



**SUBMISSION TO THE CONSUMER POLICY UNIT  
on behalf of THE AUSTRALIAN TREASURY**

***FREE RANGE EGG LABELLING INFORMATION STANDARD***

**9 December 2016**

**Voiceless Limited**

ACN 108 494 631  
2 Paddington Street  
Paddington NSW 2021

**P** +61 2 9357 0703

**F** +61 2 9357 0711

**Disclaimer:** Voiceless Limited ACN 108 494 631 ('Voiceless') is a company limited by guarantee. Voiceless is not a legal practice and does not give legal advice to individuals or organisations. While Voiceless makes every effort to ensure the accuracy of information presented on its behalf, Voiceless does not guarantee the accuracy or completeness of that information. Information is provided by Voiceless as general information only and any use of or reliance on it should only be undertaken on a strictly voluntary basis after an independent review by a qualified legal practitioner (or other expert). Voiceless is not responsible for, and disclaims all liability for, any loss or damage arising out of the use of or reliance on information it provides. To learn more about Voiceless, please visit <http://www.voiceless.org.au>

Voiceless, the animal protection institute (**Voiceless**) is a not for profit think tank, focused on raising awareness and alleviating the suffering of animals in factory farms and the commercial kangaroo industry in Australia.

We appreciate the opportunity to comment on the *Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017 (Cth)* (**the Information Standard**).

## 1. Position on the Information Standard

1.1 As a preliminary matter, Voiceless wishes to affirm that it does not endorse the Information Standard in its current form. For the reasons outlined briefly below, Voiceless argues that the Information Standard fails to meet the intended purpose of the consultation process and disregards existing law and regulations to determine a definition of free range egg production.

### *Intended purpose of consultation process*

1.2 The original purpose of this consultation process, as identified in the supporting documents, is 'to consider options to enhance consumer confidence and certainty around egg labelling'.<sup>1</sup> In Voiceless' view, this has not been achieved by the Information Standard. To the contrary, the Information Standard will arguably generate further confusion and fail to assist consumers to identify genuine free range eggs.

1.3 Considering that the difficulty for consumers is to discern between products that do and do not align with their expectation of what constitutes free range, the Information Standard would be most effective if it accurately reflected consumer expectations.

1.4 As identified by multiple consumer surveys<sup>2</sup> and proceedings brought on behalf of consumers by the ACCC,<sup>3</sup> the consumer expectation of free range is significantly different to the definition offered in the Information Standard. In short, the expectation is that eggs come from hens who are not intensively farmed and actually go outside on most ordinary days.<sup>4</sup>

---

<sup>1</sup> Explanatory Statement, *Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017 (Cth)* 1.

<sup>2</sup> See, for example, Humane Society International, 'HSI Free Range Egg Labelling Consumer Survey' (October 2015); Rachel Clemons and Katinka Day, *Do You Shell Out for Free-Range Eggs?* (7 August 2014) CHOICE <<https://www.choice.com.au/food-and-drink/meat-fish-and-eggs/eggs/articles/free-range-eggs>>; 2015 CHOICE Free Range Egg Labelling Survey; Consumer Research by the Free Range Farmers Association (2010).

<sup>3</sup> See, ACCC, *Enforcement Guidance – Free Range Hen Egg Claims* (2015); *Australian Competition and Consumer Commission v Pirovic Enterprises Pty Ltd (No 2)* [2014] FCA 1028.

<sup>4</sup> *Ibid.*

### *Existing precedent for a definition of free range*

- 1.5 Voiceless notes that the Information Standard marks a significant and undue departure from the understanding of free range egg production both domestically and overseas.<sup>5</sup>
- 1.6 The fourth edition of the Model Code of Practice for the Welfare of Animals – Domestic Poultry (**the Model Code**) has provided guidelines for the poultry industry since 2002. As the central reference point for producers and consumers alike, the Model Code has been fundamental in shaping an understanding of free range. It stipulates a number of basic conditions for free range that are not provided for in the Information Standard. These conditions are discussed in paragraph 2.11 of this submission. Most significantly, the Model Code identifies a maximum outdoor stocking density of 1,500 birds/ha for free range layer hens.
- 1.7 Voiceless stresses the importance of maintaining 1,500 birds/ha as the threshold for free range stocking densities, and strongly recommends this be reflected in the Information Standard. Doing so would serve to hold producers to account to accurately meet consumer expectations. In its current form, the Information Standard serves to protect producers by expanding the definition of free range. In doing so, it misappropriates the free range label and legitimises conduct that was previously considered misleading and deceptive. This will no doubt cause severe detriment to consumers and those egg producers who abide by the Model Code.

