

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

Greens NSW Response to the Consultation Regulation Impact Statement: Free Range Egg Labelling

The Greens NSW are committed to protecting and advancing the rights of consumers.

In May 2014, our party adopted a comprehensive consumer rights policy, which can be viewed at <http://nsw.greens.org.au/policies/nsw/consumer-rights>

Reflecting the principles and aims outlined in the policy, we welcome the opportunity to make a submission to the "Consultation Regulation Impact Statement: Free Range Egg Labelling" October 2015 (consultation paper).

Please direct any correspondence in relation to this submission to John Kaye using the below contact details.

Yours sincerely,

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1. Introduction

Legislative reform to bring an end to the misuse of the free-range egg label is long overdue.

The Greens NSW first entered the debate in 2006, when our analysis of data produced by the Australian Bureau of Statistics (ABS) showed that as many as 200,000 factory farmed eggs were being passed off as "free-range" each day across Australia¹.

This was the beginning of the current conflict over the meaning and use of the free-range label.

While the debate has evolved from the issue of direct substitution, industrial producers have continued to boost their own profits by exploiting ethically motivated consumers.

The widespread misuse of the 'free-range' label has resulted in consumers paying more without producers delivering anticipated animal welfare outcomes. In some cases, the hens on so-called free-range farms are stocked so intensively that many are unable to venture outside.

The impacts of these practices on consumers, genuine free-range farmers and animal welfare are unacceptable.

This consultation process is a critical opportunity to develop a labelling regime that restores confidence to the free-range label and brings much needed certainty to consumers and genuine free-range egg farmers.

Concerns regarding the consultation process

The Greens welcome the provision of opportunities for public engagement in the development of free-range standards. However we have concerns about the unnecessary complexity of the options put forward in the discussion paper.

Some consumers might find that the bewildering array of options and the complexity of the discussion questions are a barrier to expressing their entirely valid opinions.

It is likely that there will be a large number of consumers who would be dissuaded from engaging with the consultation process by its complexity, despite wishing to have their opinions heard.

We recommend that further, less complex and more accessible opportunities for engagement with consumers be created.

2. Summary of the Greens position

¹ 'Layers of Intrigue as the barnyard becomes a battlefield,' Sydney Morning Herald, 29 July 2006.

The Greens NSW do not support any of the policy options as presented in the consultation paper.

With significant amendments Option 3, Information Standard for all categories of eggs, could form the basis of a labelling system that provides adequate protections to all parties.

In summary, the Greens NSW support:

1. The introduction of a legislated standard for all categories of eggs including cage, barn-laid and free-range;
2. The maintenance of 'free-range' as a single, premium egg label; and
3. The following definition of free-range egg production and the mandatory labelling of all other eggs as either "cage" or "barn laid".

The Greens NSW preferred definition of free-range egg production

Overarching requirement: *"free range eggs are produced by hens that can, and do, move about freely on an open range on most ordinary days"* (as contained in Options 2 and 3 of the consultation paper)

Specific conditions:

- Outdoor stocking densities must not exceed 1,500 hens per hectare;
- The provision of outdoor shelters and/or cover to encourage birds to utilise the range;
- Indoor stocking densities: no less than 1 square metre for every 5 birds including the roosting area (as prescribed by Humane Choice²); and
- Maximum flock numbers of 2,500 birds per shed (as prescribed by Humane Choice³)

Husbandry practices:

- A ban on the practice of de-beaking, beak cutting or trimming;
- No induced moulting; and
- A ban or limit on other procedures that impact bird welfare, in consultation with genuine free-range farmers and their representatives.

Compliance

- Independent third party auditing.

²[http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20\(MASTER\).pdf](http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20(MASTER).pdf)

³[http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20\(MASTER\).pdf](http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20(MASTER).pdf)

3. Greens NSW reject Option 1: Status Quo with upcoming ACCC guidance

The Greens NSW do not believe that maintaining the status quo is a useful or valid policy outcome.

The consultation paper identifies the problems associated with free-range egg labelling in the absence of a strong regulatory framework. In doing so, it illustrates why continuing with the status quo is an unacceptable option that would result in continued consumer confusion and exploitation.

The paper states:

"... in some cases producers represent eggs as free-range that are not farmed under conditions that consumers typically expect when they buy them."

"It is relatively easy to mislead consumers and there is a financial incentive for producers to do so."

"Consumers lose out when producers represent eggs as free-range at a higher price when they are not genuinely free-range according to consumer expectations."⁴

In addition to these statements, a large body of evidence points to the comprehensive failure of the egg industry to ensure the integrity of the free-range label and to provide certainty to consumers.

