several years clearly demonstrates.

Our first point on the consultation paper in relation to consumers is to point out our disappointment at its unnecessary complexity and length. Its nature means that the consumers themselves who are at the very heart of this debate are deterred from commenting. HSI would have recommended such a

paper be written in simple terms and in a succinct way allowing those directly affected by this issue the opportunity to finally come forward and let their voices be heard.

Consumers must have the right to make informed purchasing decisions that align with their ethics and belief systems. This is possible through accurate and meaningful information on product labels. Labelling terms must be limited, adequately defined in legislation, and linked to consistent National Standards, thereby providing consumers with protection, confidence, and an increased ability to make suitable informed choices. Such transparency allows consumers to differentiate products on the basis of animal welfare, health and environmental concerns, therefore allowing them to be well positioned to exercise their rights to make informed decisions.

4.1 HSI Consumer Survey (October 2015)

In order to establish exactly what consumer expectations of the term 'free range' are, HSI conducted an online Consumer Survey in October 2015 (*attachment 2*) which was completed by 1,400 respondents. The sample surveyed contained representation across all groups for gender, age, and location. Key findings are summarised below:

- ✓ An overwhelming majority believe there is a need for a mandatory National Standard for eggs labelled 'free range'.
- ✓ Most consumers who chose not to purchase free range eggs did so because they didn't trust that they met their expectations of 'free range'.
- ✓ Almost all consumers surveyed believe the maximum outdoor stocking density for free range hens should be capped at 1,500 hens per hectare, in line with the Model Code of Practice.
- ✓ The welfare of the hens is the primary motivation for most consumers buying free range eggs.
- ✓ Most consumers think a maximum limit is necessary for the number of birds kept inside each shed.
- ✓ Most consumers believe that eggs from farms stocking 10,000 hens/hectare fail to meet their expectations of 'free range'.
- ✓ The survey demonstrated an urgent need for truth in labelling with most respondents believing that the outdoor stocking density and beak treatment should be displayed on egg boxes.
- ✓ More than three quarters believe a mandatory National Standard for free range eggs should not allow beak trimming, and must include provisions for outdoor shelters and green cover outside.
- ✓ Almost all consumers agree that they are happy to pay a premium for genuine free range eggs.

Survey respondents were also given the opportunity to provide their comments on the subject of *Free Range Egg Labelling*. Their responses demonstrated an urgent need for truth in labelling and many voiced their frustrations over the confusing terms, consumer deception, and a lack of regulation. Some examples of some of their comments are listed below:

"You need to make the packaging clear and concise for shoppers. There's too much confusion and some shoppers think they are buying the ethically farmed eggs, however are not due to misleading information. There needs to be a UNIVERSAL guide on ALL carton packages."

"I really hope the government will hear the voice of people. We are tired of paying for something that is labelled as free range when clearly it is not. We have a right to know, as the consumers, exactly where our eggs come from."

"'Free range' means nothing until mandatory national standards are imposed and enforced."

"Guidelines should be enforced and monitoring done by independent bodies to ensure free range is real and maintained."

"There is no way that consumers consider 10,000 hens per hectare to be truly free range. What free range means to the average person is that the hens live a life as close to 'natural' as possible, with plenty of fresh air and sunshine, room to roam, and clean, roomy sheds or barns to sleep in at night."

"Clear labelling so that I feel confident of the proper choices that I want to make. I do not want

to be fooled by Coles and Woolworths.”

“All eggs labelled Free Range should have the one set of rules (no exceptions) and so you can only put free range on the carton if your chickens are raised under those rules, then it’s not confusing and big big fines (or closure) if you print free range on your cartons and it’s actually not. I only buy organic or biodynamic eggs to avoid the lies.”

“Free range should mean what it says, not watered down for profit and undermine producers who are truly free range. Farmers have far too much say in standards and as for the industry policing itself, what a joke.”

“The big supermarkets should not be allowed to call 10,000 hens per hectare as free range. It is deceptive and they are only trying to get the premium price that true free range eggs receive. I never purchase supermarket brand eggs.”

“Consumers have been ripped off for too long, Australia needs a mandatory National Standard where no more than 1500 hens per hectare are kept outdoors.”

“We need standards. If people don’t like or care they can buy the cheap stuff!”

“I had no idea that Coles and Woolworths permitted stocking rates of 10,000 hens/hectare for so called free range eggs. That’s not good enough.”

“I am happy to pay more for free range eggs but I need to be sure I am buying true free range. I believe many people feel this way also but the labelling & marketing is so confusing they don’t know what they are buying. Please do something about this situation.”

“I get extremely frustrated when buying eggs as it is almost impossible to know if you are buying genuinely free-range eggs. All egg cartons need to be clearly labelled with hen density numbers.”

The findings for each survey question are listed below:

1. When buying eggs, 90% of participants always choose those labelled ‘free range’.
2. Of those who never choose eggs labelled ‘free range’, 90% made this decision because they didn’t trust that they were truly ‘free range’. The remaining 10% chose barn or cage eggs instead.
3. Over 99% of respondents agree that Australia needs a mandatory National Standard for eggs labelled ‘free range’.
4. 97% say their primary motivation for buying free range eggs is the welfare of the hens. Only 2% choose free range because of the health benefits for them, and 1% due to care for the environment.
5. Of those who thought that a National Standard for Free Range Eggs should specify an outdoor stocking density, 98% said that their expectations of ‘free range’ would be a maximum of 1,500 hens per hectare or less. Only 1% claimed that a limit of 10,000 hens per hectare was acceptable, whilst just 1% said they trusted the producers to make the call and didn’t think a maximum stocking density needed to be specified. (They were provided with *Figure 1*, below). The majority of respondents (57%) chose a maximum outdoor stocking density of 1,500 hens per hectare to match their expectations of ‘free range’.



