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CONSULTATION REGULATORY IMPACT STATEMENT FREE RANGE EGG LABELLING CONSUMER AFFAIRS AUSTRALIA NEW ZEALAND OCTOBER 2015

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Submitted to:

Free Range Egg Labelling Consultation Paper
Small Business, Competition and Consumer Policy Division
The Treasury
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1. Background - The Commercial Egg Producers Association of WA (Inc).

The Commercial Egg Producers Association of Western Australia (Inc) (CEPA) is the leading representative body for Western Australian commercial egg producers. CEPA members produce approximately 85 per cent of eggs in Western Australia using caged, barn and free range production methods. Majority of commercial egg producers in the State are members of CEPA.

2. Objectives

- To proactively represent and promote the best interests of Commercial Egg Producers in dealings with Government, non-government bodies and their representatives.
- To secure uniformity of action on matters affecting the common interest of Commercial Egg Producers.
- To promote and uphold industry codes of practice for animal welfare, quality assurance, bio-security, environmental, labelling and transport of live poultry.
- To promote the consumption of Western Australian laid eggs.

3. Membership

- WA's leading State farm lobby group The Western Australian Farmers Federation.
- Egg Industry national peak body Egg Farmers of Australia Inc.
- Egg industry Research, Development and Marketing Company, The Australian Egg Corporation Ltd.

4. Egg Production in Western Australia

There are 186 registered businesses in Western Australia (WA) that produce eggs. Only 30 produce eggs as their primary business which represents 99% of total WA egg supply. The WA egg industry only supplies 66% of eggs sold in WA meaning 34% of eggs are supplied from interstate.

5. Background to the submission

On 12th June 2015 Consumer Affairs Ministers from the Commonwealth, States and Territories requested the preparation of a draft national standard on free range egg labelling. As required by COAG, regulation impact guidelines, a consultation Regulation Impact Statement (RIS) and decision RIS will be prepared ahead of Ministers formally considering in February 2016 whether an information standard is required.

“The problem:

1. Do production systems claims for eggs such as ‘free range’ sometimes mislead consumers? Is this the case for other claims, including ‘barn’ or ‘cage laid’?
2. If so, how much detriment have consumers suffered due to misleading production system claims for eggs?
3. What detriments have producers and retailers suffered due to misleading production systems claims for eggs made by competitors?
4. Do producers face significant uncertainty about how to ensure that they do not make misleading production system claims for eggs?”

6. COMMENTS TO THE CONSULTATION PAPER

6.1 Executive Summary

CEPA supports and is signatory to the Egg Farmers of Australia submission made to Treasury on Friday 13 November 2015.

CEPA supports the Egg Farmers of Australia definition of Free Range as follows:

“Laying hens in free range farming systems:

- are unconfined within a ventilated hen house;
- have access to and are free to roam and forage on an outdoor range area during daylight hours in a managed environment; and
- a maximum outdoor stocking density of one hen per square metre”

Comments in this submission are CEPA’s State position on the consultation paper in order to assist decision makers in understanding the logic used for the positions that have been taken on the options presented in the paper.

6.2 Comments on the Consultation Paper Process

CEPA welcomes the opportunity to comment on the Free Range Egg Labelling Consultation Paper released in October 2015 which will assist in developing a definition of free range at a National level.

CEPA was very disappointed with the short timeframe provided for public consultation on this matter considering the fact that it is such an important topic for industry to ensure that the outcome is consistent with consumer expectations and one that can be delivered by producers. It was pleasing to see common sense prevailed and an extension was granted by the Federal Government until 27th November 2015. Future consultation period should be longer than three weeks due to the consultative process that needs to take place at a State and National level within industry.

The consultation paper was inadequate in the fact that it lacked industry content. The paper had mainly information supplied by organisations such as CHOICE and the Australian Consumer and Competition Commission (ACCC). Considering the fact that any decisions made as a result of this consultation paper may affect egg producers across the country, lack of consultation and information in the consultation paper from the egg industry is discouraging and disappointing. This is especially the case since the national peak industry body, Egg Farmers of Australia, made itself available to provide information during the drafting stages. Lack of interaction with stakeholders (producers) is evident through the comments and options presented in the paper.

