

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

19 November 2015

Dear Minister

**RSPCA Australia submission to Free Range Egg Labelling Consultation Paper**

Thank you for the opportunity to comment on the Consultation Regulation Impact Statement for Free Range Egg Labelling.

The debate surrounding egg labelling is motivated substantially by consumer concerns for animal welfare. As Australia's leading authority on animal care and protection, we are well placed to assist the Consumer Policy Unit in undertaking this review. We have significant experience in meeting consumer expectations regarding animal welfare in various livestock production systems, including layer hens, through our Approved Farming Scheme. Many of the recommendations made in our attached submission draw from these experiences.

We support the development of a national information standard for all categories of eggs, providing that the category definitions take into consideration the specific welfare requirements of the hen. Our attached submission outlines this position in further detail and addresses some of the focus questions put forward in the document.

We believe this is a very important and long overdue review process, not only for the welfare of millions of layer hens but for the proper functioning of Australia's egg market including the producers and consumers operating within it. We are therefore very keen to assist the review process in any way that we can. Please do not hesitate to contact our office if you require any further assistance with the review.

Yours sincerely



Heather Neil  
Chief Executive Officer  
RSPCA Australia

RSPCA Australia Inc.

ABN 99 668 654 249

P 02 6282 8300  
F 02 6282 8311  
E [rspca@rspca.org.au](mailto:rspca@rspca.org.au)  
W [rspca.org.au](http://rspca.org.au)

PO Box 265  
Deakin West ACT 2600



## RSPCA Australia submission to Free Range Egg Labelling Consultation Paper

(19 November 2015)

### General statements

As an animal welfare organisation, RSPCA Australia's key focus in the discussion around free range egg labelling is the welfare of the hen laying the egg. We strive to improve the welfare of layer hens in Australia and a significant part of this work involves educating consumers and interacting with relevant stakeholders and producers.

Consumer awareness and demand for higher welfare food is growing and consumers have the power to influence and progress animal welfare in this country through their purchasing power. It is therefore important that consumers are provided with the right information and knowledge to enable them to make informed choices with confidence that the market will facilitate their concerns for animal welfare.

Consumer interest in the term free range is highly associated with perceptions of better standards of welfare for the hen so it is imperative that the definition of free range meets this expectation. Simply being able to move about freely on an open range does not guarantee good welfare. There are numerous other factors that influence the welfare of the layer hen, both inside and outside of the shed. For consumer expectations to be met with conviction, the definition of free range must also consider these influencing factors. RSPCA Australia therefore supports option 3 of the Consultation Paper; that is, the development of a national information standard for all categories of eggs. However, this support is on the basis that the descriptions for the 'barn' and 'free range' categories are expanded to cater for the specific welfare requirements of the hens in each category.

RSPCA Australia is strongly opposed to the confinement of hens in cages because of the restrictions these systems place on the ability of the bird's movements, social interactions and behavioural needs. We therefore support the clear and mandatory requirement to label cage eggs as such so consumers can make an informed choice to purchase eggs produced under a higher welfare system, whether that be barn or free range.

### 1 The problem

While perhaps not all misuse of the term free range is intentional, the current lack of a clear and nationally consistent definition is a major issue that needs to be addressed. The use of ambiguous phrases and depiction of hens roaming on wide-open, lush green pastures can mislead consumers into thinking the eggs they are purchasing have been produced in systems that provide for the needs of the hen, however this is not always the case.

Consistency between state jurisdictions in terms of the minimum production and labelling requirements is also needed for the benefit of producers to create a level playing field and to reduce the regulatory burden particularly for those producers selling their products in multiple jurisdictions.

<b>Question 1. Why do some consumers prefer free range eggs?</b>
--

As acknowledged on page 6 of the consultation paper, animal welfare is one of the main reasons why consumers choose to purchase free range eggs. Therefore it is essential that any national definition of the term free range is developed with the welfare of the layer hen as the key focus. This will not only ensure

that these eggs are produced in a system that meets the hen's behavioural and physiological needs but will also provide added confidence to consumers that their choice to purchase free range eggs has made a positive impact on animal welfare.

**Question 2. Would consumers and egg producers benefit from a clarification of the meaning of free range in relation to egg labelling?**

Yes. Without clear definition, the term free range is open for interpretation. A consumer with no additional knowledge of the industry may be misled into thinking that hens are continually outside in large, open paddocks and never confined indoors. While a consumer who is a little more informed would know that hens are routinely housed indoors in sheds and are only provided access to the range during certain times of the day. Ultimately, uncertainty in labelling terms reduces consumer confidence. A clear, defined national standard for the meaning of free range will improve consumer confidence in the egg market.