Consumers do not have faith that the label 'free-range' is accurate

Consumer demand for free-range eggs has increased significantly over the last ten years.

According to the Australian Egg Corporation, in 2005/06 eggs labelled free-range represented 20.3% of the market in volume and 30.6% in value⁵. By 2013/14, this had grown to 38% in volume and 47% in value⁶.

The increase in demand has been accompanied by scepticism and confusion from a significant number of free-range egg consumers.

In a 2009 consumer survey undertaken by Humane Society International, 93% of the 10,000 respondents disagreed that current egg labels gave them enough information to make informed purchasing decisions.⁷

⁴ Page 5

http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2015/Free%20range%20egg%20labelling/Key%20Documents/PDF/free_range_egg_labelling_RIS.ashx

⁵ <https://www.aecl.org/assets/Uploads/Annual-Reports/Annual-report-2006.pdf>

⁶ <https://www.aecl.org/assets/Uploads/Annual-Reports/AECL-Annual-Report-2014.pdf>

⁷ [http://www.foodlabellingreview.gov.au/internet/foodlabelling/submissions.nsf/lookupSubmissionAttachments/1SWIN-85K27620100518100813BVBC/\\$FILE/452.pdf](http://www.foodlabellingreview.gov.au/internet/foodlabelling/submissions.nsf/lookupSubmissionAttachments/1SWIN-85K27620100518100813BVBC/$FILE/452.pdf)

According to a 2014 survey by consumer advocacy body CHOICE⁸, "28% of free-range egg buyers do not have confidence that the free-range eggs they buy are produced under what they expect to be free-range conditions".

This uncertainty and lack of confidence in the free-range label may also be a barrier to consumers from purchasing free-range products, despite their desire to do so.

According to research conducted by Dr Paul Burke from the UTS Business School and the Centre for the Study of Choice, key reasons why people don't buy products considered to be ethical include:

1. They're confused about what makes a product ethical,
2. They're too expensive,
3. They are sceptical about how ethical products are,
4. They don't give it much thought, and
5. They have to go to specialty stores⁹

As the study also identified that free-range eggs were one of the top products purchased by 'ethical' consumers, points 1 and 3 are particularly relevant.

Maintaining the status quo would perpetuate this confusion and result in unacceptable consumer detriment.

Business as usual would also damage the integrity and future viability of genuine free-range farming by preventing consumers from buying products that reflect their values due to uncertainty and confusion. This would impede the growth of the ethical food products market and be a detriment to genuine free-range farmers.

Research conducted by consumer advocacy group CHOICE found that 54% of people would no longer be prepared to pay extra for egg labelled 'free-range' if the standard did not live up to their expectations.¹⁰

Research conducted by both CHOICE and Humane Society International have indicated a strong preference by consumers for a mandatory national standard for free-range egg labelling.¹¹

ACCC cases illustrate the problem, not the solution

The Australian Competition and Consumer Commission (ACCC) has played a leading role in exposing and prosecuting producers that misuse the free-range egg label to exploit consumers.

⁸ <https://www.choice.com.au/food-and-drink/meat-fish-and-eggs/eggs/articles/free-range-eggs>

⁹ <http://www.uts.edu.au/about/uts-business-school/marketing/news/research-identifies-barriers-ethical-buying>

¹⁰ CHOICE free-range egg survey 2015

¹¹ CHOICE free-range egg survey 2015; HSI Consumer Survey (October 2015)

CHOICE's 2015 report, "Free range eggs: Making the Claim Meaningful"¹², notes eight major instances in the last five years where the ACCC has instituted or taken action against egg or chicken meat producers for allegedly misleading consumers with their free-range claims.

As a result of these proceedings, a case law definition of free-range egg production has begun to emerge. In October 2015, the ACCC launched an enforcement guide for producers in relation to free range egg claims to assist producers avoid prosecution under the Australian Consumer Law (ACL).