The consultation paper refers to consumer research undertaken by an organisation named CHOICE. Why has CHOICE, nor Treasury, made this research methodology of consumer research available as part of this process? Good research is undertaken independently, is peer group reviewed and replicated to ensure that the outcomes are sound. Was this research undertaken independently? Has it been peer group reviewed? Has it been replicated? Why does CHOICE refuse to provide this information as part of this consultative process?

6.3 Comments on the Proposed Definition of “Free Range”

CEPA supports the development of a definition of “free range” and implementation across all jurisdictions in a manner that will allow producer’s clarity as to what constitutes free range and consumers the opportunity to make informed decisions when purchasing free range eggs.

CEPA does not support the development of a “defence” to assist producers uncertain of when it would be appropriate to use as a free range label. If the definition of “free range” is clear then there is no need to have a defence against it.

CEPA does not support the creation of any new categories within the “free range” definition as it will confuse the producer and consumer.

CEPA does not support the creation of “access to range” category as this will confuse the consumer. Consumers already expect birds to have access to an outside area within the free range system.

CEPA does not support the creation of the “premium free range” category because there is no need for it. Free range already means that hens can go outside of the shed, therefore, would “free range” be different to “access to range” and different again to “premium free range”. The whole premise for a definition is to keep it simple for the producers and consumers with no ambiguity.

CEPA supports the prosecution of producers who do not comply with Consumer Law and are misleading in their actions/labelling. If a producer markets their eggs as “free range” but in fact eggs came from a “caged” or “barn” system, they should be prosecuted to:

- a) stop misleading consumers and
- b) not tarnish the reputation of free range egg producers who are doing the right thing.

CEPA supports the Egg Farmers of Australia definition of free range as follows:

“Laying hens in free range farming systems:

- **are unconfined within a ventilated hen house;**
- **have access to and are free to roam and forage on an outdoor range area during daylight hours in a managed environment; and**
- **a maximum outdoor stocking density of one hen per square metre”**

(APPENDIX 1)

6.4 Policy Response

CEPA supports the development of a definition of what constitutes “Free Range”.

CEPA does not support the Australian Consumer and Competition Commission (ACCC) definition of free range as being “most hens go outside on most ordinary days”. With the absence of an agreed definition of free range, the ACCC quoted a definition that an ordinary consumer would see as being an adequate representation of what free range means. The ACCC definition has not been developed

in consultation with industry, nor has it been developed as a result of consumer research or any research for that matter.

The ACCC definition is not appropriate going forward. The ACCC definition has served its purpose to date, however, time has now come to move beyond this vague definition which would be difficult to implement, monitor and prosecute against.

Industry is not satisfied with a response from the Chairman Mr Rod Sims in his letter to the egg industry dated 2 March 2015 which states:

“While we appreciate the interest the industry may have in metrics around concepts of most hens and most days, we don’t believe this is likely to be as useful as you might think and potentially cause more ambiguity. We consider their ordinary meaning and common sense application will be the best approach for industry and others.” (APPENDIX 2)

CEPA does not agree with the above statement. Both industry and government have the opportunity to develop a more sound definition that will deliver clear guidelines to all concerned.

The ACCC definition is not workable as it would be very difficult to implement at a farm level. A farmer would have to force his animals out of the shed to comply. Hens, like humans have different behaviour habits, some like being outside more than others. When managing hens, the focus is on keeping hens as comfortable as possible. Should the farmer be forced to move hens outside when they are unwilling to do so themselves, means that farmers would be posing unnecessary stress on the birds. The ACCC definition of “most hens going outside on most ordinary days” lacks clarity as what is constituted by “most hens” and “most ordinary days”. The definition is difficult to implement, difficult to measure and difficult to prosecute against.

The definition used by the ACCC was based on “ACCC perceptions as to consumer expectations” CEPA supports the definition of Egg Farmers of Australia.

“Laying hens have access to and are free to roam and forage on an outdoor range area during daylight hours in a management environment”

If a consumer was to read out the ACCC definition of “most hens being able to go outside on most days” and compared it to “laying hens having access to and are free to roam and forage on an

outdoor range area during daylight hours in a management environment”, most people would agree that they are one and the same. However, the difference lies in its application, monitoring and prosecution.