## 2. Recommendations

- 2.1 Voiceless has identified a number of approaches to better ensure compliance with the Information Standard and fulfil consumer expectations regarding free range. Many of these approaches are crucial to any system that seeks to be free range, and as such, should not be lightly excluded from the Information Standard.

### *Definition*

- 2.2 In accordance with Part 1 of this Submission, Voiceless' primary recommendation is that the Information Standard be amended to reflect the existing understanding of free range, by incorporating a definition that reflects the following:

**Free range eggs** are eggs laid by hens that:

- (a) were able to, and actually did, move about freely on an open range during daylight hours on most ordinary days; and
- (b) were subject to an outdoor stocking density of 1,500 hens/ha or less.

---

<sup>5</sup> For example, the maximum stocking densities for free range egg production are limited at 2,500 hens in the UK and the EU.

- 2.3 This would provide genuine assistance to consumers by aligning with their expectations<sup>6</sup> and support those egg producers who have ensured their production practices adhere to the existing free range guidelines.
- 2.4 The consumer expectation of free range also extends to the assumption that free range hens are not subject to unnatural practices, such as debeaking or forced moulting.<sup>7</sup> It is strongly recommended that the definition of free range incorporates prohibitions on debeaking and forced moulting. This is especially pertinent considering that genuine free range and lower stocking densities eliminate the industry rationale for debeaking.<sup>8</sup>
- 2.5 In regard to determining whether or not a producer complies with the definition of free range, Voiceless recommends that producers be audited, and compliance with the Information Standard enforced, by an independent third party.

*Exceptions to outdoor access*

- 2.6 Voiceless is concerned that the exceptions listed in the Information Standard under clause 7(2)(a) would effectively permit hens to be routinely denied access to the outdoor range. If applied in their current form, there will be little assurance for consumers that hens had meaningful and regular access to the outdoor range.
- 2.7 It is therefore recommended that the parameters of each exception be clarified, by amending the Information Standard to address each exception. Voiceless recommends the Information Standard:
- (i) specify a maximum period of time that is acceptable for hens to undergo nestbox training;
  - (ii) only permit access to be denied in extreme weather conditions where hens are at an immediate risk;
  - (iii) only permit access to be denied when predators pose an immediate risk;
  - (iv) specify that any reason to contain hens on a medical basis is based on instruction from a qualified veterinarian; and
  - (v) in the instance of an exceptional circumstance, require the producer to immediately report to the relevant authority, seek permission to prevent access on an ongoing basis and take all reasonable measures to relieve the situation.
- 2.8 Voiceless also recommends that a provision be inserted into the Information Standard to require producers to keep a daily record of reasons why hens were prevented from accessing the outdoor range, and that this record be available for inspection on request.

---

<sup>6</sup> 78% of people surveyed in 2015 by CHOICE believed the definition 'hens must be allowed to move around freely on an open range on most ordinary days' was consistent with their expectations around free range eggs, see 2015 CHOICE Free Range Egg Labelling Survey.

<sup>7</sup> See, for example, Humane Society International, 'HSI Free Range Egg Labelling Consumer Survey' (October 2015).

<sup>8</sup> Australian Competition and Consumer Commission, *Initial Assessment of Certification Trade Mark Application CTM1390450 filed by the Australian Egg Corporation Limited*, 2 November 2012.

- 2.9 Voiceless further recommends that a provision be inserted to limit the period of time that hens may be prevented from accessing the outdoor range, and restrict the application of any and all exceptions to only be relied upon on an uncommon or rare basis.
- 2.10 To mitigate the over-application of these exceptions, Voiceless recommends including further provisions regarding the outdoor range, as outlined in paragraph 2.11 of this Submission.