Producers will also benefit from further clarification. Some egg producers may believe that simply providing an outdoor area for the birds is enough. While others may go further and actively provide an outdoor environment that caters for the hen's needs such as providing adequate shade and maintaining palatable vegetation. This can create an uneven playing field between producers as widely different production practices with significant variations in animal welfare-based input costs nevertheless attract the same price premium for using the free range label. Producers who invest in genuine animal welfare standards may be undercut by competitors and priced out of the market. This can cause a race to the bottom in welfare standards that is in complete contradiction to the consumer concerns upon which the free range term is supposed to be based. Producers will therefore benefit from the development of minimum and clear requirements that must be met on farm in order to label an egg as free range as it will level the playing field and provide further certainty for their industry.

As some egg producers sell their products interstate, the development of a national information standard will have additional benefits by ensuring consistency between state jurisdictions and simplifying the processes involved in complying with labelling requirements.

**Question 5. Are consumers interested in additional information about production methods used to produce free range eggs such as stocking density, number of hours hens range freely in daylight hours and hen mortality rates? If so, is this information currently available? If not, how would consumers like access to this information (e.g. displayed on packaging or online)?**

Consumers who choose to purchase free range eggs for welfare reasons are by extension interested in additional information about production where this has an impact on hen welfare. Good animal welfare is multifactorial and is not easily defined by a simple figure or adherence to a single production practice. If the term free range is to meet consumer expectations of better welfare then it needs to encompass all the various production practices that influence hen welfare, both inside and outside the shed. Many consumers would be interested in knowing this additional information. However, most of all consumers want a labelling regime they can trust and one that ensures the label on the product is an accurate representation of the product's credence claim.

While some individual producers may choose to provide additional production information on pack or on their website, there is currently no legal requirement for them to do so. Ideally, this information should be clearly presented for the consumer on pack or alternatively on point of sale retail displays. For

example in the ACT it is a requirement under the *Eggs (Labelling and Sale) Act 2001* for a person who displays eggs for retail sale to have a prominently placed sign at or near the display that identifies the eggs as cage, barn or free range, including a short definition of each system as defined in the legislation. Expanding this concept to require additional information about production methods to be displayed would allow consumers to easily access this information rather than needing to go online.

## 2 Object of reform

The policy objective as stated on page 9 is to *'increase consumer certainty, not to prescribe a particular set of production practices or regulate animal welfare.'* RSPCA Australia would argue that these concepts are not mutually exclusive in that, as research has indicated, better welfare is one of the main reasons that consumers purchase free range eggs. Therefore, it is vital that any national definition of the term free range in relation to egg production ensures the behavioural and physiological needs of the hens raised in these systems are met and these systems actually cater for hen welfare.

RSPCA Australia agrees with the statement that *'markets cannot operate effectively where consumers do not have reliable information to make meaningful choices to reflect their preference'*. In order for consumers to make this meaningful choice, it is our view that that proposed standards for 'barn' and 'free range' categories under Option 3 (as presented in Box 6) need to be expanded beyond the current definitions. Refer to the discussion under the Option 3 heading for more details.

## 3 Policy options

### Option 1

RSPCA Australia does not support the option of maintaining the status quo and continuing to rely on ACCC guidance. The current case law definition of free range that hens *'move around freely on an open range on most ordinary days'* provides only limited information to consumers about the conditions in which the hens are raised on farm. Future compliance with using the term free range would remain focused on this single phrase, when both consumers and producers should also be considering the numerous other production aspects that influence hen welfare in free range systems. Refer to the discussion under the Option 3 heading for more details.

We believe a nationally recognised standard which takes into consideration the essential features of the range as well as what is important to bird welfare inside the shed will provide consumers with confidence in their choice to purchase eggs produced in a free range system.

**Question 14. Are producers disadvantaged by the uncertainty regarding free range egg labelling and associated production methods? If so, to what extent have judicial decisions under the ACL alleviated this detriment? To what extent could future court actions do this (that is, would more case law make it clearer)?**

As discussed above, uncertainty regarding a term such as free range - which has become such a pivotal element of consumer purchasing behaviour within the Australian egg market - creates significant disadvantages for producers. It creates an uneven playing field among competitors negatively affecting

those attempting to provide genuine welfare benefits. Additionally, it increases the regulatory burden faced by producers as inconsistencies between state jurisdictions complicate regulatory compliance requirements. Finally, uncertainty in the meaning of labelling terms exposes producers to the threat of litigation from government regulatory agencies.