The enforcement standard addresses some, but not all, of the issues relevant to genuine free-range egg production. It recommends that producers seeking to label their eggs 'free-range' should ensure that they meet the following definition:

*The ACCC considers the fundamental test is to assess whether your farming practices involve **most of your hens moving around freely on an open range on most days.***¹³

While the guide provides some assistance to producers wishing to avoid any potential legal action, it is a poor and insufficient substitute for a binding legislated definition of free-range eggs because:

1. If a producer is not meeting the suggested guidelines, there is no formal mechanism to detect these breaches and pursue prosecution. It is not the role of the ACCC to 'police' the egg industry. To date, many of the complaints regarding free-range egg production have been pursued and reported by non-for-profit organisations including Humane Society International Australia. This is an unsustainable and unsatisfactory situation.
2. Reliance on the development of case law as expressed in the enforcement guide to achieve consistency in the free-range egg market will be a lengthy and drawn-out process. In the meantime, consumers will continue to be misled and genuine free-range egg producers disadvantaged.
3. Reliance on the enforcement guide fails to recognise that the ACCC may in the future choose to not prioritise egg labelling in its portfolio of consumer affairs work.
4. A judicial response is likely to be far more costly and place more pressure on the court system than a legislated definition. It is unclear whether this was taken into account in the compliance cost estimates in Appendix G of the consultation paper.
5. The standard does not specify key husbandry and housing conditions that are critical in delivering the welfare outcomes consumers expect when purchasing free-range eggs. This includes, for example, stocking density and the practice of de-beaking.

¹² <https://www.choice.com.au/~media/619b60e5a1f04b2191d09fd9dab4c72e.ashx>

¹³ https://www.accc.gov.au/system/files/1029_Free%20range%20Eggs%20guidelines_FA.pdf

History of peak industry body's behaviour demonstrates need for legislated definition

The Australian Egg Corporation Limited (AECL) as the peak industry body would play a critical role in the management of a self-regulated definition of free-range under Option 1.

Its track record suggests a willingness to push for labelling standards that maximise the profitability of the large producers at the expense of genuine free-range farmers and their consumers.

Governance of the AECL has been dominated by the large industrial producers, with the generally smaller free-range farmers feeling their needs are generally not represented in the Corporation's decisions.¹⁴

In 2012, the AECL begun advocating for a free-range standard based on 20,000 birds per hectare which, if it had become the accepted outdoor stocking density, would have driven a significant number of genuine free-range farmers out of business.¹⁵

Coinciding with their push for an the adoption of a more intensive free-range standard, the AECL initiated a misleading and disingenuous campaign claiming that the long standing Model Code of Practice for the Welfare of Animals Domestic Poultry 4th Edition did not place any cap on outdoor stocking densities. This claim is disputed by many in the industry, who the Greens believe rightly interpret the Code as recommending a cap of 1,500 hens per hectare.¹⁶

Taking into account this behavior to date, it is clear that Option 1 would allow the AECL to continue with their campaign to intensify free-range egg production at the expense of genuine free-range farmers and consumers.

4. Preferred policy option: Option 3 with significant amendments

The development of a legislated definition of free-range eggs is critical to restoring consumer confidence in the free-range label.

In November 2011, the Greens' *Truth in Labelling (Free-range Eggs) Bill 2011* successfully passed the NSW Legislative Council¹⁷. The bill moved to introduce a legislated definition of free-range egg production in line with the Model Code of Practice for Domestic Poultry.

Despite the bill being defeated in the Legislative Assembly in August 2013, the Greens firmly believe that such a legislative response is critical to ending the misuse of the free-range label.

We strongly support the development of an information standard under Australian Consumer Law (ACL) that would prescribe conditions for all categories of eggs sold on the market. This is one aspect of Option 3 that would protect consumers, producers and animal welfare.

¹⁴http://www.freerangefarmers.com.au/uploads/7/4/2/0/7420102/fact_sheet1.pdf;

<http://www.smh.com.au/business/consumer-affairs/free-range-egg-producers-feel-powerless-because-of-ridiculous-industry-voting-system-20151118-gl261e.html>

¹⁵ <http://ausfoodnews.com.au/2012/11/07/australian-egg-corporation-limited-denied-free-range-trademark.html>

¹⁶ http://www.freerangefarmers.com.au/uploads/7/4/2/0/7420102/fact_sheet1.pdf

¹⁷ <http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/0136971F01EC3935CA257886002A0FEF>

Despite the current issues in the egg market revolving around the use and misuse of the 'free-range' label, the introduction of a legislated definition for all categories of eggs including cage and barn laid would be a sensible move that would ensure consistency.

For this reason, the Greens consider Option 3 to be preferable to Option 2, which would provide just a basic information standard for free-range eggs.

Shortfalls of Option 3

While we support the legislative framework behind Option 3, the Greens NSW have significant concerns that it might perpetuate consumer confusion and exploitation if left unamended.

Oppose the introduction of "Access to range" (Option 3b) and "premium free-range" (Option 3a) labels

The Greens strongly believe that "free-range" should remain a single premium label.

