



**SUBMISSION TO THE TREASURY
FREE RANGE EGG LABELLING
REGULATORY IMPACT STATEMENT**

NOVEMBER 2015

The Victorian Farmers Federation

The Victorian Farmers Federation is Australia's largest state farmer organisation, and the only recognised, consistent voice on issues affecting rural Victoria.

The VFF consists of an elected Board of Directors, a member representative Policy Council to set policy and commodity groups representing dairy, grains, livestock, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peers to direct each of the commodity groups and are supported by Melbourne-based staff.

Each VFF member is represented locally by one of the 200 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views on hundreds of industry and government forums.

The VFF Egg Group represents 90% of hens in the Victorian commercial egg industry. Its members farm in all production systems – cage, barnlaid and free range. They range in size from members with 4000 birds through to large producers. Most members market their own eggs direct to small shops, restaurants and supermarkets.



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1. Executive summary

Victorian Farmers Federation Egg Group (**VFF Egg Group**) welcomes the opportunity to provide a submission to the Treasury in relation to the free range eggs labelling standard.

VFF Egg Group supports consumer protection regulation and the principle that consumers should not be misled in relation to aspects of free range production systems.

The Egg Group also strongly supports the free range egg labelling standard process. It considers that that greater clarity in the definition of free range eggs has the potential to deliver significant net benefits for consumers and the industry.

VFF Egg Group makes the following submission which includes detailed data information and analysis and support for the Australian Government's reduction of redtape and regulation as explained on the Cutting RedTape website. The Egg Group also supports the Office of Best Practice Regulation. It has used the Regulatory Burden Measure to calculate the compliance cost of the RIS.

VFF Egg Group is concerned that the 'most birds, most days' approach used in the Regulatory Impact Statement Consultation Paper (**RIS**):

- seeks to define free range by reference to misrepresentations that have been the subject of enforcement action;
- is based on case law which has not considered the meaning of free range;
- is based on data which is not complete nor represents the current egg industry in its entirety
- would significantly distort the competitive process by imposing a definition of free range that the many free range egg suppliers may not be confident they could meet
- would add to confusion by giving a different definition to the one in current use under jurisdictional law
- is not based on credible, independent consumer research which shows that there is a problem to the majority of consumers and
- does not give a clear net-benefit to the Australian economy. An Australian compliance cost of A\$70Million or more, is way above any benefit to a small number of consumers.

VFF Egg Group proposes a definition of free range in which hens which are not in cages have access to an outdoor range during the day, and the range has a stocking density of not more than 10,000 birds/ha.

In addition to the submission below, VFF Egg Group has set out brief responses to some of the relevant focus questions identified by the Treasury in the RIS in Attachment A to this submission.

2. Background

2.1 VFF Egg Group

Victorian Farmers Federation Egg Group represents the farmers who farm over 90% of commercial egg laying birds in Victoria. It represents the egg industry across the spectrum of size and production system – from small commercial free range and cage producers to large producers who have all three production systems.

VFF Egg Group is committed to promoting the benefits of and improving all egg farming for the benefit of the Victorian community. It aims to further the interests of the Victorian egg industry through developing and advocating policies, engaging with relevant stakeholders and participating in public debate.

2.2 Egg production in Australia – including Victoria

Egg farms in Australia currently produce approximately 4 billion eggs per annum (approximately 334 million dozen) predominantly in the domestic market. Most export sales of eggs are opportunistic or of products made with eggs, although the new China FTA may change this.

The primary drivers of free range egg production costs are:

- the capital cost of establishing flocks;
- the capital cost of production and packing systems; and
- the cost of feed, predominantly grain, and water
- the cost of land for ranging – which varies with the quality of the soil.

There are currently a range of systems of egg production. The three main production systems are guided by the national [Model code of practice for the welfare of animals - domestic poultry 4th edition](#) (Model Code) which has been incorporated into jurisdictional law throughout Australia. According to the Model Code, production systems may be defined as:

- cage, in which hens are continuously housed in cages within a shed;
- barn laid, in which hens are free to roam within a shed which may have more than one level; and

- free-range, in which hens are housed in sheds and have access to an outdoor range.