6. When informed that most free range hens are enclosed in barns or sheds at night, experiencing these conditions for much of their lives, 97% of respondents said that Image A

would satisfy their expectations for 'free range' hens when given the choice below in *Figure 2*. Only 3% chose Image B.



7. Given that the ACCC has identified that the flock size is critical because it largely determines the hens' ability to access the outdoors, over 99% of respondents said they think there should be a limit for the maximum number of birds kept inside each shed.
8. Coles and Woolworths currently allow up to 10,000 hens per hectare for eggs labelled 'free range' – as a consumer over 98% of respondents said they do not feel this represents their expectation of 'free range'.
9. 98% of respondents agree that all egg cartons containing 'free range' eggs should display the outdoor stocking density for the hens.
10. 98% of respondents say they are happy to pay a premium for genuine free range eggs.
11. 89% of respondents say they think 'no beak trimming' is an important consideration for a mandatory National Free Range Egg Standard, 79% thought 'outdoor shelters' are important, 89% thought 'some green cover outdoors such as trees or shade cloth' was important, whilst less than 1% believe a mandatory standard is not necessary.
12. 91% believe that beak treatment (whether they still have their full beaks or have they been trimmed) should be displayed on free range egg boxes.

4.2 40,000 postcards supporting 1,500 hens/hectare

In 2013, a total of 40,000 postcards⁵ were signed by Australian consumers and delivered to the door of the Prime Minister in protest to industry and state government's indifference to the continued mislabelling of free range eggs. This was the largest number of postcards ever presented to government to support a campaign, and clearly demonstrates the strong public opinion on the issue. They were inserted into thousands of egg boxes of true free range eggs, so we know that these opinions are directly from consumers who were purchasing genuine free range eggs.

The postcards called for outdoor stocking densities for free range hens to be capped at 1,500 per hectare, in line with the Model Code of Practice, meeting consumer expectations for free range eggs.

⁵ HSI Postcard Campaign: 'How free are your free range eggs?'



Since then, HSI has collected 10,000 more signed postcards from consumers who believe truth in labelling is their right. We have copies of all 50,000 signed postcards which you are most welcome to view if it would assist you.

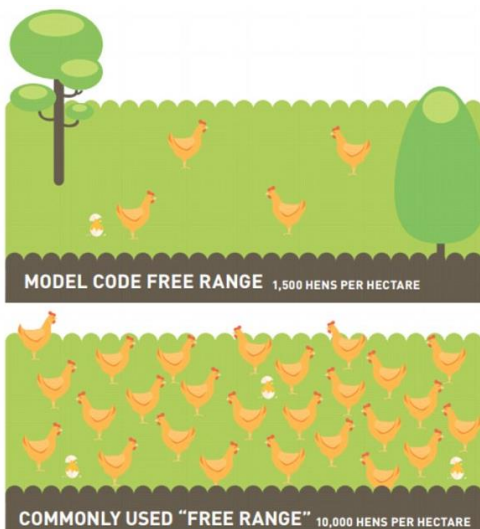
4.3 HSI Consumer Survey (2009)

A consumer survey⁶ carried out by HSI in 2009 investigated public expectations of the various terminologies within the egg production industry including the meaning of 'free range', and over 10,000 responses were received. It also investigated consumer expectations in regards to product labelling and the level of information currently provided. It highlighted that there is confusion over the definition of many of the industry terms and emphasized the urgent need for improved truth in labelling. The survey revealed the following:

- ✓ 98% of respondents agree that full and adequate product labelling is every consumer's right
- ✓ 93% disagreed that current labels gave them enough information to make informed purchasing decisions
- ✓ 95% agreed they would be prepared to pay extra for ethically produced food.

In 2010, consumer research conducted by the Free Range Farmers Association⁷ involving over 3,600 buyers of free range eggs established that they were opposed to any stocking density higher than 1500 hens per hectare, and that free range hens should not be beak trimmed.

4.4 Choice Consumer Survey (2012)



A consumer survey about free range foods and labelling was released by Choice⁸ in 2012 and it was completed by 900 people. Results showed that consumers expect transparent and reliable labelling for free range eggs that meet high animal welfare standards. Almost half of the people surveyed indicated that they rely solely on the term 'free range' on the packaging when buying eggs. This translates to a perceived level of trust in the industry and its standards. Any attempt to break such trust is simply exploitation of the consumers. Over 65% of the respondents indicated that 'free range' must mean the birds are never confined in cages, and they have easy access to pasture. Of those who selected a maximum outdoor stocking density, the majority chose 1,500 birds per hectare as reasonable. Choice representative Ingrid Just said shoppers wanted accurate and consistent National Standards. The best outcome was "a standard that meets consumer expectations and encourages confidence in the product."