CEPA does not support the ACCC Enforcement Guidance for Free Range Hen Egg Claims provided by the ACCC. Please make reference to APPENDIX 3 where CEPA has made comment on the ACCC document.

CEPA does not support the proposition of detailed guidance on production factors.

Producers already label their eggs as “caged”, “barn” or “free range”. As far as mandating stocking density on the labels, it is probably unnecessary. Once the definition is developed and stocking density of no more than 1 bird m² outside is agreed upon, then that stocking density will need to be adhered to by anyone who produces free range eggs and not exceed this stocking density. Producers who stock at lower stocking densities can have the freedom of placing that number on their egg carton for marketing advantage in the market place if they so choose. To compare with other agricultural products, milk cartons don’t have cow stocking densities on their labels, neither does pork, beef or lamb on their meat trays. Consumers expect that producers are producing livestock or livestock products for human consumption under appropriate legislation, regulation and codes of practices. Once the stocking density of no more than 1 bird per m² is agreed upon it should become the industry norm and therefore not a requirement to label.

CEPA does not support the prominent disclosure on free range egg cartons of the indoor or outdoor stocking density of hens or any other practices for reasons mentioned above. Should a producer wish to place additional information for market advantage reasons they should be made free to do so.

There is little benefit in introducing an information standard on free range egg production if there is a definition of free range.

CEPA is not aware of any research undertaken to support stocking density of 1,500 birds/hectare on animal welfare grounds, but would welcome it for review. It is said that the original 1,500 birds per hectare was put into Model Codes of Practice at a time when the free range industry was very small and that 1,500 birds/hectare was the stocking density of the time.

Major supermarket chains have indicated that for producers to provide eggs to their stores, they must not exceed 1 bird per m² stocking density. Research on animal welfare, stocking densities and consumer expectations has been undertaken by the Australian Egg Corporation and can be obtained.

In September 2015 QUANTUM Market Research released a report entitled '*Defining consumer expectations: what production practices are necessary to underpin confidence in free range labelling*' http://www.nswfarmers.org.au/_data/assets/pdf_file/0004/45607/Defining-Consumer-Expectations-Free-Range-Topline-Findings-Aug-15.pdf

The research studied the attitude of Australians, purchasing behaviours, category understanding and expectations of free-range eggs. The work was a comprehensive qualitative phase, followed by an online survey of 1,200 free range egg buyers aged 18+, across all States and Territories. The robust sample provides accuracy and reliable insight into consumer preference and behaviours.

The survey concluded that:

53% of respondents define free-range as hens not in a cage

22% of respondents defined free range as having access to outdoors

18% of respondents did not know how to define free range

It is important to note that as much as consumers have a view on the definition of free range, they are also mindful of how much they would be willing to pay on average for a dozen eggs. Research indicated that consumers perceive that the average price paid for a dozen free range eggs was \$5.30. Research indicated that at prices of \$5.50 and above, 76% of consumers think that they are too expensive to consider. What this is saying is that should production costs go up in producing free range eggs due to very unrealistic stocking densities or parameters placed on industry, producers will have no choice but to pass the costs on to the consumers at which point there may be a reluctance to purchase free range eggs should they be sold for more than \$5.30 per dozen.

The Research also looked at what Australians consider to be the current standards of free range stocking densities. It is interesting to point out that:

- a. 35% of respondents already thought that hen stocking density was 5 birds per m²
- b. 30% of respondents thought that hen stocking density was 1 bird per m²
- c. 11% of respondents thought that hen stocking density was 1 bird per 6m²

- d. 7% of respondents thought that hen stocking density was 10 birds per m²

Therefore, 72% of consumers perceive stocking density to be already be at 1 bird per m² or above.

7. CONCLUSION

CEPA wishes to work with Members of Parliament, their staff and respective Government Departments to ensure that the definition used by industry and understood by consumers is clear, concise, easy to implement and easy to measure to provide clarity and certainty to all concerned.

CEPA would very much like to have the opportunity in providing comment to the paper which will be considered by all State and Territory Ministers in due course.

APPENDIX 1

EGG FARMERS OF AUSTRALIA MEDIA RELEASES



Free-range systems

Definition

"Laying hens in free range farming systems are unconfined within a ventilated hen house. They have access to and are free to roam and forage on an outdoor range area during daylight hours in a managed environment."