The production systems have different cost profiles as a result of the different capital cost of establishing production infrastructure and the different biosecurity and predator risks as well as different rates of lay of the hens kept under different conditions. These costs are reflected in different farm gate, wholesale and retail prices. For instance, AZTEC data indicated that in 2013/14 the average retail price for:

- cage eggs was \$3.35 per dozen,
- barn laid eggs was \$4.80 per dozen; and
- free range eggs was \$5.34 per dozen.

These retail prices are not the prices that egg farmers receive except possibly when they sell at retail.

The commercial egg industry is relatively concentrated with a number of large scale farmers supplying the majority of eggs (52%) supplied through supermarkets, both on a branded and 'home brand' basis. The other 48% of the eggs are sold in the non-supermarket retail sector (called the box market), for processing and for food service. A large part of this market is supplied by smaller farmers. Farmers Markets are usually supplied by lifestyle farmers.

The box market consists of: supermarkets which are not part of the 2 major supermarket chains, including IGA's, greengrocers, butchers, health food stores, restaurants and cafes.

Traditionally, both barn laid and free range systems have been established in a horizontal plane within a shed. This was so in the last review of the Model Code. However, the 4th edition does allow for barn laid production to be on more than one level but without reference to aviary systems.

In recent years, there has been a push to establish aviary shedding for laying hens. This is a system which takes up the vertical space of a shed by having what is effectively small floors going up the shed. In practice, an aviary shed is like a cage shed with the cages removed but the levels and manure belts left in place and nesting boxes added. Aviary was not established in Australia for free range production when the previous revision of the Model Code was considered.

Aviary shedding is used extensively in much of Europe and is included in their legislation. It is mostly used in Australia by suppliers to the major retailers. These sheds can be used for barn laid eggs or, by opening the pop-holes along the side of the sheds, as free range eggs.

2.3 Model Code

In the 4th edition of the Model Code, barn laid and free range are not differentiated except when referring to the Range area. Although the RIS is not about animal welfare, it is likely that Treasury will receive a number of submissions which refer to the Model Code.

The Model Code process started after a Senate Committee recommendation in 1992. The poultry code is now starting work on a 5th edition. The Committee working on the new edition consists of the same organisations as the last review: Australian government, all jurisdictions, egg industry, chicken meat industry, RSPCA and Animals Australia.

The Model Code will be drawn up on a Standards and Guidelines basis. The Codes will be incorporated into State and Territory animal welfare legislation. The Standards will be incorporated into State and Territory regulations under the animal welfare acts. Incorporation into jurisdictional regulations was implemented for the 4th edition of the Model Code on a basis of having in place similar outcomes throughout Australia. The 4th edition of the poultry code was the first animal welfare code to do this.

Although both government and industry supported science-based Standards, the whole of the 4th edition was not science-based. Some issues were brought forward from the 3rd edition without any science being done on which to base Standards or Guidelines.

One of these was the range stocking density. The figure was simply transferred from the 3rd edition with the addition of a comment regarding the rotation of pastures.

At the time the 4th edition was written, the free range chicken meat industry was very small and was hardly considered in the negotiation of the Model Code. The comment about rotation was not aimed at the chicken meat industry specifically.

Shed density was included in the Regulations in the jurisdictions but range density was not. This was because range density was seen as an environmental issue not an animal welfare issue by the jurisdictions.

2.4 The development of free range

The manner in which the free range egg category has developed in Australia is directly relevant to the issues raised in the RIS as this narrative has been the subject of significant misrepresentation by some interested parties to date.

Before deregulation, egg farmers were required to be part of State egg marketing boards. The Boards strongly pushed cage production – predominantly for biosecurity reasons. In

fact, in some States, farmers were prosecuted in Court for failing to change to cage production from a floor system.

Deregulation meant that banks increased their interest rate and then changed the criteria to be met by the lender. This led to the development of larger farms due to the need to cover the additional costs of borrowing money and the higher costs of marketing and grading.