4.5 Choice Consumer Survey (2014)

⁶ Humane Society International Consumer Survey (2009)

⁷ Consumer Research by the Free Range Farmers Association (2010)

⁸ Choice Consumer Survey Key Findings Report (April 2012)

Another survey by Choice in 2014 showed that only 2% of free range egg buyers believe that 10,000 is an acceptable stocking density. They also found that 84% of egg buyers agree that a mandatory National Standard is needed for free range eggs.

4.6 NSW Farmers Association Survey (QMR, 2015)

In an effort to contradict the majority of research and consumer data collected to date, earlier this month *NSW Farmers* released a *Quantum Market Research (QMR)* survey⁹ that they commissioned alongside *Egg Farmers of Australia*. Based on 1,200 online surveys, it was completed in September 2015 by “a nationally representative sample of free range egg buyers”. They claim that the results show the external stocking density of one hen per square metre (10,000 birds/hectare) matches the expectations of nearly three quarters of Australian consumers, and that price is fundamentally important for even the most ardent shoppers led by animal welfare concerns. As these are such bold claims, HSI decided to have the survey analysed by a Barrister – the evaluation is attached¹⁰ for your reference but a couple of points are summarised below:

- ✓ The scope of the brief to QMR was “to gather empirical evidence of consumer expectations regarding free range eggs. Specifically, QMR were tasked to examine what production practices consumers expect to underpin the labelling claim of ‘free range’.” Despite this, the report analyses the responses to only 5 questions. When contacted, NSW Farmers refused to release the full report claiming that the others related to other things “such as meat and dairy”.
- ✓ The report summary states that “Consumer expectations of the free range definition correspond primarily to outdoor space or external stocking density”, however, none of the responses referenced in the report mention an external stocking density and there is little mention of outdoor space. Q17 is instead about “perceived current minimum standards” which is completely different to consumer expectations.
- ✓ One of their topline findings is “The proposed maximum stocking density of 1 bird per m² meets or exceeds most consumers’ expectations” – this is a bold and controversial statement, and there is nothing in the findings to substantiate such a claim. The report contains no questions about consumer expectations of stocking density.

In a recent article titled ‘Free-range egg debate fires up’ in *The Land*¹¹, Choice media spokesman Tom Godfrey said Quantum merely confirmed consumers were confused about the meaning of free-range. He continued, “The research that we’ve seen from NSW Farmers does not ask people what they think genuine free-range stocking density should be. It asked people what they thought about the current minimum standard.”

This defensive reaction is unsurprising. NSW Farmers Association has been pushing for a stocking density of 10,000 birds per hectare and is dominated by industrial producers. HSI recommends that such a flawed attempt at disproving years of research should simply be disregarded for this Consultation and the QMR Survey demonstrates yet again how such industry bodies try to deceive consumers, this time by misrepresenting their valuable opinions.

Mick Keogh, Executive Director of the *Australian Farm Institute* and previously General Manager Policy for *NSW Farmers Association* recently wrote an article titled, “Free range definition sets a

⁹ NSW Farmers Association – *Defining consumer expectations: what production practices are necessary to underpin confidence in free range labelling?* Topline Research Report (September 2015) (http://www.nswfarmers.org.au/_data/assets/pdf_file/0004/45607/Defining-Consumer-Expectations-Free-Range-Topline-Findings-Aug-15.pdf)

¹⁰ Analysis of the NSW Farmers Association Quantum Report (September 2015)

¹¹ ‘Producers tell Choice to ‘get clucked’ by Alex Druce for *The Land* (15 October 2015)

*dangerous precedent for agriculture*¹². He wrote that, “While consumer perceptions of what constitutes free range are undoubtedly influenced by anthropomorphic projections and fictional, idyllic deceptions of farming, it is highly questionable whether those conditions actually result in improved animal welfare or health outcomes for the animals in question.” After agreeing that the implementation of a standard makes sense he continues, “For a sector like egg production this will have consequences in terms of additional costs and the need for capital investment, but in the absence of competition from imports, these costs can largely be passed on to Australian consumers.” Again, this demonstrates the callous attitude that these organisations have towards both consumer interests and animal welfare.

4.7 Compensation for deceived consumers

Although HSI is hopeful that a National Standard will be legislated to define ‘free range’, we remain concerned that loyal consumers who have regularly purchased eggs they thought to be ‘free range’ but were in fact from intensive ‘free range’ systems for several years, will never be compensated. The money they would have lost would be considerable. Choice recently noted that Pace Farms, Manning Valley and Farm Pride, three of the four largest egg producers, accounted for 30.7% of the number of free range eggs sold in Australia in 2014 (according to Retail World 2014). They all produce ‘free range’ eggs using production systems with an outdoor stocking density of 10,000 hens per hectare and it has become apparent that consumers do not perceive this as true ‘free range’. In 2014 the grocery volume of free range eggs sold was 696 million from these producers alone, so we can estimate that at least 213 million eggs sold as free range in Australia didn’t meet consumers’ expectations of free range. HSI feels that these consumers have the right to financial compensation from those who have ripped them off.

5) Review of Consultation Paper Policy Options

Although HSI has not chosen one policy option and supported it in its entirety, there are some important aspects covered in both option 2 and 3 in the Consultation Paper that we would support. We have detailed below our views and recommendations.