Minimum Standards:

1. Hen housing should:
 - a. provide shelter from inclement weather;
 - b. provide protection from predators;
 - c. be ventilated; and
 - d. contain access to food and water.
2. Hens should be provided with a minimum of 6 hours of darkness per night.
3. Eggs must not be labelled as free range until such time that the flock is provided with unrestricted daily access onto the outdoor range area.
4. Popholes (openings) should be provided extending along the length of the hen house equating to 2 metres per 1000 hens (min size 35cm high/40cm wide).
5. The outdoor range area should provide:
 - a. vegetation;
 - b. shelter;
 - c. shade; and
 - d. reasonable protection from predators.
6. Access to an outdoor range should be unrestricted and be for a minimum of 8 hours per day during summer daylight hours and a minimum of 6 hours per day during winter daylight hours.
7. Outdoor stocking density must not exceed 1 hen per square metre. Where hens are stocked at higher than 1500 hens per hectare, close management must be undertaken and regular rotation of hens onto fresh outdoor range areas should occur with some continuing soil or fodder cover.
8. Stocking density inside the hen house up to a maximum of 30kg per square metre of useable space.



Media Release

New definition of free range

10 June 2015

Egg Farmers of Australia has endorsed a new definition of free range egg production that will help build consumer confidence and provide certainty for egg farmers.

The new definition, that covers a range of points relating to the management of free range egg farms, was presented to the NSW Minister for Innovation and Better Regulation, Victor Dominello in a constructive meeting in Sydney this morning.

Egg Farmers of Australia spokesman, John Coward, said he was hopeful that Minister Dominello will take that definition to a meeting of Ministers for Consumer Affairs/Fair Trading in Melbourne on Friday. That meeting will aim to find ways to improve egg labelling in Australia.

"Egg Farmers of Australia believes it is imperative consumers get what they are paying for when it comes to egg purchasing," Mr Coward said.

"There has been some confusion regarding the current definition of free range in the Model Code of Practice for Domestic Poultry – 4th Edition (<http://www.publish.csiro.au/pid/3451.htm>) but the new definition agreed to by the majority of the egg industry yesterday, after considerable consultation with all State representative bodies, will aim to improve consumer confidence and egg farmer certainty," he said.

The new definition is: 'Laying hens in free range farming systems are unconfined within a ventilated hen house. They have access to and are free to roam and forage on an outdoor range area during daylight hours in a managed environment.'

Mr Coward said the definition (which is pasted below)) contained a number of minimum farm management standards to be met including "outdoor stocking density must not exceed 1 hen per square metre. Where hens are stocked at higher than 1500 hens per hectare, close management must be undertaken and regular rotation of hens onto fresh outdoor range areas should occur with some continuing soil or fodder cover."

"The egg industry is pleased the Minister will consider progressing such a constructive view of the issue to a national approach to egg labelling. We hope others involved in this debate, such as Choice, will take a constructive and responsible approach on this issue. All we have heard from Choice recently are cheap shots from the sideline that highlight their lack of accountability," he said.

For media enquiries, please call (02) 9409 6909.



Media Release

National approach to egg labelling

12 June 2015

Egg Farmers of Australia (EFA) has endorsed the national approach to egg labelling agreed to by State and Federal Ministers for Consumer Affairs this morning.

The Ministers agreed to pursue an enforceable national definition for free range eggs at a meeting in Melbourne.

EFA spokesman John Coward said a national approach would help build consumer confidence in eggs as well as clarity and certainty for egg farmers.

“We want to make sure consumers get what they are paying for. But some people in this debate are forgetting about the rights of egg farmers, who are the experts when it comes to farming. Investment in the free range sector appears to have slowed because of the lack of clarity around the definition of free range,” Mr Coward.

“However, we don’t want to rush into a new labelling system without proper consultation with egg farmers to ensure we get the details right,” he said.

Earlier this week, Egg Farmers of Australia presented Minister Dominello with a new definition of free range agreed to unanimously by the State Egg representative bodies that compromise EFA.

The new definition is: ‘Laying hens in free range farming systems are unconfined within a ventilated hen house. They have access to and are free to roam and forage on an outdoor range area during daylight hours in a managed environment.’