Free Range production lapsed after the introduction of cages by Egg Boards until the early 1980's, when the Victorian Egg Marketing Board introduced free range egg production standards. Very few farmers who worked within these new standards had more than 500-1000 hens.

It took from 1994 (de-regulation in Victoria) to the mid-late 2000's for free range egg production to grow into a reasonable amount of the market in the major supermarkets. In 2002 when the 4th edition of the Model Code was completed, free range eggs were about 10% of total egg production. Now they are around 20-25%.

Once free range eggs were taking up significant space on the supermarket shelf, as distinct from the green grocer, the price of wholesale eggs decreased significantly compared to the cost of production. This led to farms growing in size to meet increased demand at a price which the majority of customers would pay (ie shops, supermarkets, restaurants) to enable them to make a profit on the price that they sell to the consumer.

On deregulation in Victoria, it was not unusual to get \$1/dozen profit for free range eggs sold to shops. Now 20c/dozen or less is more usual.

The spiralling costs meant that free range eggs were increasingly grown on larger farms. Those commercial egg farmers who had never previously considered free range production, entered the free range market so as to keep their supermarket business.

Lifestyle, or part time, farmers entered the market and sold predominantly at weekend markets and some small stores. Many of these people have another income apart from egg production and sell retail to the Farmers Markets. So they can sell at a lower price than shops without necessarily having to cover their labour and still cover their costs (without labour). They are not necessarily looking for a profit.

As the industry was deregulated across the country, changes in consumer awareness and demand for improved animal welfare outcomes lead to the development of free range egg production by the industry across Australia. Initially the farms were small but as demand has

increased, this free range segment has continued to grow and now represents approximately 25% of egg production in Australia.

One animal welfare concern expressed by some consumers was that the quality of life and health of caged hens could be improved if they had greater mobility and production facilities that more closely reflected the natural environment. In response to this consumer demand, the free range category developed on the basis that free range hens would not be caged and would be housed in sheds that provided access to an outdoor range. These sheds could be fixed or mobile.

Consumer demand did not extend to ensuring that free range hens, or any proportion of them, went outside for any particular period. As a result, much of the industry developed free range production systems without regard to this requirement.

As the free range category developed, it continued to reflect the structure of the egg industry more broadly with the vast majority of free range eggs in supermarkets being supplied by large scale farmers and the remainder by a range of smaller scale farmers.

The free range category has mainly developed based on production systems and accreditation schemes that reflect the Model Code, such as the accreditation scheme, HenCare, operated by VFF Egg Group. However, as free range egg farmers have sought to differentiate themselves based on higher specification production systems, a number of other schemes have emerged which provide for additional requirements, generally reflecting perceived higher animal welfare outcomes or other perceived market advantages.

Due to the difference in the price of cage, barn and free range eggs, there has always been competition between each category and the farmers that supply eggs in one or more categories. In this context, there have been circumstances in which:

- some free range egg farmers have made representations to consumers regarding their production systems that were inaccurate, including by exaggerating the extent to which free range hens spend time on an outdoor range; and
- some free range egg farmers and animal welfare groups have sought to promote particular free range egg production systems by representing that they are 'genuine' free range systems whereas the systems of competitors are not.

The potential for misleading claims to confuse consumers and undermine consumer confidence in the free range category is a concern for all egg farmers.

VFF Egg Group supports the intervention of consumer protection regulators to address representations of this nature. Such intervention needs to be timely, evidence based and objectively focused.

2.5 Economics and Competition of the Victorian Egg Industry

The Economics of the Victorian Egg Industry reflects the economics of the Australian egg industry. The VFF Egg Group does not support unnecessary regulation and red tape and is in favour of a free competitive market for the sale of eggs. However, it does support the establishment of the Supermarket Code of Conduct as this is seen as an assistance to the free competitive market for the sale of eggs.

The Victorian egg industry supplies eggs across the whole market. It includes small farmers, medium farmers and large farmers across all production systems. Some farmers have hens in more than one production system.