Option 1: Status quo, with upcoming ACCC guidance

It is disappointing to see the inclusion of *Option 1* in the consultation paper when there is clearly such an urgent need for change to avoid further consumer deception. The fact that so many years have already passed without the introduction of a National Standard for free range eggs is almost a crime in itself, despite gaining media attention time and time again. In 2009 in an inquiry and reporting¹³ into meat marketing, the Senate Standing Committee on Rural and Regional Affairs and Transport concluded that:

“...it is currently too easy for food producers to make dubious claims about their animal welfare practices on the labels seen at retail level. This is because it is too difficult for the ACCC to prosecute misleading and deceptive conduct in this area when the meaning of those descriptors are broadly understood but not clearly defined. Any misuse of animal welfare descriptors such as ‘free range’ threatens the competitiveness of genuine producers bearing the increased costs associated with meeting high animal welfare standards. Animal welfare-

¹² “Free range definition sets a dangerous precedent for agriculture” by Mick Keogh (8 October 2015) (<http://www.farminstitute.org.au/aq-forum/free-range-definition-sets-a-dangerous-precedent-for-agriculture>)

¹³ The Senate Standing Committee on Rural and Regional Affairs and Transport (2009), Meat Marketing – Final Report, Commonwealth of Australia. P.33

related labelling should be subject to tighter controls to protect both consumers and genuine producers.”

HSI believes that, for numerous reasons, Option 1 be denied – the main reasons for this recommendation are:

- ✓ Consumers would continue to be faced with a near impossible decision each time they purchase eggs labelled ‘free range’ with a good chance that those they choose would not meet their expectations of the term
- ✓ Consumers remain perplexed by the terms used for the labelling of eggs
- ✓ Consumers willing to pay a premium for eggs labelled ‘free range’ would not be guaranteed they were getting a product meeting their expectations of ‘free range’
- ✓ Consumer confidence in the industry would continue to be tarnished further
- ✓ Large producers may continue to reap the rewards built up by the honest true free range farmers
- ✓ Despite the existence and protections of Australian Consumer Law (ACL), the costs of identifying and prosecuting those who engage in misleading or deceptive conduct are high and cases can take months, even years to conclude
- ✓ The research and investigations required for each case is simply a waste of the ACCC’s resources when they are completely avoidable with suitable legislation in place
- ✓ True free range farmers will continue to suffer as larger producers hijack the market, and consumer confidence falls
- ✓ The Model Code of Practice acts only as a voluntary guide, detailing minimum standards in relation to domestic poultry, focussing on their welfare and husbandry
- ✓ The fact that AECL have stated 29% of free range egg production in Australia stock at densities higher than 20,000 hens per hectare demonstrates why self-regulation is no longer appropriate for the egg industry

Option 2: ‘Basic’ information standard for free range egg labelling

HSI believes that the national information standard on free range eggs should incorporate the following definition for “free range;”

Hens must have a maximum outdoor stocking density of 1,500 birds per hectare, and they must be able to move about freely on an open range on every ordinary day. Practices must be based on the Farm Animal Welfare Council (FAWC) ‘five freedoms’ of animal welfare.

Option 2 proposes a basic definition for eggs labelled ‘free range’, namely that **they were produced by hens that can, and do, move about freely on an open range on most ordinary days**. This is a commendable statement and is fully supported by HSI. However, there would still be a huge potential for large producers to claim the ‘free range’ term whilst still using intensive methods such as high stocking densities and uninviting range areas, unrepresentative of true free range to most consumers.

The concept of introducing a set of conditions for a ‘defence’ provision, as in option 2a, would be supported by HSI but only if these conditions were made mandatory and were reflective of true free range production. Otherwise HSI believes that Option 2 is meaningless as far as the consumer is concerned.

Option 2b discusses the idea of disclosing the stocking density on packaging alongside the words ‘free range’ – this would definitely be a valuable addition to the information standard, providing much needed transparency and granting consumers the power to decide. However, HSI strongly believes that the outdoor stocking density needs to be set at a maximum of 1,500 hens per hectare for the term ‘free range’ to be used on any egg carton.

Option 3: Information standard for all categories of eggs

HSI would support the idea outlined in Option 3 requiring that all egg packaging must identify the eggs as belonging to one of a defined set of categories. We agree with the concept of matching the definitions of barn and cage laid eggs to those described in the Model Code, thereby minimising compliance costs for producers. We believe that these guidelines should be made mandatory, rather than just presented as recommendations.

However, we strongly disagree with the introduction of the proposed term 'premium free range'. This would only add to the confusion experienced by consumers searching for ethical produce as it makes the term 'free range' meaningless to most. The term 'free range' must be reserved for use only by true 'free range' producers, and those who do not comply with the conditions should not be able to associate themselves with the term. If the same concept had been applied to the organic sector and they had introduced the term 'premium organic', imagine the confusion amongst consumers looking to purchase genuine organic produce. Consumer confidence would never recover if the waters were muddied further with a term such as 'premium free range', confusing them further and allowing intensive free range producers to continue to hijack the free range market. Instead they should fall into the new proposed category 'access to range' which would provide a much more accurate and honest descriptor of their production systems.