Mr Coward said he hoped for an outcome that would ensure existing free range egg farmers could continue farming to accepted principles.

“But I also hope organisations like Choice will be more accurate in their commentary on this important debate as their misinformation only confuses consumers.”

For media enquiries, please call (02) 9409 6909 or visit www.eggfarmersaustralia.org .

APPENDIX 2 LETTER FROM ACCC CHAIRMAN



Our ref: D15/14169
Contact officer: Scott Gregson
Contact phone: 02 6243 1350

2 March 2015

Mr John Coward
CEO Qld United Egg Producers Pty Ltd & National Spokesman
Egg Farmers of Australia
c/- 1203/38 Mahogany Drive
Pelican Waters QLD 4551

Dear Mr ~~Coward~~ ^{Sohn},

Re: Free range egg labelling

Thank you for your letter of 29 January and for the earlier opportunity to meet with you and other egg industry representatives. It was helpful to discuss the Australian Competition & Consumer Commission's interest in and recent actions in relation to free range egg labelling and to obtain further insights from the industry.

You have summarised the view of the ACCC that in making a free range egg claim, a producer is representing that most of its hens can and do go outside on most ordinary days. However you advise that when you have conveyed this message to the egg industry, you have identified uncertainty in the industry influenced by factors such as what constitutes most hens or ordinary days, management of hen behaviour and interaction with animal welfare, biosecurity and food safety.

You have also noted that several farmers have queried whether the ACCC test would be satisfied in circumstances where there were adequate openings and additional shade areas but, even allowing for those circumstances, many hens returned to sheds throughout the day to escape the hottest times, adverse weather conditions or threat of predators. You are concerned that despite every effort to meet the ACCC test, they may fail to meet expectations on certain days or at certain parts of the day.

By way of clarification, the ACCC view is that consumers regard free range as meaning that most of the hens are able to move around freely on an open range on an ordinary day and do in fact do so on most days. By focusing on what actually happens on most days (rather than most ordinary days) a greater a degree of certainty can be provided.

It is important to note that while the ACCC can form views on what is likely to mislead and share these to inform consumers and businesses, its views are forged in the context of potential or actual consideration by the Court. While we have sought to distil our view to a simple proposition, we know that there are calls to be made within

that proposition and that its application in specific instances would need to be informed by all the circumstances, including the actual representations made and the practical experience of each farm.

This said, I provide the following additional points for context to our approach. While there is consumer demand for free range eggs and accordingly business drivers to produce and label accordingly, it is a choice farmers or producers can make to label as free range or not. We only expect that, where made, those claims do not mislead consumers. We believe that most would agree that farming practices, conditions or circumstance that did not actually result in hens going outside would not be consistent with free range claims and accordingly regardless of effort, farmers or producers in those circumstances would need to review whether they could make or continue to make such claims.

To assist with your queries, the ACCC does not expect that hens always be outside to support free range claims. Reference to most hens and most days reflect this. We appreciate that hens will come and go and may spend periods indoors to avoid hotter parts of the day, other weather conditions or appearance of predators. This in itself should not defeat the appropriateness of a free range claim.

While we appreciate the interest the industry may have in metrics around concepts of most hens and most days, we don't believe this is likely to be as useful as you might think and potentially cause more ambiguity. We consider their ordinary meaning and common sense application will be the best approach for industry and others.

Finally, while the principles above are prominent in our actions, I would also ask industry to remember other important factors such as outdoor conditions more generally and densities that are relevant to consumer understanding and industry depiction of free range.

Like you, we are very interested in ongoing dialogue in relation to these matters and we would be pleased to continue to take calls, attend meetings and share correspondence. Please feel free to contact our Executive General Manager of Consumer Enforcement, Scott Gregson (02 6243 1350) should you wish to discuss this further.

Yours sincerely



Rod Sims
Chairman

John

We will always take
a common sense, rather
than an arithmetic or
pedantic approach on this
issue
Rod.