The Victorian egg industry grew strongly after WWII when governments were concerned that they may not have enough food to feed Australia's quickly growing population. Immigrants (especially from Italy and Greece) worked on the roads, on the Snowy scheme and dug graves to get enough money to buy land and bring out their families. They bought a bit of land on the then outskirts of Melbourne and planted vegetables. When they made some money, they built a shed and put in laying hens.

The industry was regulated under the Egg Marketing Act until de-regulation in 1993-4. Farmers had to learn how to market their own eggs, rather than supply in bulk to the Egg Board. This took some time, but there are now very few farmers in Victoria who do not have their own label.

Changes to the cage systems after the development of the 4th edition of the Model Code meant that farmers spent very large sums of money building new sheds for cage birds and new grading systems. Free range farmers also expanded and put in new systems.

As the power of the major supermarkets grew, pressure was put on suppliers to supply across all types of eggs. So large producers put in free range and barn laid systems. Once these were in place, downward pressure on prices by the major supermarkets, and others meant that it was necessary to reduce the cost of production to be able to continue to supply.

Over the last few years, the supermarkets have been pressured by activists to reduce or delete cage eggs in their own brands and they have also run low price campaigns. This has

meant that they have pressured suppliers to provide more barn laid and free range eggs at lower prices. The only way to do this is to use aviary sheds to produce the eggs.

Victorian egg farmers have 24-25% of Australian egg production. This is across all production systems and all sizes of farms. The data comes from the Commonwealth Levies Office, which collects both the Research and Development Levy and the Marketing Levy for the egg industry.

This does not necessarily equate to 24% of the market for eggs. The eggs sold at retail are only about 75-80% of the eggs produced. For free range, about 65-70% of eggs produced are sold at retail. The rest of the eggs are sold for processing and food service.

The lower proportion of free range eggs sold at retail is due to more second quality eggs being processed compared to cage eggs. This happens due to the shell quality of large eggs and the higher proportion of small eggs being produced by free range hens.

Competition in the egg industry is fierce. In Victoria, egg farmers sell their eggs to multiple channels: the box market, distributors who have their own labels, distributors who distribute pre-packed eggs, large marketers who supply supermarkets, from the farm shop etc. Since there are so many competitors, price competition is fierce.

The VFF Egg Group is involved in pre-competitive issues such as food safety, animal welfare and biosecurity to allow farmers to improve the product they sell. It follows core principles and clearly advocates that:

1. Regulation should only be imposed when it can be shown to offer an overall net benefit and
2. The cost burden of new regulation must be fully offset by reductions in existing regulatory burden.

As shown later in this submission, the high cost of compliance, based on Treasury's own figures, makes it difficult to support any of the options presented in the RIS. This is particularly so when a large part of this cost is monitoring ie it is an on-going cost.

VFF Egg Group has used the Compliance Cost tool on the Office of Best Practice Regulation website to work out figures for the cost of compliance.

2.6 Certified Trademarks

The VFF Egg Group has a Certified Trademark (CTM). HenCare is a third party audited quality assurance program which audits egg producers of all production systems.

The RIS clearly states that only Option 1 will not require any changes to the current Standards of a CTM. Therefore, it is important that the VFF Egg Group knows what are the consequences, if any, to HenCare and its members, of being in favour of any particular option.

HenCare strongly supports the need for egg farmers to comply with the law. Many of its Standards are written to require compliance with legislation or regulation or government and industry Codes of Practice.

Our preferred option is always to have a minimum of regulation unless:

- there is an identifiable failure of regulation;
- the regulation will set a minimum standard and will not distort competition by excluding some suppliers from the supply of free range eggs;
- the regulation would have no impact on innovation or the ability of farmers that operate differentiated production systems to make accurate claims in relation to the characteristics of those systems;
- the regulation would not impact on the flexibility to address changed consumer preferences or concerns; and
- the regulation would not conflict with jurisdictional law.

VFF Egg Group is particularly concerned about the adoption of an information standard rather than having a clear understanding of a straightforward definition of free range. All current information standards are about manufactured products. The HenCare process is about living animals and the products they produce. It is not reasonable to expect farmers to not take into account the characteristics of the animals they farm.

