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Consumer Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email to: AustralianConsumerLaw@treasury.gov.au

8th December 2016

Dear Australian Treasury,

Submission by Humane Society International Australia providing comments on the Free Range Egg Labelling Information Standard Exposure Draft

Humane Society International (HSI) is the world's largest animal welfare organisation with 65,000 Australian supporters, and over 13 million supporters worldwide. *'Humane Choice True Free Range™'* is the only free range certification scheme for eggs in Australia with its own registered Trademark so it is critical for us that the term is not diluted, meaning that consumers would lose confidence in the integrity of products labelled with the term 'free range'.



In 2006 HSI launched the certification scheme called *Humane Choice True Free Range™* to improve the welfare standards of farm animals across Australia and New Zealand. It ensures the highest standards of animal welfare and guarantees that the animals are truly free range.

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.

Disappointment with consultation to date

We take this opportunity to relay our severe disappointment that the Consumer Affairs Ministers agreed that the new *Free Range Information Standard* should allow an outdoor stocking density of up to 10,000 birds per hectare for free range layer hens. The objective of consultation on a free range egg standard has been to "*work to enhance consumer confidence and certainty around egg labelling*". It is our view that the consultation will fail in this objective and consumer confidence and confusion will not be restored by the standard that is proposed. Many organisations and thousands of consumers invested heavily in this process and the result will impact tens of thousands of consumers across the country, as well as Australia's true free range egg producers who have worked so hard over many years to create the demand for 'free range' eggs in the first place. In the process to date, the views of consumers who seek out free range eggs in the interests of hen welfare, and the producers that genuinely provide it, have been summarily ignored.

Media reports¹ told us that Minister Kelly O'Dwyer (during her role as Minister for Small Business) said the ministers made a decision following an extensive consultation process which began in October last year, with nearly 10,000 consumers, farmers, retailers and advocacy groups providing input. In Appendix C of the Decision RIS, released in March 2016 it states that, "*The majority of submissions received directly from consumers called for a definition of free range that encompassed low-stocking densities and regular use of an outdoor range.*" It continues by stating that, "*the majority of submissions from individual consumers may be from those stakeholders that are most engaged in the issue of egg labelling and most*

¹ 'Free range eggs: Ministers sign off on a controversial decision' – Sydney Morning Herald (31st March 2016)

concerned with issues of animal welfare. Therefore it is not clear that these submissions can be interpreted as representative of 'average' consumer opinion."

HSI is astonished by this conclusion when it is clear that the very consumers who are choosing to purchase eggs labelled 'free range' are the consumers motivated by the assumption that higher standards of animal welfare are adhered to. This whole consultation should prioritise the opinions of these consumers because they are the ones who will be directly affected by the outcome and who pay a premium for free range. Yet it is their opinions that have been completely dismissed.

HSI was also alarmed by media reports that published comments made by Deputy Prime Minister Hon Barnaby Joyce in March this year, just prior to the conclusion of the consultation following the Consumer Affairs Ministers meeting on 31st March 2016. The article by Colin Bettles in Stock and Land on 3rd March said,

'Mr Joyce said he and Ms O'Dwyer had resolved the egg labelling issue between them and the upcoming meeting with the States would be the final tick-off point – but he didn't want to upset that process, by announcing anything beforehand.

"I'm basically as happy as I think I could be and have gone as far as I think we're going to get on the issue," he said.

"And in talking to egg producers they're pretty well on side with where we are now."

These statements are very concerning given that it is the consumers who have in effect been completely misled here. It is critical for these consultations to be fair, and if the statements above are true then the consumers' comments and the submissions have been completely ignored. In effect it seems that Minister Joyce and his colleagues pre-determined a solution for the egg labelling issue prior to the conclusion of the consultation process. HSI contacted both Minister Joyce and Minister O'Dwyer last March concerning these comments, and both failed to respond.