APPENDIX 3 THE COMMERCIAL EGG PRODUCERS ASSOCIATION OF WA INC RESPONSE TO ‘ACCC ENFORCEMENT GUIDANCE – FREE RANGE HEN EGG CLAIMS’ Issued October 2015

ACCC interpretations

In the *ACCC Enforcement Guidance – Free Range Hen Egg Claims* (“guidance”) ACCC makes a number of statements, assertions and conclusions which would not stand scrutiny from the majority of Australian poultry experts, particularly those that have worked in the free range egg industry for many years. We have listed a number of items in the “guidance” which we believe are incorrect or unhelpful.

Consumer laws apply to free range eggs

Responsible producers of free range eggs recognise the requirements under consumer laws to provide products that are true to labelling. The vast majority of free range egg producers are meeting their obligations. In the “guidance” provided by ACCC the statement is made that *“an expectation that free range eggs involve hens that spend time outdoors”* and this appears to be reasonable advice to industry.

Use of the outdoor range

The ACCC makes the statement *“we understand laying hens may spend periods indoors, for example, to avoid hot or poor weather, when predators are present, when the hens are medicated etc”*. Whilst these are all true, the ACCC has missed the important ones such as feeding, drinking, laying eggs, resting etc. The ACCC has, either a lack of understanding of the day to day needs of laying hens, or has chosen to only include some of them in their advice.

ACCC assessments

The “guidance” states *“the ACCC is not an industry expert – but we have relied on industry expertise to assist us with considering the types of practices more likely to lead to hens accessing an outdoor range”*. These experts are not identified so it cannot be said that they represent the majority views on free range hen management. Many of the statements in the “guidance” would not be supported by the majority of Australian poultry experts with experience in free range egg production.

Avoiding misleading free range claims and ACCC action

The comments relating to this section are not clear as to what is meant by “*design their farming infrastructure and practices*”. A large number of farms, and particularly the majority of bird numbers, are housed in systems specifically designed in Europe for the housing of birds for free range egg production. Is there a suggestion that the ACCC has particular design views in mind and is this contrary to normal free range egg production practice both in Australia and worldwide?

Further the statement that “*the use by significant proportion of hens each day*” is vague. Is it proposed to have a definition of “significant” and a method for continual calculation during the day?

INDOORS

Flock size – The suggestion by ACCC that “*the discrete flock size is a threshold issue*” does not stand up to scrutiny. The reference to “*unfamiliar hens*” in larger flock sizes is irrelevant. A recent literature review identifies many articles on this issue with one in particular reporting: “*Recent research suggests that laying hens are able to recognize around 30 individuals. The social structure developed in small groups begins to break down in flocks of 30 to 60 birds. When there are more than 60 the birds in a flock, the chickens become less aggressive and more tolerant of each other. Ref: (Dr. Jacquie Jacob, University of Kentucky 2015).* In the past, reports have suggested birds can recognise up to 90 individual birds.

The fact of limited bird recognition discredits the proposition by ACCC that larger flock sizes, kept in larger barns, would inhibit the navigation of hens past unfamiliar individuals. Does the ACCC believe that hens need to recognise every other hen before departing the barn? The only relevant point is the distance to pop holes and more birds does not necessarily mean a greater distance – the barn is just longer to accommodate larger number, but has more pop holes.

Internal architecture - By necessity free range barns contain many items of “internal architecture”, for example, nest boxes, feeders, drinkers and perches. Hens by nature are extremely adept at moving through these different areas and they do not restrict access. It should be noted that birds regularly each day move up and down to nest boxes, feeders, drinkers and perches.

Openings – The Model Code already provides the guidance for pop holes in a barn. The recommended 2 metres per 1,000 hens has also been repeated in nearly all audited standards in Australia – e.g. Coles; Woolworths.

OUTDOORS

Outdoor densities - The “guidance” notes *“hens tend to engage in their natural behaviours in an area adjacent to, or certainly not too distant, from a barn”*. This is to some degree accurate. The reference to *“viable grazing area close to barns”* however does not recognise two key points – firstly the hens favour this area for dust bathing; secondly the consumption of too much grass by the hens is counter-productive in that it does not provide for their nutritional requirements and in fact too much can affect their health and welfare.

The reference to the RSPCA standard of 2,500 birds per hectare is irrelevant to the “guidance” as it is but one of many voluntary standards and not science based.

NEXT STEPS

Reference is made in this section to the use of “common sense”. We would suggest that in the “guidance” ACCC has gone beyond this approach and instead is determining what they determine is correct farming practice.