A straightforward definition must allow for the variation that happens by virtue of living animals making up their own minds whether and when they leave and enter a shed and problems which occur which are outside the control of the farmer.

VFF Egg Group cannot support an information standard that requires birds to be pushed out of a shed.

3. Approach to the RIS process

VFF Egg Group is aware of consumer research by Quantum Market Research which shows that the ACCC definition of most birds outside on most ordinary days is not supported by consumer expectations in relation to free range production systems.

The free range egg debate is complex as it is often difficult for people to separate animal welfare, which is inherently subjective in nature, and the competitive market position of various free range egg farmers.

VFF Egg Group urges the Treasury to consider this issue with a focus on the development of a straightforward definition that clarifies the existing confusion regarding the meaning of 'free range' and assists the process of competition and innovation.

4. The proposed 'definition' in the RIS

4.1 Most birds on most ordinary days

The proposed definition in RIS ignores the history and development of free range egg production systems in Australia, and the economics and competition in the egg industry, as explained above.

Also, the consumer research done by Quantum Market Research shows different consumer expectations. VFF Egg Group is disappointed that the Legislative and Governance Forum on Consumer Affairs has not commissioned or provided independent, Australian based, evidence of consumer expectations. However, there is the information from Quantum Market Research which we would encourage Government to consult.

As the RIS points out the ACCC received a total of 179 contacts between January 2012 and June 2015 regarding egg labelling, only part of which related to complaints regarding free range representations, out of a total of 185,640 consumer contacts in 2012-13 and 202,363 contacts in 2013-14.

The 'most birds, most days' approach is difficult to provide evidence for, irregardless of the size of the free range operation. This contradicts one of the requirements of the Australian government for good regulation.

Such an approach can also be misleading as it may give an impression that those people who run 'caravan' type sheds, have more birds out than other free range systems. However, these systems are often breaking biosecurity requirements to minimise disease in the hens, as they have to put feed and water outside the sheds as many birds will not go in the sheds due to crowding in the shed. This feed and water attracts wild birds and increases the risk of disease to their hens, to hens in the area, and to the wild birds.

Many birds do not go in the caravans as the sheds are overstocked. By information available in the public internet and media, the number of birds quoted, in the size of shed

quoted, are sometimes 100% more than the maximum regulatory requirement for floor based systems and also higher than the maximum regulatory stocking density of cages.

VFF Egg Group considers the requirement that most hens are outside on most ordinary days has no connection to known consumer expectations or the majority of free range production systems that are currently in operation and may be misleading. As such, this approach does not form a basis for appropriate regulation.

4.2 *Impact on competition*

VFF Egg Group is concerned that an information standard has the potential to adversely impact competition in the production of eggs.

Competition theory says that where competitors are able to misrepresent their products or services as having particular attributes they are able to take sales away from businesses that are actually producing goods or services with those attributes. If this practice is allowed to continue, the incentive to innovate is undermined and consumers miss out on the benefits of innovation and the competition that it generates.

VFF Egg Group fully supports this competition theory, the regulatory stance of the ACCC to date, and the importance of consumer protection regulation and enforcement in ensuring competitive markets. However, VFF Egg Group contends that this theory is not a basis for new regulation in relation to standards for free range egg production.

Some farmers that have been producing free range eggs for many years consider themselves at risk of not being able to substantiate that they do comply with such a standard.

VFF Egg Group members which are supermarket suppliers have also indicated that they have already deferred investments as a direct result of the uncertainty created.

If a free range egg standard is adopted based on the 'most birds, most days' approach then this distortion of the competitive process will be crystallised. The farmers that currently supply the majority of free range eggs face a choice between:

- abandoning their free range production systems, stranding these assets;
- reinvesting in the modification to their free range production systems to meet the 'most birds, most days' standard;
- selling free range eggs as 'barn laid' or another type of egg at a lower price point, thereby forfeiting the return on their investment in free range production systems;

- being in the situation of not being able to comply with the conditions of their contracts with their customers or
- risking ongoing enforcement action by the ACCC, including costly substantiation notices, enforcement proceedings and/or penalties due to not being able to prove compliance.