HSI also strongly recommends that mandatory conditions should be set for those awarded the term 'free range' and displaying it on their egg boxes. These conditions must include:

- ✓ outdoor stocking density must not exceed 1,500 hens per hectare (in line with consumer expectations of free range and the Model Code)
- ✓ maximum flock numbers of 2,500 birds per house
- ✓ indoor stocking density should be no less than 1 square metre for every 5 birds including the roosting area
- ✓ prohibiting induced moulting
- ✓ no de-beaking, beak cutting or trimming
- ✓ no wing cutting, toe trimming or de-snooding
- ✓ the provision of outdoor shelters
- ✓ some green cover outdoors such as trees, or shade cloth
- ✓ hens must be given no hormones or growth promoters
- ✓ use of antibiotics only for disease treatment
- ✓ meat by-products in feed only if heat treated
- ✓ ensure care of the environment

6) Further Recommendations by HSI

6.1 Costs and price sensitivity

The issue of price sensitivity is repeatedly raised by intensive free range producers who are attempting to take over the market. However, when an appropriate mandatory National Standard is introduced, consumers willing to pay a premium for real free range eggs will be getting exactly what they are paying for – honest, genuine, free range eggs. The key here is that it will be their choice, as it should be – if they are happy to pay more for the products and they finally know exactly where their extra dollars are going, they are being treated fairly and protected from deception. This way the market will regulate itself. HSI is also making the point that the price premium is irrelevant to this argument, so long as the consumers are happy as they are being treated honestly through honest labelling and transparent mandatory standards.

The final cost in store is up to the retailer, not the producer, so HSI feels that it is important that major retailers are not in a position to take advantage of caring consumers and genuine producers. For instance Kangaroo Island Free Range Eggs are priced the same at the farm gate, but their price varies from \$6 up to \$18 in the various retailers. These price hikes are being pocketed by the retailers, not the producers, who are providing consumers with ethical produce at an honest price.

The introduction of a new information standard is critical for the welfare of all free range egg consumers, and thousands of them have been taken advantage of for too many years already. This point alone makes the transitional compliance costs for all egg producers (associated with new labelling requirements) immaterial because under no circumstances should their confusion and deceit continue any longer.

6.2 Independent 3rd Party Auditing

HSI believes it is critical for free range farms to be audited by a third-party. Third-party certifiers supply credibility, information, food safety, and quality assurance to consumers. In general, a third-party auditor is more experienced, more highly trained, and has pledged to uphold a particular code of ethical conduct in the performance of the audit. They work for a quality register that also has policies, rules, and regulations to which the auditor must abide. They can also provide a competitive edge over rivals, as certification through a third-party organisation creates a premium on these products. Producers are now increasingly claiming that their produce is of a higher quality than those a consumer could purchase elsewhere.

Third-party certification has the benefit of transparency and gives consumers the level of trust that they would expect from an ethical producer. It is much more trustworthy than self-certification, and gives consumers greater confidence. This is key for animal produce in particular where animal welfare, environmental impact, food safety and food quality play an important role in consumer purchasing decisions.

It is worth noting here that AECL does not represent all egg producers. In fact there are well over 100 egg producers throughout Australia who have chosen not to be represented by them. This is most likely because the AECL voting processes are hugely skewed in favour of large intensive producers because many sit on their Board. They consistently avoid the views and interests of true free range producers and family farms. For this reason we recommend that going forward, AECL should only represent intensive producers and a separate Corporation needs to be established to look after the interests of Australia's true free range farmers. The fact that the intensive producers, including those owned and managed by AECL's Board members, were happy to hijack the market for free range eggs clearly demonstrates that they cannot continue in that role, taking advantage of those they should be protecting.

HSI also finds it perplexing that all egg producers, whether members of AECL or not, are made to pay a promotional levy which it receives on every chicken purchased by free range egg farmers. This seems unethical given that AECL are not even representing the interests of all producers, favouring those using more intensive production systems.

6.3 Satisfying consumer demand

There is currently a robust free range industry in Australia based on the Model Code of 1,500 birds per hectare. Although industry will suggest that free range production at 1,500 hens per hectare will never be able to satisfy consumer demand and that the cost of the eggs will be prohibitively high, this is simply not the case. In anticipation we would like to address this.

Buckleberry Farm was established based on HSI's *Humane Choice true free range egg standards*. Pastures, paddock rotations and movable shelters were designed to manage the welfare of their fully beaked hens while ensuring optimal lay rates and continued productivity. This farm is progressively installing new paddocks with a target of 140,000 layers and the capacity to expand further.

Kangaroo Island Free Range Eggs stocked 50,000 hens when first accredited and the producers say they are always 10,000 hens short of a demand that just continues to grow. The farm is currently stocking around 70,000 hens with plans to increase this amount further, and they are employing a full time shelter builder on the farm. They are now the largest employer on Kangaroo Island.

Both of these farms are located on large areas of land. Buckleberry has incorporated cattle and hay production into their system, and Kangaroo Island produces enough grain to feed their hens as well as maintain a large sheep flock. The two farms stock at fewer than 1,000 hens per hectare and are both profitable and expanding, whilst offering the Australian consumer affordable eggs, produced to the highest animal welfare and environmental standards.