We understand that only around 15 submissions supported a stocking density of 10,000 birds per hectare, and they were all from egg producers currently running those numbers or from supermarkets stocking those densities – following the reasoning in the Decision RIS, surely these would equally not represent "average" consumer opinion", and furthermore, they will gain financially from the outcome. We struggle to understand why Treasury undertook a public consultation when the opinions of the consumers most affected by this issue were effectively ignored. We would also expect that many consumers and true free range producers will refrain from sending submissions on this occasion because their opinions have been disregarded and they feel disenfranchised.

Despite this major flaw in this important consultation, HSI offers the following comments on the draft Free Range Egg Labelling Standard.

Comments on Part 2: Free range egg labelling and display requirements

Section 7 – Meaning of the term free range

In Part 2, section 7(1)a it states that, *"Free range eggs are eggs laid by hens that had meaningful and regular access to an outdoor range during daylight hours across the laying cycle,"*. HSI recommends that this text is amended as follows and an addition is added, as highlighted in bold text below:

*"Free range eggs are eggs laid by hens that had meaningful and **continuous** access to an outdoor range during daylight hours across the laying cycle **with the provision of adequate shelter and an enriched safe environment. The range area is capable of continued production of vegetation and aggressive behaviour such as feather pecking or cannibalism is eliminated by reducing the stocking density when necessary.**"*

It is important for the range area to be capable of continued production of vegetation to allow the hens to display their natural foraging behaviours when they are outdoors. The display of natural behaviours is critical for this Information Standard because it is a fundamental consumer expectation of the behaviour of birds kept within a free range production system. The standard must specify that bird housing must be continuously open during daylight hours.

The word *'meaningful'* needs to be defined within the Information Standard itself in Part 1(4).

HSI believes that if an enriched and safe environment on the range area is not provided, then the access

may not be considered 'meaningful'. Keeping the birds active by enriching their environment can minimise aggressive behaviour such as feather pecking and cannibalism. Appropriate stocking densities need to be incorporated in order to avoid aggression. At the correct stocking density de-beaking is not necessary and the absence of the practice would be more in line with consumer expectations of higher welfare.

Shelter such as shade cloth and trees must be available in the range area to encourage the birds to go outside without fear of avian predation. Appropriate shade and wind breaks must also be provided to allow meaningful access for the birds. Shade must be sufficient enough to allow all birds to access it without having to crowd together, to prevent further heat stress.

HSI strongly disagrees with the maximum stocking density allowed (of 10,000 hens or less per hectare) in Part 2, section 7(1)b and recommends for it to instead read, "*Free range eggs are eggs laid by hens that were subject to a stocking density of 1,500 hens or less.*"

Pop-hole Requirement

HSI recommends for an addition to Part 2 (7)(1) as follows:

"(c) For housing where pop-holes are used to provide hens with continuous access to the outdoor range, the following conditions must apply:

- (i) Pop holes are required to be a minimum of 35cm high by 40cm wide and allow easy entry and exit for the birds.*
- (ii) Pop-holes must be evenly distributed along the building. There should be no more than 200 birds per metre of pop-hole.*
- (iii) The surrounds of the shed or the ground surrounding the pop-holes must be maintained to minimise muddy conditions."*

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.