Eggs that are not produced in accordance with our preferred standard for free-range eggs as described below should be labelled "cage" or "barn laid".

We oppose the introduction of two new labels including "access to range" and "premium free-range" for the following reasons:

1. Consumers already consider free-range to be the premium label.

The label 'free-range' has significant brand recognition as a high animal welfare product in comparison to cage and barn laid varieties.

According to research conducted by consumer advocacy body CHOICE in 2014¹⁸, 68% of free-range egg consumers purchased the product for animal welfare reasons.

As the premium category in an established market, it would be in the best interest of consumers to ensure that the free-range label is correctly used rather than introducing a new category.

Inserting a new category of 'premium free-range' unnecessarily fragments the label, confusing consumers and unfairly disadvantaging farmers that have been doing the right thing.

2. The introduction of a 'premium free-range' label degrades the original 'free-range' label with unacceptable consequences for genuine free-range farmers.

The standards proposed for the 'premium free-range' label category in the consultation paper include:

¹⁸ <https://www.choice.com.au/food-and-drink/meat-fish-and-eggs/eggs/articles/free-range-eggs>

- an outdoor stocking density of 1,500 birds per hectare and
- strict controls on the practices of de-beaking.

These more closely align with current free-range egg production as outlined in the Model Code.

Consequently, farmers who have been producing 'free-range' eggs in good faith according to current industry standards will be shoe-horned into the 'premium' free-range eggs category.

This has significant impact on these producers and their customer base.

Producers will become isolated the mass base as their products are identified as 'boutique'.

Further, the producers will have to bear the costs of rebranding their eggs to take into account the new 'premium' free-range label. As described on page 37 of the paper in the Impact Analysis, the cost of changing the labelling is expected to be \$3,000 per egg product. For large industrial producers, this cost will represent a fairly insignificant expense. However, for small producers the cost could be a substantial proportion of their profit margin.

It is deeply unfair that producers who have been following standard industry practice and meeting the expectations of their consumers will now have to bear the brunt of re-labelling their eggs to reflect the new 'premium free-range' category.

The change in labelling will also disrupt current relationships with consumers who were under the impression that the label 'free-range' has to date indicated a premium product.

These consumers may then be lost to other brands that are able to use the new, inferior definition of 'free-range'.

3. Adding yet more labels into the egg market will only serve to exacerbate already high levels of consumer confusion.

It will be extremely difficult for the average consumer in the supermarket to decipher the difference between "access to range" "free-range" and "premium free-range" and make a choice in line with their ethical preferences.

The names all include the word 'range' yet as outlined in the consultation paper,¹⁹ they would see the hens raised in vastly different conditions, some with poorer animal welfare outcomes:

- **Access to range** would mean that producers only have to provide limited access to some sort of range. This could mean a large barn operation with a single small pop hole to a barren range, where none of the hens ever go outside, could use the label.

¹⁹ Page 28

http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2015/Free%20range%20egg%20labelling/Key%20Documents/PDF/free_range_egg_labelling_RIS.ashx

- **Free-range** as defined by the consultation paper would mean that producers have to meet the following definition: *"free range eggs are produced by hens that can, and do, move about freely on an open range on most ordinary days."* This definition fails to mention stocking densities or husbandry procedures such as de-beaking.
- At the other end of the spectrum, the '**premium free-range**' category specifies an outdoor stocking density of 1,500 hens per hectare, strict controls on de-beaking and a ban on forced moulting.

Clearly the 'premium free-range' category would result in higher animal welfare outcomes than 'access to range' or 'free-range.'

Yet the repeated implications from use of the word 'range' fails to clearly communicate these critical differences to consumers through the label.

As animal welfare is the primary reason for consumers choosing to purchase free-range eggs, this ambiguity is at best confusing and at worst misleading.

It appears that the introduction of new categories of free-range is more about meeting the interests of producers than providing an opportunity for the market to develop. This would bestow an unjustifiable reward on those who have benefited from exploiting consumers by misusing the label, by enabling them to use some version of the word 'range', without adjusting their practices.

The need for a detailed definition of free-range egg production

As previously stated, the Greens advocate for a single 'free-range' label defined in legislation.

It is critical that specific production conditions, including stocking density and husbandry practices, are referenced in the legislated definition.

The Greens note that both Option 2 and 3 of the consultation paper use the following definition as the basis of their 'free-range' definition:

"eggs were produced by hens that can, and do, move about freely on an open range on most days"

The Greens recognise that this reflects the definition of free-range outlined in the ACCC's enforcement guide for producers.