6.4 Inside the Shed

It is critical that the new information standard should include a maximum number of birds allowed inside the shed because if the density indoors is too high, they will not be comfortable to exit the shed. ACCC also make this point in their newly released 'ACCC enforcement guidance – free range hen egg claims'¹⁴. They correctly state that, *“The discrete flock size is a threshold issue. While stocking density, barn size and flock size are inextricably related, it is the flock size which largely determines the ability of each hen to access an outdoor range. This is because larger flock sizes must be kept in larger barns so this will not only increase the absolute number of unfamiliar hens the hen must navigate past but also increase the average distance the hen must travel to reach an open side or pophole.”*

This point is further supported by *Dr Raf Freire of Charles Sturt University (CSU)* who has been reviewing global research on free range egg production and is a senior lecturer at CSU's School of Animal and Veterinary Sciences¹⁵. He says that studies indicate there should be no more than 200 birds per metre of pop-hole compare to the industry code of practice which recommends 500 birds per metre of pop-hole.

Where large numbers of 15,000 or more birds are placed in large sheds this means they will never make it to the pop-holes, and therefore they will be unable to access the outdoor range at all. On true free range farms with stocking densities less than 1,500 hens per hectare, during daylight hours it is unusual to find more than 10% of hens inside the sheds at any one time¹⁶. The following visual clearly illustrates this point, comparing a low density free range farm with a photograph of hens over-stocked in a farm supplying Coles supermarket 'free range' labelled eggs.

¹⁴ 'ACCC enforcement guidance – free range hen egg claims', October 2015 -

(https://www.accc.gov.au/system/files/1029_Free%20range%20Eggs%20guidelines_FA.pdf)

¹⁵ 'Australian free range egg standard should include shed and flock size and protection from predators: poultry expert' by Laurissa Smith – ABC Rural News, 16 June 2015 (<http://www.abc.net.au/news/2015-06-16/poultry-expert-identifies-obstacles-in-free-range-egg-production/6548740>)

¹⁶ Free Range Farmers Fact Sheet 1

(http://www.freerangefarmers.com.au/uploads/7/4/2/0/7420102/fact_sheet1.pdf)



Many consumers may be unaware that a large proportion of supermarket ‘free range’ eggs are currently being produced in aviary systems. These multi-level, highly stocked aviaries effectively increase the stocking rates indoors by 2 or 3 times as all the horizontal surfaces are counted as usable areas. These systems house 30,000-40,000 hens per shed with just pop-hole access. This looks good on their live chook-cam, until you consider just how many hens actually ever make it outside.

6.5 Free range packaging display

HSI strongly recommends that whatever the outcome of this Consultation Paper, the outdoor stocking density must be displayed on the packaging. We would also recommend for beak treatment to be displayed. This would enhance transparency and assist consumers with their purchasing decision.

6.6 Beak trimming

HSI supports the ACCC’s view that beak trimming, which may impact on a bird’s ability to engage in natural behaviours (particularly foraging), is not an animal welfare outcome that consumers would typically associate with free range egg production

6.7 Avian influenza and free range farming

News reports that the outbreak of bird flu near Young October 2013 could throw Australian free range egg production into long-term disarray angered HSI since the farm was not free range at all. Federal Minister for Agriculture, Barnaby Joyce, was quick to lay the blame for the outbreak on the free range egg industry which fitted in perfectly with his mission to discourage supermarkets from phasing out caged eggs.

Contrary to his statements, the farm in question was anything but free range, stocking a massive amount of hens on a small plot of land. The Young property stocked 420,000 birds of which 240,000 were in a caged facility, whilst the rest were classed as ‘free range’ and kept on a couple of hectares. The stocking rate of their free range operation equated to an enormous 80,000 hens per hectare – this is far from free range when you compare to the genuine free range farms who abide by the 1,500 hens per hectare prescribed in the Model Code. We also question how AECL could ever have allowed eggs

coming from such an overstocked farm to be stamped as 'free range', and pity the consumers who are duped at the supermarket checkout again.

Mr Joyce's comments were ill informed and inaccurate. The fact is that there has never been an outbreak of bird flu traced back to a real free range egg farm in Australia. HSI has written to Mr Joyce a number of times explaining that as Agriculture Minister he should be representing all egg production systems equally, and that his comments could prove highly damaging to small free range egg farms given his bias towards large-scale caged egg producers. He refused to withdraw his damaging statements and support true free range farmers and the small producers he is supposed to represent.

6.8 Effect on the livelihoods of genuine producers

True free range businesses were established to meet the Model Code of Practice for free range egg production and they have made a significant financial investment. It is in fact their hard work and pioneering efforts that have created the desire for true free range eggs. Their efforts and future needs need to be considered when formulating a National Standard because the growth of the free range egg industry in Australia has been based on honest representation by genuine producers to trusting consumers.

6.9 The Model Code of Practice

The existing Australian *Model Code of Practice for the Welfare of Animals: Domestic Poultry (4th edition)* was prepared by the Animal Welfare Committee (AWC) within the Primary Industries Ministerial Council (PIMC) system. The 'Preface' of the Code states that, "*Membership of the AWC comprises representatives from each of the State Departments with responsibility for agriculture, CSIRO, the Department of Agriculture, Fisheries and Forestry – Australia and other committees within the PIMC system. Extensive consultation has taken place with industry and welfare groups in the development of the code.*" HSI points out that the definitions relating to free range eggs have been followed by farmers since 2002 and were never questioned until AECL attempted to introduce their controversial CTM allowing an outdoor stocking density of up to 20,000 laying hens per hectare. Therefore the research and extensive consultation that went into its production would still have strong relevance today, including the outdoor stocking density of 1,500 hens per hectare, and this information should be considered as a major part of this consultation process.