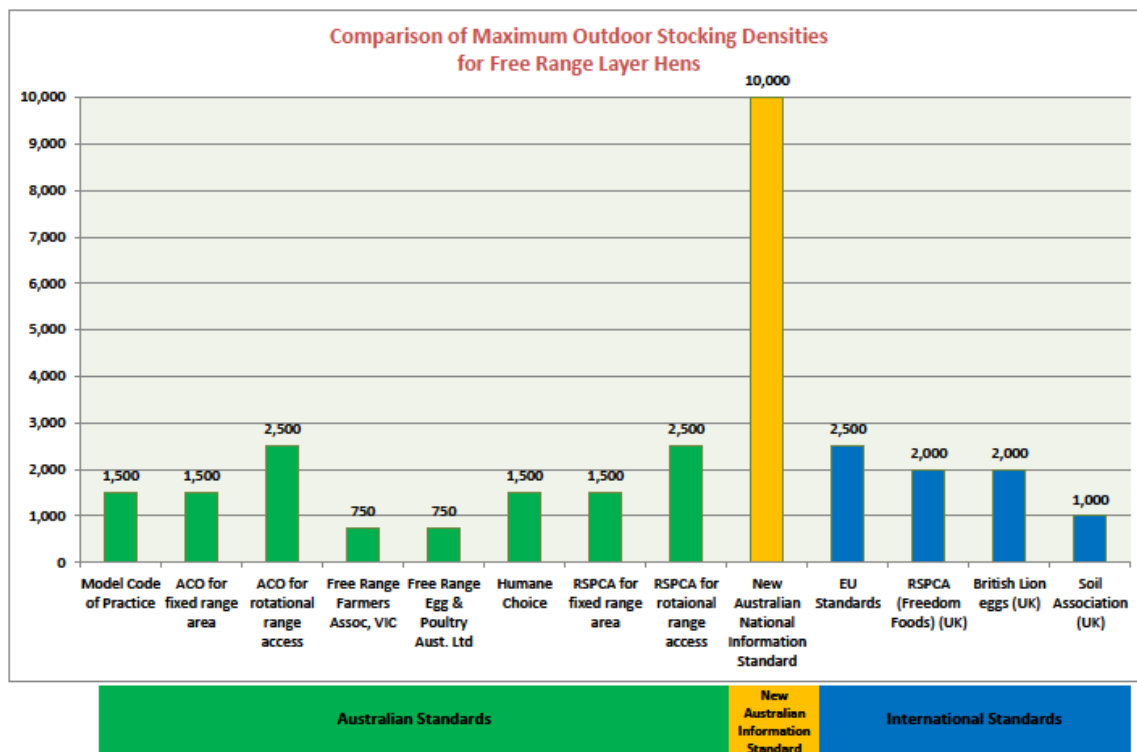
Both the EU and the UK are bound to a limit on stocking densities of 2,500 or less for outdoor layer hens. Additional standards are stipulated for British Lion Eggs² under The Lion (UK) Quality Code of Practice which ensure free range hens in the UK are kept under the highest animal welfare conditions and highest standards of food safety. [RSPCA welfare standards in the UK](#)³ allow a maximum of 2,000 hens per hectare, while organic standards specified by the [Soil Association](#)⁴ allow a maximum stocking density of 1,000 hens.

² British Lion Eggs – Free range egg production – Fact sheet

³ RSPCA Welfare Standards for Laying Hens (UK) – September 2013

⁴ Soil Association Organic Standards farming and growing, Revision 17.3 November 2014 (page 233)

This chart clearly demonstrates that throughout the world a stocking density of more than 2,500 hens per hectare for free range layer hens does not exist, so why has the Government ignored millions of Australian consumers and legislated 10,000 hens per hectare?



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 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.

Indoor Stocking Density

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 'ACCC enforcement guidance – free range hen egg claims'⁵. They correctly

⁵ 'ACCC enforcement guidance – free range hen egg claims', October 2015 - (https://www.accc.gov.au/system/files/1029_Free%20range%20Eggs%20guidelines_FA.pdf)

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 Sciences⁶. 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.

HSI strongly recommends that maximum flock numbers for layer hens should not exceed 2,500 birds per house, with an indoor ‘on ground’ stocking density no less than 1 square metre for every 5 birds including the roosting area. 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. This would prevent the birds from having meaningful and regular or continuous access to the outdoor range.

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 time⁷. 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.



Occasions when hens are prevented outdoor access

Part 2, section 7(2)(a) lists occasions when hens are prevented from accessing the outdoor range. These occasions should be rare and the hens should be allowed to freely access the range on most ordinary days. Therefore HSI recommends that farmers should be made to submit a report on any day that their hens are denied outdoor access explaining the exact reasons why. HSI recommends amendments to the text in this section as follows:

“7(2) For the purpose of paragraph (1)(a):

- (a) Disregard the **rare** occasions when hens were prevented from accessing the outdoor range because.”

