

NSW Department of Primary Industries

Submission to the Commonwealth Government Egg Labelling Consultation – December 2015

The NSW Department of Primary Industries (DPI) supports the Commonwealth's efforts to provide greater clarity and certainty to consumers on egg labelling, and welcomes the opportunity to provide a Submission to the Consultation Regulation Impact Statement (RIS). NSW DPI regularly engages with the egg production and processing sector in NSW, including through twice-yearly NSW Egg Industry Consultative Committee (EICC) meetings, chaired by the NSW Food Authority.

Options to address consumer needs

NSW DPI notes there are two fundamental outcomes that the Commonwealth-led efforts on egg labelling should seek to achieve. The first is ensuring that consumer expectations on egg labelling are met and that consumers are provided with the information they need to make purchasing decisions. The second is to remove the uncertainty being experienced across the free range egg industry as to whether their production systems will comply with existing or proposed definitions.

Currently, there are many free range certification and accreditation schemes that have been developed by different industry associations and certification bodies (see Table 1 on page 5 for details). These operate with varying definitions and production standards for 'free range' and all comply with the *Model Code of Practice for the Welfare of Animals: Domestic Poultry* ('Model Code'). Those currently certified under these schemes are concerned as to whether their production systems comply with requirements established under common law for defining free range egg production, and future requirements proposed under a national information standard.

NSW DPI supports the development of egg labelling definitions in a national information standard that are outcomes-based, not overly prescriptive, and reflect the differences in production and processing practices across industry. The free range definition developed by the Egg Farmers of Australia (EFA), and publicly released in June 2015, is one such example, defining free range as: "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 during daylight hours in a managed environment¹". This definition has the unanimous support of the state representative bodies that comprise the EFA. While NSW DPI does not suggest this definition should be adopted without consultation with industry, consumers and their advocates, it does provide a useful reference point for the development of an outcomes-based free range egg production definition.

Definitions for 'cage' and 'barn' hens are already contained within the Model Code, and these are largely accepted by industry. These definitions could be referenced within the information standard, in addition to an agreed definition for 'free range'. The Model Code is currently being reviewed and converted to standards and guidelines, led by NSW DPI, which is expected to be completed by November 2017. Draft standards and guidelines are being prepared in consultation with industry and welfare groups, which will be taken to a wider group of national stakeholders in March 2016.

These definitions should be supported by a mandatory requirement to declare production parameters considered important to consumers, such as stocking density. Over time, the requirement to declare specific

¹ <http://eggfarmersaustralia.org/wp-content/uploads/2015/10/20150610-EggDefinition.pdf>

production parameters could be reviewed and updated to ensure this aligns with contemporary consumer expectations and concerns. This will be important as consumers become better educated and increase their understanding of factors that influence animal welfare outcomes, beyond the misconception that hen stocking density is a proxy for animal welfare. These initiatives together would address the current information asymmetry for consumers associated with free range eggs and allow the market to appropriately consider and respond to consumer demand, where necessary. These measures would also provide industry with the certainty it requires on the classification of its production and processing practices.

Concerns with options proposed in RIS

NSW DPI holds concerns with the proposed definition for 'free range' as described in the RIS, particularly as it compounds the existing uncertainty created by the common law definition of free range egg production established in recent Federal Court findings. The proposed definitions for free range for both options 2 and 3 in the RIS (as per Box 3 on page numbered 19 and Box 6 on page numbered 28) are described as eggs "produced by hens that can, and do, move about freely on an open range on most ordinary days".

However, the Federal Court finding upon which the definition in the RIS is based, describes free range eggs as being produced by hens that:

1. "were farmed in conditions so that the laying hens were able to move around freely on an open range on an ordinary day" (having access to an open range); and
2. "by laying hens most of which moved about freely on an open range on most ordinary days" (most hens access the range on most ordinary days).

The essence of the Federal Court finding is that to be classed as free range, all hens must have access to an open range, but only most of them are required to access the range on most ordinary days. However, the definition in the RIS differs from the Federal Court finding as it does not qualify that only most hens actually have to access the range on most ordinary days.