6.10 International definitions of 'free range'

Throughout the world, a stocking density of more than 2,500 hens per hectare for free range layer hens does not exist. A maximum density of 1,500 birds per hectare has been successfully demonstrated by a number of free range producers across Australia.

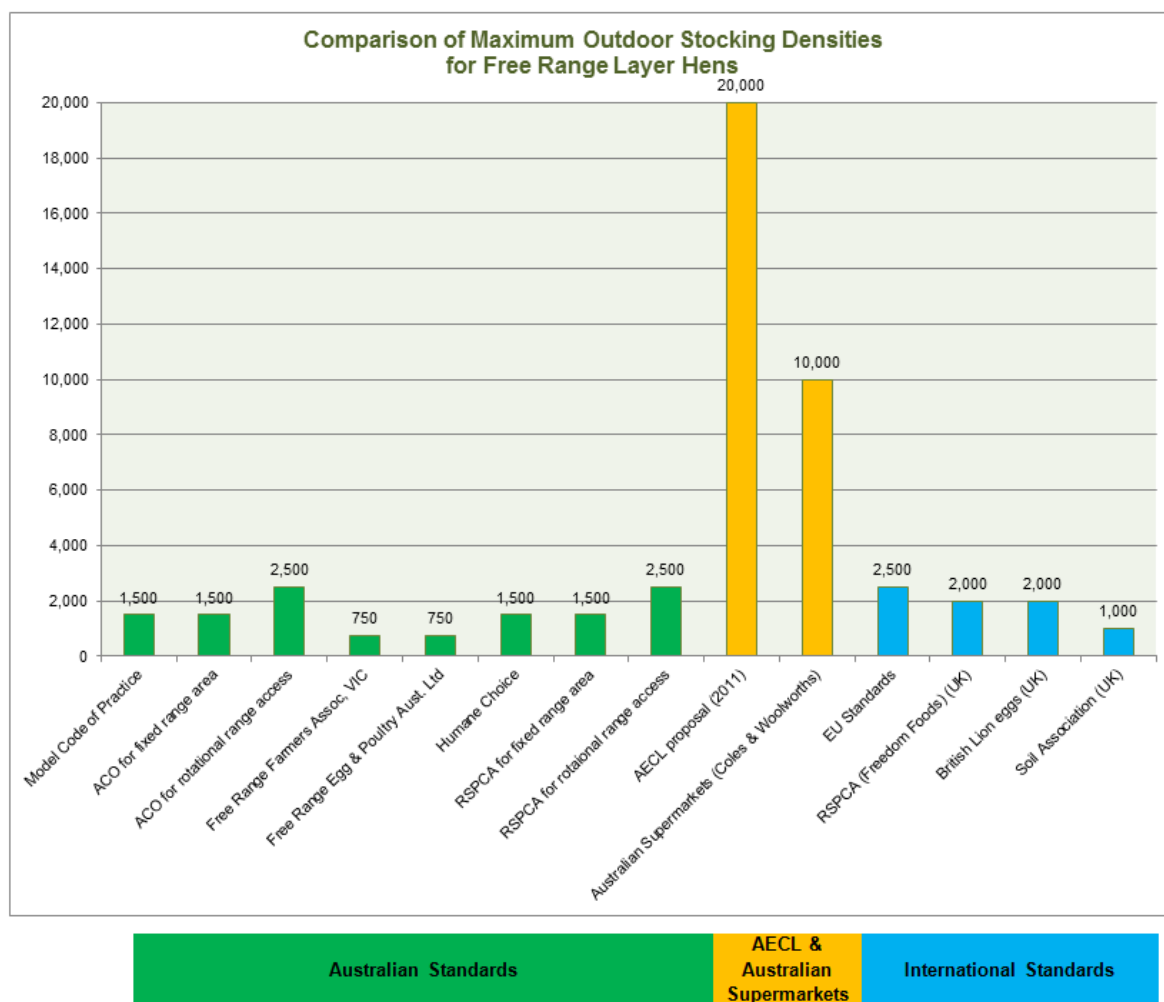
Caged egg production has been abolished in the EU, UK and Tasmania, but in mainland Australia it still represents approximately 60% of all eggs sold. The free range and organic systems accounted for about 45% of eggs produced in the UK in 2010.

Both the EU and the UK are bound to a limit on stocking densities of 2,500 or less for outdoor layer hens. Additional standards are stipulated for British Lion Eggs¹⁷ under The Lion (UK) Quality Code of Practice which ensure free range hens in the UK are kept under the highest animal welfare conditions and highest standards of food safety. [RSPCA welfare standards in the UK](#)¹⁸ allow a maximum of

¹⁷ British Lion Eggs – Free range egg production – Fact sheet

¹⁸ RSPCA Welfare Standards for Laying Hens (UK) – September 2013

2,000 hens per hectare, while organic standards specified by the [Soil Association](#)¹⁹ allow a maximum stocking density of 1,000 hens.