The Greens broadly support the base definition of free-range, noting that it could deliver high animal welfare outcomes in line with consumer expectations in some situations. It could be argued that in some production systems, the ability of the birds to move freely on an open range on most days, would mean that the birds were kept at relatively low stocking densities and did not require de-beaking.

However the lack of prescriptive conditions exposes this broad definition to misuse, both intentional and unintentional.

Rather than adopt prescribed conditions that are more likely to produce high animal welfare outcomes, producers will be forced to interpret a loose definition and try to adjust their practices accordingly.

Further, in the absence of prescribed conditions, such a standard would also require strict monitoring by an official over a timeframe to ensure compliance.

The Model Code of Practice Domestic Poultry 4th edition

It is current industry practice to provide specific instructions to producers in regards to space requirements, housing conditions and husbandry practices.

The Model Code of Practice Domestic Poultry 4th edition, developed with relevant stakeholders including industry representatives, explicitly outlines the conditions under which free-range laying hens must be kept.

Page 4 and 5 of the code refer to the provision of perches, nests and bedding materials as well as management of the range and predator protection. Critically, stocking density is defined for both on the outdoor range and in the shed.²⁰

The broad definition of 'free-range' as outlined in the consultation paper is a significant and unnecessary departure from the format outlined in the Model Code of Practice.

It is hard to see how a single line statement specifying only the ability of hens to access a range would be superior to the legislation of a code that contains detailed information on factors that are critical to hen welfare.

The code has been in place since 2002 and is generally accepted by most as the industry standard.

The Greens are of the opinion that the failure of mostly large industrial producers to adhere to the code is not because it is overly prescriptive or unattainable, but because they are looking to exploit its voluntary status to increase their profits.

International experience also demonstrates that prescribing specific stocking densities and other husbandry practices is common practice in regulating the egg industry. Both the European Union and the United Kingdom have legislated specific standards, with the EU including requirements that address stocking density, pop holes and utilisation of range.²¹

While the consultation does not specify that eggs labelled 'free-range' could come from production systems that stock their hens at 10,000 hens per hectare or higher, the Greens are of the Opinion that the definition of 'free-range' in Option 2 and 3 may allow this to occur.

²⁰ <http://www.publish.csiro.au/Books/download.cfm?ID=3451>

²¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1435151498494&uri=CELEX:31999L0074>

A legislated free-range standard that is based on the format of the widely accepted Model Code of Practice will offer greater certainty to producers, regulators and consumers.

For these reasons the Greens do not support the above definition being used as the sole defining attribute of 'free-range' egg production.

The Greens' recommended definition of free-range egg production

The Greens recommend that the following be used to define the single, premium category of free-range eggs:

Overarching requirement: *"free range eggs are produced by hens that can, and do, move about freely on an open range on most ordinary days."* (as contained in option 2 and 3 of the consultation paper)

Specific conditions:

- Outdoor stocking densities must not exceed 1,500 hens per hectare,
- The provision of outdoor shelters and/or cover to encourage birds to utilise the range,
- Indoor stocking densities: no less than 1 square metre for every 5 birds including the roosting area (as prescribed by Humane Choice²²), and
- Maximum flock numbers of 2,500 birds per house (as prescribed by Humane Choice²³).

Husbandry practices:

- A ban on the practice of de-beaking, beak cutting or trimming,
- No induced moulting, and
- A ban or limit on other procedures that impact bird welfare, in consultation with genuine free-range farmers and their representatives.

Compliance

- Independent third party auditing.

The importance of specifying stocking densities

²²[http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20\(MASTER\).pdf](http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20(MASTER).pdf)

²³[http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20\(MASTER\).pdf](http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20(MASTER).pdf)

Stocking density is critical to both hen welfare and consumer expectations of free-range egg production, as it impacts the ability of the hens to move about freely on an open range.

This was confirmed in the case against Pirovic Enterprises Pty Ltd brought by the ACCC. On 23 September 2014, the Federal Court ordered Pirovic to pay a pecuniary penalty of \$300,000 for engaging in misleading conduct relating to the labelling and promotion of eggs as 'free-range.'

In handing down the finding, the court found that high stocking densities played a critical role in preventing the hens from moving about on an open range²⁴.