The wording of the definition in the RIS implies that all hens must access the open range on most ordinary days. This is simply not practical, as there will always be occasions where some hens may choose not to access the open range, despite being able to on an 'ordinary day'. This definition would be practically very difficult, if not impossible for industry to comply with, and would make monitoring and enforcement of compliance by the regulator extremely difficult, if not impossible. Examinations would most likely be limited to snapshot observations, rather than presenting a picture of the on-going operation of an egg farming system.

Any free range definition must also address industry's extant concerns, shared by DPI, with the Federal Court finding itself, particularly regarding industry's ability to comply with a definition principally based on a ruling against one egg producer. These concerns include:

1. The requirement for hens to "move about on the range" is not in line with international definitions and conventions. Typically the minimum standard for free range is "access to the outdoors", with premium branding schemes available for producers who wish to meet criteria beyond the minimum standard.
2. Measurement and auditing range usage by "most hens on most days" is not practical. Research (mostly focused on large flocks) shows that while a majority of hens will access an open range where available, it is typical that only a small percentage of birds will be outdoors at any time. This is a matter where individual animal behaviour and choice is just as relevant as producer intent in the design of an egg

production system. Without individual hen monitoring technology, it is not possible to demonstrate the number or percentage of hens that have accessed the range, or the period of time any hen spent on the range.

As some aspects of animal roaming are driven by animal behaviour and choice, the benefit of such monitoring as indicative of the intent of an egg producer in the design of an egg farming system is highly questionable. Thus providing evidence to demonstrate that most hens access the range on most days is not practical. An observation at any point in time will be likely to result in “few” hens on the range at that time, however most may access the range at some time in the day. It will therefore be difficult to demonstrate compliance with this definition.

Any free range definition must also to accommodate occasions when hens need to be confined for husbandry purposes, such as to allow hens to be medicated for disease or parasites, to facilitate the control of vermin and/or predators, or to allow for range maintenance.

3. The Federal Court case against NSW-based egg producer Pirovic Enterprises has been used to generate a definition that will apply across industry, without appropriate consideration of the differences between producers and production systems.







The proposed ‘safe harbour’ provisions under option 2a also appear too prescriptive, have not been adequately informed by consultation with industry, and therefore fail to address concerns that already exist around industry’s capacity to comply with the Federal Court-derived definition for free range egg production.



The situation could be remedied by consideration of the Minimum Standards for Free Range Systems², developed by the EFA in conjunction with its free range definition. These standards are supported by the State representative bodies that comprise the EFA, and reflect the differences in production and processing systems across the free range sector.

² <http://eggfarmersaustralia.org/wp-content/uploads/2015/10/20150610-EggDefinition.pdf>

Table 1 – Voluntary egg production accreditation schemes operating in Australia.

All schemes comply with the *Model Code of Practice for the Welfare of Animals: Domestic Poultry*. The Model Code requires that hens have access to the outdoors and shelter, are stocked at a maximum of 1500 hens per hectare or higher where hens are regularly moved onto fresh range areas, and defines acceptable animal management practices.

Voluntary egg production accreditation schemes	
<u>Australian Egg Corporation Limited</u> 	Egg Corp Assured Complies with Model Code
<u>Australian Certified Organic Ltd</u> 	Australian Certified Organic Standard 2013 Complies with Model Code + additional standards
<u>Free Range Farmers Association Inc.</u> 	Free Range Farmers Association Inc. Standards - Egg Production - Rev 12 - 2013 Complies with Model Code + additional standards
<u>Free Range Egg and Poultry Australia Limited</u> 	FREPA Free Range Egg Standards Complies with Model Code + additional standards
<u>Humane Choice</u> 	True Free Range Complies with Model Code + additional standards
<u>RSPCA</u> 	Approved Farming Scheme Standards - Layer Hens (August 2011) Complies with Model Code + additional standards

Voluntary egg production accreditation schemes cont'd.	
<p><u>Coles</u></p> 	<p>Coles Egg Production Standard for Free Range eggs</p> <p>Complies with Model Code</p>
<p><u>Woolworths</u></p> 	<p>Egg Corporation Assured</p> <p>Complies with Model Code</p>

Further information is available at <http://www.foodauthority.nsw.gov.au/consumers/food-labels/labelling-and-the-law/egg-labelling>