These higher standards include the provision of outdoor shading, additional pop-hole space, open for 8 hours daily to allow access to the outside, a maximum flock size of 16,000 birds, a maximum colony size of 4,000 hens, and a maximum range area stocking density of 2,000 birds per hectare. In addition the British Free Range Egg Producers Association requires no more than 1,500 birds per hectare.

The European Union regulates marketing standards for egg production systems and specifies the following minimum conditions for free range farming.

- ✓ Hens have continuous daytime access to open-air runs, except in the case of temporary restrictions imposed by veterinary authorities;
- ✓ The open-air runs to which hens have access is mainly covered with vegetation and not used for other purposes except for orchards, woodland and livestock grazing if the latter is authorized by the competent authorities;
- ✓ The open-air runs must at least satisfy the conditions specified in Article 4(1)(b)(ii) of Directive 1999/74/EC whereby the maximum stocking density is not greater than 2500 hens per hectare of ground available to the hens or one hen per 4m² at all times and the runs are not extending beyond a radius of 150m from the nearest pop-hole of the building; an extension of up to 350m

¹⁹ Soil Association Organic Standards farming and growing, Revision 17.3 November 2014 (page 233)

from the nearest pop-hole of the building is permissible provided that a sufficient number of shelters and drinking troughs within the meaning of that provision are evenly distributed throughout the whole open-air run with at least four shelters per hectare.

The EU egg marketing legislation stipulates that eggs termed 'free range' must comply with the conditions listed above.

6.11 Environmental considerations

The outdoor stocking density also has a direct effect on the land because the more birds that are using the range, the less sustainable it will become. Farms stocking large flocks of birds have increasingly more environmental issues.

In 2005 AECL received Commonwealth funding through the National Heritage Trust Pathways to EMS Program to develop and implement an environmental management system (EMS) for the Australian egg industry. The objective was to ensure the industry adopts the best management practices with regard to environmental issues. In the '[Environmental Guidelines for the Australian Egg Industry](#)'²⁰ on page 16 under the heading 'Free Range', it states that "it is recommended in the Model Code of Practice for the Welfare of Animals – Domestic Poultry (4th edition) that the range area should not have a stocking density in excess of 1500 birds/ha." Any farms using a higher stocking density would therefore be breaching the levels of AECL's own environmental guidelines. As a result these farms would experience a massive nutrient load and would not be environmentally sustainable.

7) Concluding comments

To summarise, HSI recommends that the following points be considered during the development of a National Standard for Free Range Eggs in order to increase consumer certainty about egg labelling:

1. Robust free range egg industry currently exists in Australia based on the Model Code of 1,500 hens per hectare
2. Growth and demand for free range eggs prompted many large producers to hijack the market at the expense of smaller true free range farmers
3. True free range producers must be represented throughout the development of National Standard
4. Overwhelming evidence from consumers calling for the maximum outdoor stocking density to be set at 1,500 hens per hectare
5. Significant growth of Australian 'organic' sector resulted from strict regulation and truth in labelling to reassure consumers
6. Complexity and length of Consultation Paper may deter many consumers and producers from providing their comments
7. Historical events demonstrate that AECL cannot be trusted to look after the interests of all egg producers, instead favouring the large industrialists, some of whom make up their Board
8. Consumer surveys highlight an urgent need for truth in labelling
9. Survey released by NSW Farmers Association last month proved to be a masterpiece of obfuscation and of little relevance or value to its stated purpose
10. HSI supports the disclosure of stocking density on packaging alongside the words 'free range'
11. HSI strongly recommends that the National Standard should set a mandatory outdoor stocking density at no more than 1,500 hens per hectare for eggs labelled 'free range'
12. HSI strongly objects to the introduction of the term 'premium free range'

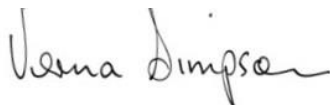
²⁰ Codes of Practice: Environmental Guidelines for the Australian Egg Industry (June 2008)

13. Intensive free range producers who now label their eggs 'free range' should instead use the new descriptor 'access to range'
14. The price premium is irrelevant, so long as consumers are happy knowing they are buying true free range eggs, labelled truthfully
15. It is critical for all free range farms to be audited by an independent 3rd party auditor
16. HSI recommends that going forward, AECL should only represent intensive producers and a separate Corporation should be established to look after Australia's true free range farmers
17. True free range egg producers stocking a maximum of 1,500 hens per hectare can easily satisfy consumer demand at a reasonable cost
18. The new National Standard must include a maximum number of birds allowed inside the shed to prevent the indoor density from being too high
19. The outdoor stocking density and beak treatment must be displayed on the product packaging
20. Despite industry claims, there has never been an outbreak of avian flu at a real free range farm in Australia
21. Throughout the world, a stocking density of more than 2,500 hens per hectare for free range layer hens does not exist
22. A farm stocking in excess of 1,500 hens per hectare would not be environmentally sustainable

To prevent further consumer confusion and deception, HSI would recommend the new National Standard for free range egg labelling to be mandated in legislation as a matter of urgency, ideally within 6-12 months from the meeting in February 2016

HSI appreciates the opportunity to make this submission, providing comments on the Consultation Regulation Impact Statement (RIS) on 'Free Range Egg Labelling'. We would be happy to provide further information or assistance on any of the points outlined above if required.

Yours sincerely



Verna Simpson
Director
HUMANE SOCIETY INTERNATIONAL