In responding to the court findings, the ACCC listed a number of farming conditions that it has found to impact on whether hens are able to, and do, move freely on an open range each day:

The relevant conditions include:

- the internal stocking density of sheds;
- the conditions of the internal areas the hens are housed in;
- the number, size and location of any openings to an outdoor area;
- the time of day and how regularly the openings are opened;
- the size and condition of the outdoor area, including any shaded areas, the presence of food, water and different vegetation and ground conditions;
- the stocking density of any outdoor area; and
- whether the hens have been trained or conditioned to remain indoors.

For these reasons, the Greens are of the opinion that the prescription of a specific stocking density limit is critical when defining free-range egg production.

Outdoor stocking density

The Greens believe that free-range production systems should have a maximum stocking density of 1,500 birds per hectare.

This is currently the industry status quo as outlined in the Model Code of Practice Domestic Poultry 4th edition.

This stocking density also enjoys wide support from consumers as most accurately reflecting the 'free-range' label.

Research conducted by CHOICE and Humane Society International demonstrate that 1,500 birds per hectare is the preferred stocking density of free-range egg consumers.

- A 2015 survey conducted by CHOICE found most consumers stated that 1,500 per hectare or below was the maximum outdoor stocking density they would want for a national free range egg standard.²⁵

²⁴<https://www.accc.gov.au/media-release/federal-court-orders-300000-penalty-after-finding-free-range-egg-claims-to-be-misleading>

- An online consumer survey conducted by Humane Society International in October 2015 found that almost all consumers surveyed believe the maximum outdoor stocking density for free-range hens should be capped at 1,500 hens per hectare, in line with the Model Code of Practice.²⁶

In regards to stocking densities, it is important to note that consumers and consumer advocacy bodies have thoroughly rejected the notion that intensive stocking densities of 10,000 to 20,000 hens per hectare could result in a genuine free-range product:

- Research conducted by consumer advocacy body CHOICE in 2014 found that just 2% of survey respondents believed that 10,000 hens per hectare is an acceptable stocking density for free-range egg production.²⁷
- A survey conducted by Humane Society International this year found that 99% of respondents believe that eggs from production systems stocking 10,000 hens per hectare fail to meet their expectations of free-range.²⁸

In response to Cole's launch of their new free-range standard in 2012, the ACCC publicly stated that they did not consider stocking densities of 10,000 hens per hectare to be consistent with the term free-range.²⁹

In August 2015, the NSW Farmers Association commissioned Quantum Market Research (QMR) to conduct research into "Australians' attitudes, purchasing behaviours, category understanding and expectation of free-range eggs."³⁰ The research was conducted in August of this year and published in October, with the intention of informing this consultation process.

As a result of this research, the NSW Farmers Association is now claiming that consumers support an intensive stocking density of 10,000 hens per hectare.³¹ This is at odds with the research findings of CHOICE and HSI and the legal opinion of the Australian Competition and Consumer Commission.

Since publication, the research has been the subject of sustained criticism. CHOICE stated that the research that had been shown to them failed to ask about what consumers wanted the standard stocking density to be.³²

HSI also subjected the claimed results to rigorous scrutiny and found that there was a lack of credibility in the claims made by NSW Farmers.

²⁵ CHOICE free-range egg survey 2015

²⁶ HSI Consumer Survey (October 2015)

²⁷ <https://www.choice.com.au/food-and-drink/meat-fish-and-eggs/eggs/articles/free-range-eggs>

²⁸ HSI Consumer Survey (October 2015)

²⁹ <http://www.smh.com.au/national/10000-hens-to-a-hectare-is-no-free-range-acc-20130304-2fgxg.html>

³⁰ <http://www.miragenews.com/survey-consumers-happy-with-one-hen-per-sqm-as-free-range/>

http://www.nswfarmers.org.au/_data/assets/pdf_file/0020/45605/mr-101-15.pdf

³¹ <https://www.nswfarmers.org.au/news/global-news/egg-industry-and-consumers-like-their-eggs-the-same-way>

³² <http://www.theland.com.au/story/3424010/producers-tell-choice-get-clucked/>

Taking into account the existing status quo as outlined by the Model Code, the position of the ACCC and research conducted by CHOICE and HSI, little credibility can be placed on the assertions made by NSW Farmers Association based on the report.

It is also worth noting that the Egg Committee of the NSW Farmers Association is dominated by large industrial egg producers including Bede Burke, Paul Pace and Frank Pirovic.³³

Indoor stocking density

The ACCC observed that indoor stocking density was one of "a number of farming conditions that impact on whether hens are able to, and do, move freely on an open range each day".³⁴

Overcrowding in the sheds will limit the number of hens that will be able to leave the sheds and access the range.