HSI also recommends the following addition to Part 2, section 7(2):

“If the hens are prevented from accessing the outdoor range for a period greater than 24 hours then the authoritative body must be fully informed and provided with detailed reasoning for the decision, accompanied by a report from a veterinary authority.”

⁶ ‘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>)

⁷ Free Range Farmers Fact Sheet 1 (http://www.freerangefarmers.com.au/uploads/7/4/2/0/7420102/fact_sheet1.pdf)

Comments on Part 2, parts 8 and 9: Free range egg labelling and display requirements

HSI supports the requirement that the stocking density must be prominently displayed on the packaging so that it is easy for consumers to see when they read the label. HSI does not support stocking densities above 1500 being able to use a free range label. If this is allowed we think the government will be complicit in duping and misleading consumers because true free range farmers originally set up their genuine operations abiding by the 1500 hens per hectare stocking density upper limit prescribed in the Model Code.

Comments on Part 3: Misleading or deceptive conduct

HSI supports the point made in section 10 ensuring that a person must also comply with the relevant provisions within the *Australian Consumer Law*. This will prevent breaches such as a person using images on packaging which show hens subject to a significantly different stocking density than that which is indicated on the label.

Further Comments

Urgent Need for Peak Industry Body for True Free Range Producers

HSI is concerned that true free range producers are not receiving the support and representation that they deserve from an industry body or the Federal Government. With *Australian Egg Corporation Limited (AECL)* holding the position as the industry-owned peak body, funded by mandatory levies paid by producers and Federal Government monies, their actions clearly show they are not acting in the best interests of all egg producers.

Some reasons for our concerns about AECL are summarised below:

- Large industry producers such as Pace Farm founder, Frank Pace, make up the board of AECL;
- Their attempt to intensify free range through their CTM application which attempted to increase free range outdoor stocking densities from 1500 to 20,000 hens per hectare demonstrates their campaigning to push towards intensive production systems;
- There have been a number of court cases where egg producers who meet the standards set by AECL and display their 'Egg Corp Assured' stamp have been prosecuted for misleading claims, such as NSW egg producer Pirovic who were fined \$300,000;
- In May 2015 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 ACCC lost the case in February 2016 but it has since appealed and is awaiting judgement.

There are well over 100 egg producers throughout Australia who have chosen not to be represented by AECL. This is most likely because the AECL voting processes are skewed in favour of large intensive producers. They consistently avoid the views and interests of true free range producers and family farms.

For these reasons HSI believes there is an urgent need for the system to be changed. 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. A new industry body named *Australian Free Range Farmers Corporation*, for example, could be set up to represent and support these genuine free range producers, developing solutions and services to maximise their success.

Concluding comments

The fact remains that there is overwhelming evidence from consumers calling for the maximum outdoor

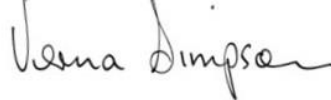
stocking density to be set at 1,500 hens per hectare and HSI recommends for this to be set as the upper limit for Australia's free range hens. Throughout the world, a stocking density of more than 2,500 hens per hectare for free range layer hens does not exist. True free range egg producers stocking a maximum of 1,500 hens per hectare can easily satisfy consumer demand at a reasonable cost.

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 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.

HSI strongly recommends the new Information Standard must include a maximum number of birds allowed inside the shed to prevent the indoor density from being too high. HSI also 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.

HSI appreciates the opportunity to make this submission and we ask that it be properly considered and acted on. We would be happy to provide further information or assistance on any of the points outlined above if required.

Yours sincerely

A handwritten signature in black ink that reads "Verna Simpson". The signature is written in a cursive style with a large, prominent 'V' and 'S'.

Verna Simpson
Director
HUMANE SOCIETY INTERNATIONAL