The ACCC has been successful at cracking down on misleading and deceptive claims relating to the welfare attributes of eggs. The case law has certainly provided some further guidance as to what the term free range means for the purposes of the Competition and Consumer Act. However, relying on court action to develop an industry standard is not a good policy option. Litigation is by nature uncertain and developing a national standard for egg production terms should not be dependent upon court action. This is not the court's role. To create certainty for producers and consumers alike a prescriptive information standard under the ACL should be developed.

## Option 2

Under the scope of Option 2, the development of a national information standard would only apply to free range eggs. RSPCA Australia believes a nationally consistent definition of the term free range is required, however we support the development of an information standard that is broadened to also cover the different production systems such as those defined in the Model Code of Practice (cage, barn and free range).

**Question 22. Does a defence improve certainty for producers that their labelling is not false or misleading? Is a defence necessary?**

**Question 23. Does the example list of conditions provide confidence that most birds would be outside on most ordinary days? If not, what changes are necessary? What set of conditions would ensure most birds are outside on most ordinary days?**

If the standard description for free range is expanded to be more prescriptive and provide guidance for producers within the standard itself, as per our discussion below under Option 3, then the inclusion of a 'defence' would be unnecessary. Including a 'defence' into this already complex issue may only further complicate and confuse producers and consumers, as the conditions within the defence would not be mandatory. Standards that are clearly defined are simple to follow and there is no confusion that they must be adhered to by law.

**Question 24. Would an additional requirement to disclose indoor or outdoor stocking density be appropriate and beneficial? Why or why not?**

**Question 25. What is the value of stocking density information to consumers? Will the disclosure of stocking densities enable consumers to distinguish between varying animal husbandry methods employed to produce free range eggs? Is it an appropriate factor on which consumers can base their choice?**

The term free range in the context of egg production cannot be accurately defined simply by requiring the disclosure of stocking density (indoor and/or outdoor) on the label. As previously stated, good welfare is multi-factorial and is about providing for the hen's behavioural and physiological needs and the standard definition of free range must be comprehensive enough to reflect these needs.

On page 22 of the consultation paper, it is noted that ‘*many consumers perceive stocking density as a proxy for hen welfare and other animal husbandry practices*’. Therefore requiring a density figure to be displayed on pack under Option 2b without any additional requirements to display the details of other important aspects of production that influence hen welfare (such as those listed in the discussion of Option 3 below) may put too much importance on this figure, which is not always indicative of overall good welfare.

RSPCA’s preferred option would be full disclosure of the various welfare indicators on pack, not only stocking density.

### Option 3

Of all the options proposed the one that most closely reflects RSPCA Australia’s position on the labelling of free range eggs is Option 3: the development of an information standard for all categories of eggs. This option is supported only on the provision that the proposed standard definitions for ‘barn’ and ‘free range’ as currently defined in Box 6 on page 28 are expanded to cater for the welfare requirements of the hens in each category and outline the conditions in which the hens are housed in more detail.

From a bird welfare perspective the conditions inside the shed are just as, if not more important than, those outside in the range area in terms of ensuring the hen’s behavioural and physiological needs are met. All hens will spend the majority of their time indoors, regardless of the system they are housed in and whether they are provided with access to a range. Some hens raised in free range systems may choose never to go outside.

Listed below are the main factors that need to be considered to ensure the production environment provides for the needs of the hen. We have provided more definitive guidance on these factors in brackets within each point. These minimum requirements derive from our scientifically-based Approved Farming Scheme Standards for Layer Hens:

#### Indoor

- the provision of adequate nest boxes with a suitable floor substrate (minimum 1 nest per 7 birds or 1m<sup>2</sup> nest boxes for every 120 hens)
- design and provision of perches to allow hens to roost (no less than 15cm per bird unless this would obstruct movement in the shed in which case no less than 7.5cm per bird)
- environmental enrichment (objects for pecking, distributed evenly throughout the laying facility and changed as necessary to ensure birds have continuous access and maintain interest)
- indoor stocking density (no more than between 7 and 9 birds per m<sup>2</sup>, depending on the system)

#### Outdoor

- easy access to the range through appropriate openings in the shed (must allow birds to pass through using normal posture and ensure all birds have the opportunity to access the outdoor area)
- ramp design (non-slip and allow for minimal effort of movement between the indoor and outdoor areas)
- sufficient overhead cover and shelter to provide protection from predators
- provision of adequate shade to encourage hens to utilise the range (minimum 8m<sup>2</sup> per 1000 birds distributed across the outdoor area)
- condition and management of the range to provide palatable vegetation and to control disease