The Greens support the Humane Society International's (HSI) position which prescribes that the indoor stocking for free-range egg production should be no more than 1 square metre for every 5 birds, including the roosting area.

Through their Humane Choice program, HSI are currently a leading voice for genuine free-range egg farmers in Australia.

HSI provides accreditation to various free-range egg farms including Buckleberry Farm in Victoria and Kangaroo Island Eggs in South Australia. The Humane Choice Accreditation program enables high levels of animal welfare and successful commercial outcomes to be achieved.

We believe that HSI are best placed to advise on appropriate indoor stocking densities and as such support their prescribed indoor stocking densities.

Flock size

Limiting flock size is important to ensure that hens gain access to the outdoors and to maintain control over the intensity of farming.³⁵

The Greens support the maximum flock numbers of 2,500 birds per house, as prescribed by Humane Choice to ensure hens access the range and meet consumer expectations³⁶.

³³ <https://www.nswfarmers.org.au/about-us/representatives/committees/eggs>

³⁴ <https://www.accc.gov.au/media-release/federal-court-orders-300000-penalty-after-finding-free-range-egg-claims-to-be-misleading>

³⁵ <http://www.abc.net.au/news/2015-06-16/poultry-expert-identifies-obstacles-in-free-range-egg-production/6548740>

³⁶ [http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20\(MASTER\).pdf](http://www.humanechoice.com.au/Resources/Current%20Standards/Humane%20Choice%20Standard%20-%20Poultry%202015%20Version%202.3%20(MASTER).pdf)

Beak trimming

Beak trimming involves the removal of the top and sometimes bottom part of a bird's beak with a hot blade or infrared beam. It is primarily used as a method of controlling feather pecking in a flock, which can result in injury and death.

According to Compassion in World Farming, the practice is responsible for *"trauma during the procedure, pain due to tissue damage and nerve injury, loss of normal function due to reduced ability to sense materials with the beak, and loss of integrity of a living animal."*³⁷

The negative potential impacts of beak trimming have led many consumers to consider it to be at odds with their view of free-range egg production.

An online consumer survey conducted by Humane Society International in October 2015 found 89% of respondents say they think 'no beak trimming' is an important consideration for a mandatory National Free Range Egg Standard.³⁸

Overcrowding is a key contributing factor to outbreaks of feather pecking and cannibalism. If hens are stocked at appropriate densities and their welfare needs are met, then feather pecking can be avoided or managed without intrusive husbandry practices like de-beaking.

This view is supported by the ACCC, who stated that:

The ACCC considers that consumers expect that free range birds would access a genuine range environment where they can frequently perform most, if not all, of their natural behaviours. Consumers would also expect higher animal welfare practices in free range systems relating to the management of flock size and density as well as preventative management practices (for example, providing opportunities for dust bathing and perching) to alleviate the need for routine beak trimming.

*107. Consequently, the ACCC considers that routine beak trimming, which may impact on a bird's ability to engage in natural behaviours (particularly foraging), is not an animal welfare outcome that consumers would typically associate with free range egg production.*³⁹

The routine need to de-beak hens can be seen as an indicator of unsatisfactory production practices and an inability to meet hen welfare.

The Greens note that the Humane Choice free-range standard has successfully prohibited de-beaking.

³⁷ http://www.ciwf.org.uk/includes/documents/cm_docs/2009/c/controlling_feather_pecking_and_cannibalism_without_beak_trimming.pdf

³⁸ HSI Consumer Survey (October 2015)

³⁹ <https://www.accc.gov.au/system/files/Initial%20assessment%20of%20Certification%20Trade%20Mark%20application%20-%20Australian%20Egg%20Corporation%20Limited.pdf>

The Australian Certified Organic standard⁴⁰ also prohibits systemic de-beaking, with some exemptions, as does the Model Code of Practice.⁴¹

Drawing on the analysis of the ACCC, industry experience and consumer preference the Greens NSW strongly believe that the free-range label should also include a ban on the practice.

The need for independent third party auditing

Independent third party accreditation is critical to ensuring producer compliance and restoring consumer confidence.

Significant damage has been done to consumer trust of the free-range label by the egregious behaviour of a number of industrial producers.

Reversing the crisis of confidence will require a degree of openness and transparency about the enforcement of the proposed national labelling standards for eggs.

This can only be achieved by auditing that is independent of the industry and not subject to regulatory capture or perverse incentives.