*Outdoor range requirements*

- 2.11 It is highly necessary to impose requirements on producers to maintain a certain quality of outdoor range, in order to meet consumer expectations regarding free range production.<sup>9</sup> A number of these requirements are stipulated in the Model Code and the ACCC Guidelines for free range egg producers. As such, Voiceless proposes amendments to clause 7(2)(b) of the Information Standard that reflect the following:

(b) have regard to the extent to which hens are able to roam, forage and display natural behaviours on the outdoor range to which the hens have access, by:

- (i) Ensuring the outdoor range is sited and managed to avoid muddy or unsuitable conditions, and providing an alternative area should such conditions develop;
- (ii) Ensuring hens can access shaded areas and shelter on the outdoor range;
- (iii) Ensuring appropriate wind breaks are installed in exposed areas;
- (iv) Ensuring the outdoor range has adequate and constant non-toxic vegetation and foliage, suitable for foraging;
- (v) Making every reasonable effort to ensure the outdoor range is protected from predators at all times;
- (vi) Providing outdoor access for the full duration of daylight hours;
- (vii) Providing a sufficient number and size of evenly distributed openings so as to allow unimpeded entry and exit for hens; and
- (viii) Monitoring the actual extent to which hens access the outdoor range.

*Indoor requirements*

- 2.12 In its current form, the Information Standard is silent on indoor requirements for free range egg production. Consumers expect free range hens to have substantial space to move about freely, both indoors and outdoors.<sup>10</sup> Voiceless stresses that stipulating both a maximum flock size per indoor area and a maximum indoor stocking density is vital to ensure hens are able to access openings and range freely outdoors. In accordance with our previous submission, Voiceless recommends the Information Standard insert provisions to limit the indoor stocking density to:

- (a) 7 birds/m<sup>2</sup> of the usable area for floor-based systems; or
- (b) 9 birds/m<sup>2</sup> of the usable area for tiered systems.

---

<sup>9</sup> For example, it was found that consumers believe a mandatory national standard for free range egg labelling should make provisions for outdoor shelters (79%) and green cover outside (89%), see Humane Society International, 'HSI Free Range Egg Labelling Consumer Survey' (October 2015).

<sup>10</sup> See, for example, 2015 CHOICE Free Range Egg Labelling Survey; Australian Competition and Consumer Commission, *Initial Assessment of Certification Trade Mark Application CTM1390450 filed by the Australian Egg Corporation Limited*, 2 November 2012.

- 2.13 It is also imperative that the Information Standard provide requirements regarding the number, size and position of openings, corresponding to the number of hens in a specific indoor space. For example, the ACCC guidelines specify that the number of hens per metre of opening must be considered.
- 2.14 To ensure hens have actual access to the outdoors, the Information Standard must require that any internal architecture is designed to allow unimpeded and constant access to the openings during daylight hours. This includes considerations of distance to openings and the size of indoor facilities.
- 2.15 Lastly, the Information Standard should require that all indoor spaces are designed to ensure adequate airflow and allow for temperature control.

#### *Labelling Requirements*

- 2.16 Voiceless' main concern with the application of the Information Standard is that consumers may be unaware of the range of stocking densities that will now qualify for free range labelling. Further, consumers may be unaware of the significance of stocking densities, and may assume that all eggs with a free range label are produced in similar circumstances.
- 2.17 Voiceless acknowledges the importance of clause 8(c) of the Information Standard – that stocking density must be prominently displayed on the packaging. To properly empower consumers in their product choice, however, it is imperative that consumers are made aware of the permissible range of stocking densities. This could easily be achieved by requiring a scale to be displayed on the packaging, with the lowest and highest stocking densities for free range at each end of the scale. The stocking density of a specific brand would be marked at a proportional point on the scale.
- 2.18 Not only would such a scale provide context for consumers to make an informed purchasing decision, but considering producers will already be required to review their labels to comply with the Information Standard, this small addition could be incorporated without additional expense or effort.

Respectfully submitted by Sarah Margo on behalf of Voiceless, the animal protection institute.