- outdoor stocking density (maximum 1500 to 2500 birds per hectare depending on the rotational management of the range)

#### Other

- the ability to forage, dust bathe and scratch (through the provision of dry and friable litter inside the laying facility or by providing access to the outdoors)
- monitoring and management of injurious pecking (daily monitoring and routine feather scoring)
- beak trimming practices (if hens are trimmed, the procedure must be performed at the hatchery using an infrared technique, limited to tipping of the beak only and be even and consistent across the flock)
- induced moulting (not permitted)
- management of sick and injured birds (prompt treatment or humane euthanasia)

Although it was stated on page 9 that the objective of this reform was ‘*not to prescribe a particular set of production practices*’, the proposed variation Option 3a to develop a ‘premium free range’ category does just that by placing prohibitions on beak trimming and induced moulting. Although we do not support the need for this additional category (refer to the discussion under Question 36 below for more detail), RSPCA Australia believes that the standard for free range needs to be more prescriptive than the current definition in Box 6 to ensure the basic requirements for the hen’s wellbeing are provided for so as to meet consumer expectations.

**Question 31. Is there consumer detriment associated with the labelling of barn and cage laid eggs? If so, how and why does this occur? Is it comparable with the consumer detriment associated with misleading labelling of free range egg?**

There is confusion and a lack of understanding around the term ‘barn’ laid in the general community. This may be due to the consumer perception that barn eggs are ‘second best’ to free range in terms of welfare. Most people may be able to visualise a hen confined to a cage or a hen outside on range, but without good knowledge of the typical conditions hens are exposed to inside the laying shed, consumers may find it difficult to comprehend what a barn system actually is.

According to AECL’s 2014 annual report, barn laid eggs accounted for only 8% of the total grocery sales of eggs by volume, compared to 53% and 38% for cage and free range respectively. Some of this may be due to the perception that hens need access to the outdoors to live a good life. As the price difference between barn and free range is often similar, consumers looking to purchase higher welfare eggs may automatically choose free range based on these assumptions.

RSPCA believes that a well-designed and managed barn system can deliver good welfare and provide for the hen’s behavioural and physiological needs, without the need to provide access to the outdoors.

Improving consumer awareness that barn laid systems, as well as free range systems, can provide good welfare for the hen would assist in broadening the options for consumers concerned about hen welfare.

This may provide a viable choice for consumers wanting to purchase eggs produced in higher welfare systems who are more limited by price. The development of an information standard for ‘barn’ systems that clearly provides for the needs of the hen would give consumers more confidence to purchase eggs from these systems. Along with an education campaign, improved awareness through a labelling standard would likely create an increased demand for barn laid eggs and provide a more stable market environment to encourage producers to move away from cage-egg production.



One of the main detriments associated with the labelling of cage laid eggs may be that consumers are inadvertently purchasing these eggs due to ambiguous labelling. RSPCA supports the requirement under Option 3 to clearly label products produced in cage systems as such so consumers who care about welfare can make an informed choice not to purchase eggs from hens housed in these systems.

**Question 32. Would the proposed definitions in Option 3 clearly define and capture the three broad methods of egg production?**

No. The proposed definitions for barn and free range do not clearly define these production methods in enough detail to provide consumers with confidence that the basic welfare requirements of the laying hen are met. To truly give effect to the consumer's willingness to support higher welfare production methods, the animal welfare factors outlined above should be incorporated into the Information Standard.

**Question 35. Should the scope of the proposed information standard be broadened to other markets (wholesale, farm-gate sales, restaurants)?**

RSPCA Australia would like to see the information standard broadened to cover all markets where eggs are sold but we understand the challenges involved in achieving this.

Under Option 2, the proposed scope on page 19 states that the *'information standard extends to shell eggs sold to consumers in retail grocery and farmers markets'* and that under ACL, producers, wholesalers and retailers would need to comply but producers would have the primary obligations to ensure compliance with the standard. However, on page 27 the proposed scope of Option 3 is simply *'the grocery retail market for shell eggs'* RSPCA Australia would like clarification on the inconsistencies between the respective scope of Option 2 and Option 3.