5. General Comments on Policy Options 2 and 3

If our preferred policy option is not adopted, then the Greens advocate for the following to be taken into account when considering Options 2 and 3:

If additional label is created, "access to range" preferred over "premium free-range"

The Greens understand that the rationale behind the proposed fragmentation of the free-range label and the introduction of a new category of "access to range" is to capture producers that do not conform to the current industry standards for either free-range or barn-laid.

This situation could have been avoided if state and federal governments had taken decisive action when the misuse of the label first emerged. However years of inaction by state and federal governments allowed for the proliferation of intensive producers claiming to be free range. The Greens understand that they are now arguing that procedural fairness requires the creation of a labelling category for their production methods.

Ideally, the label 'free-range' would remain as the single premium category of eggs. However, if a new label is to be introduced, we advocate that this be "access to range" over "premium free-range."

⁴⁰ <http://austorganic.com/wp-content/uploads/2013/11/ACOS-2013-final.pdf>

⁴¹ <http://www.publish.csiro.au/Books/download.cfm?ID=3451>

For the reasons stated above, introducing a premium free-range label has the potential to disrupt the market, confuse consumers and disadvantage genuine free-range farmers.

While the 'access to range' label adds another layer of complexity to the already confusing egg market, it may offer a second-best solution for categorising intensive 'free-range' systems.

Producers stocking their hens intensively at 10,000 hens per hectare, including Coles and Woolworths, should only be able to use the "access to range" label.

Oppose inclusion of a "defence" in meeting free-range standards (Option 2a)

Producers that do not meet the basic definition of free-range as prescribed in Option 2 should not be allowed to apply for a defence in order to use the label.

The free-range definition in Option 2 is already very broad and fails to include specific conditions that affect animal welfare and consumer perceptions of free-range:

"Free range eggs are produced by hens that can, and do, move about freely on an open range on most ordinary days.

An 'ordinary day' is every day other than a day when on the open ranges weather conditions endanger the safety or health of the laying hens or predators are present or the laying hens are being medicated."

If a producer is unable to meet this basic, core principle of free-range egg production then they should not be able to use the free-range label.

It is hard to imagine a situation where a significant number of hens would not utilise the range if given appropriate opportunities.

Further, the above definition already includes an option to allow the hens to stay inside if their health or safety is at risk.

Protecting intensive producers who claim 'free-range' status from enforcement action through a defence clause is not in the best interests of consumers or genuine free-range farmers.

Stocking densities on labels (Option 2b)

The Greens do not view the inclusion of stocking densities on labels as necessary if our preferred definition of free-range egg production is adopted.

However if the free-range label is to be fragmented into multiple labels (Option 3) or no single stocking density is prescribed (Option 2), the Greens support the declaration of stocking densities on packs.

While the inclusion of stocking densities could be confusing for some consumers, there would likely be a growing understanding of the implications of stocking densities, provided the font size and packaging location are sufficiently well specified.

If stocking density labelling is implemented it should cover all egg categories to ensure consistency and fair comparison.

Review

If the Greens preferred policy option is not adopted, then we advocate that the Consumer Affairs Australia and New Zealand (CAANZ) commit to a 2 year review conducted by an independent body.

This is critical to assess whether consumer expectations and satisfactory animal welfare standards have been met.

Extension to cover all egg products

Clear and accurate labelling of eggs should not be limited to just the shell product purchased in a retail setting.

Consumers who are seeking to avoid cruel animal treatment in the production of their foods would in general not just restrict their purchasing aspirations to shell eggs. They would almost certainly want complete coverage.

Further the development of the free-range market should not be limited to shell products while caged and other low welfare products are allowed to dominate the packaged food, hospitality and catering industries.

The Greens NSW consequently recommend that if an information standard is to be applied to the egg industry, then it should also cover:

- Eggs in packaged foods, including ice cream, mayonnaise, biscuits, cakes, confectionary and battered and crumbed foods. The use of terms such as albumin and ovalbumin as well as the ingredient label 'mayonnaise' (without further identifying the constituent ingredients) should be prohibited.
- The sale of eggs in the hospitality and catering industries.

Conclusion

Consumer Affairs Australia and New Zealand (CAANZ) has taken an important step towards resolving the deception and exploitation that have surrounded the use of the free-range label.

Expectations have now been raised by this process that consumers will have confidence restored and that genuine farmers will not be exposed to unfair competition.

This can only be achieved by an information standard that responds to the evidence of what consumers expect in a label that attracts a higher price.

The Greens NSW believe that this requires more protection for consumers than is offered by any proposal in the consultation paper. However, Option 3 provides a starting point for a strong standard that would ultimately fulfil those expectations.