**Question 36. Is there value in a 'premium free range' category to regulate the use of superior animal welfare claims? Would this benefit consumers, noting existing certified trademarks and industry standards? How would it impact on producers?**

RSPCA Australia believes one of the key outcomes from this consultation process must be to ensure that the standard definition for free range under Option 3 is sufficiently detailed to ensure the term free range equals good welfare for the hen. If this is achieved, the need for an additional 'premium free range' category to be specified in the information standard and regulated would not be necessary. Any 'premium free range' category could be left to the initiative of individual producers upon identifying a market for going beyond the standards prescribed in the information standard.

**Question 38. Would the inclusion of an 'access to range' category in the proposed information standard accurately reflect the 'grey area' between free range and 'barn' eggs for consumer expectation and production methods?**

**Question 39. Would an 'access to range' category potentially increase consumer confusion about what is and what is not free range?**

The development of any additional category that includes words such as 'free' or 'range', may only add to consumer confusion and inadvertently devalue the welfare aspects provided under the 'free range'



category as described above. Similarly with the proposal to include a ‘premium free range’ category above, having two categories using the term free range (or similar wording) may be counter-productive in providing clarity for consumers looking to purchase higher welfare eggs.

The RSPCA is not opposed to the inclusion of an additional category that aims to address the noted ‘grey area’ between free range and barn, however any such category would need to be appropriately titled to reflect the production practices of this system and to ensure consumers are able to make a clear distinction between each category. The descriptor for this category should not include the words ‘free’ or ‘range’.

If such a category is to be developed, RSPCA Australia encourages discussion with industry groups and relevant stakeholders as soon as possible in order to ensure the category name and definition appropriately reflects future direction of the industry while at the same time providing consumers with an understanding of the conditions in which the hens in this system are housed.

The noted ‘grey area’ between barn and free range may also be addressed by increasing consumer knowledge and understanding of barn systems to ensure they understand that a well-managed barn system can also provide for the welfare needs of the hen.

#### 4 Impact analysis

**Question 48. What benefits would Option 3 provide to consumers? How would they differ from Option 2?**

The benefits of Option 3 as opposed to Option 2 are that the information standard will be applicable to all consumers, not only those who purchase free range eggs. As discussed above, increased awareness of the benefits of barn systems over cage systems may be beneficial for consumers looking to purchase cage-free eggs and also for producers looking to convert existing cage sheds into higher welfare barn systems in line with consumer expectations. In order to provide consumers with the relevant information to make an informed choice when purchasing eggs it is essential that these labels are clearly defined and enforceable, and processes are put in place for auditing/monitoring compliance with the standards.

The European Union has required mandatory labelling of cage, barn and free range eggs since 2004. While the exact model used in the EU may not be suitable for the Australian environment, there are definitely some aspects that could be used to aid the development of an Australian standard.

**Question 53. Do definitions of ‘barn’ and ‘cage’ comply with existing industry practice? Would adoption of Option 3 cause significant structural changes in the egg industry?**

**Question 54. To what extent would Option 3 inhibit innovation in the industry? For example, is it flexible enough to incorporate new production methods (such as ‘aviary eggs’) developed to address biosecurity, food safety or additional welfare concerns?**

The definitions of ‘barn’ and ‘cage’ as defined in Box 6 are consistent with the current definitions in the Model Code of Practice for the Welfare of Animals: Domestic Poultry. However, as noted in the consultation paper the code is currently under review to transition into an Australian Animal Welfare Standards and Guidelines document.

Expanding the definition of 'barn' as per our recommendation above would require some producers to make structural changes to the shed environment such as ensuring the provision of litter, perches and environmental enrichment.

RSPCA Australia believes industry innovation would not be inhibited by the development of an information standard under Option 3. If the requirements for the hen's welfare are met under the standard definitions, producers would still be able to explore new and alternative production methods on farm as long as they continue to provide for the basic needs of the hen.

As these new production methods evolve, consumer views and expectations of these systems will evolve alongside them. Similarly, consumer expectations of the existing three main methods of egg production may also change over time, possibly influenced by new and improved technology, emerging animal welfare science or international industry progress. As with any standard related to animal production, the development of a standard for egg labelling may need to be updated or amended down the line to remain relevant to industry practices and also to accurately reflect consumer expectation.

**Question 55. What would be an appropriate transition period in order to allow industry to comply with the requirements under Option 3?**

The appropriate transition period would depend on the extent of the changes required by the standard definitions. Obviously, the more prescriptive the definitions and the more aspects of production that are covered within these definitions, the more time and resources will be needed to ensure compliance on farm. Feedback from industry groups should be sought upon finalisation of the information standard definitions as to the determination of a reasonable transition period.

End of Submission