Further, there will be a direct and substantial detrimental impact on consumers as a result of the adoption of a standard based on the 'most birds, most days' approach.

This may take the free range category from a broad and expanding product, to a niche product that is supported by a fraction of current free range buyers. A number of these niche suppliers who use a 'pastured' or 'caravan' approach to free range have sheds which it has been alleged do not comply with the Model Code nor with the regulations in each jurisdiction for internal stocking density. For their sheds to comply, they would have to substantially destock their sheds.

The straightforward basic free range eggs definition should be developed on an inclusive basis so that clarity can be provided to consumers and farmers, without distorting the competitive process.

5. Consumer expectations

VFF Egg Group considers that it is critical that any free range egg standard is developed with reference to the expectations of consumers and with evidence of those expectations.

In August the NSW Farmers' Association commissioned a study into the expectations of Australian consumers that purchase free range eggs.

The results of the research indicate that no consumers identified the 'most birds outside on most ordinary days' approach as reflecting their expectations of free range eggs. Instead, 75% of consumers indicated that free range means 'not in a cage', 'free to roam' or 'access to outdoors' and 18% of consumers had no view of what the term free range should mean. The study also tested the expectations of consumers in relation to the outdoor stocking density of free range hens. The study found that 72% of consumers consider one square metre or 10,000 hens per hectare to be an appropriate stocking density.

VFF Egg Group recommends that Treasury approach NSW Farmers for more information on the research.

6. Free range definition

6.1 Options

The 'most birds outdoors on most ordinary days' approach adopted by regulators in their enforcement activities means that Option 1 - Status Quo with ACCC guidance is not appropriate without change to allow for many free range farmers to have a reasonable chance to comply. The industry needs a straightforward definition to clarify the meaning of free range in accordance with consumer expectations and the structure of the industry.

Option 3: Information standard for all categories of eggs is needlessly prescriptive and would have the effect of imposing regulatory restrictions across the industry. VFF Egg Group considers that there is no basis for supplanting the role of consumer demand and competition. In fact, it would stifle future innovation to the detriment of consumers.

As a result, VFF Egg Group submits that Option 3 or its sub-sections should not be pursued by the Treasury.

Finally, for reasons set out in detail above, VFF Egg Group considers that Option 2: 'Basic' information standard for free range egg labelling, as proposed, does not satisfy the criteria of good regulation. Similarly Option 2a is needlessly prescriptive. A defence should not be needed for a product which is legal and benefits the consumer.

Eggs are a nutritious food irregardless of the production system in which the birds are housed. Consumers buy eggs due to their nutritional value and their variable uses eg cakes, omelettes, mayonnaise. Secondly, Consumers assume that the eggs are safe. Thirdly, they look at price. Only after these three attributes do Consumers consider the production system.

VFF Egg Group supports the consumer making informed choices, if they choose to do so. So, it accepts that there may be benefits to the adoption of a straightforward definition of Free Range Eggs.

6.2 Proposed free range labelling definition and standard

VFF Egg Group submits that the Treasury should develop a straightforward free range egg labelling definition which reflects consumer expectations.

That is, that free range production systems:

- provide for hens that are not in cages,
- allow hens the ability to move around in their shed

- allow hens access to an outdoor range during the day and
- have a stocking density of no more than 1 hen per square metre.

VFF Egg Group does not see the need to impose this definition as an information standard under the Australian Consumer Law. A straightforward definition modified in line with this definition, would enable farmers and the consumer to have confidence in free range eggs. It would also enable both consumers and farmers to understand the basis on which the ACCC is going to enforce the Competition and Consumer Act.

The ACCC has not used enforceable undertakings under section 87B of the Competition and Consumer Act 2010 (Cth) to deal with any compliance issues, although it has been used by the ACCC for free range pork compliance. VFF Egg Group assumes that this option will still be open to ACCC, in appropriate circumstances.

This definition above is consistent with the findings of the Quantum Market Research study of consumer expectations regarding free range hens.

There is a current review of the Model Code which includes the Commonwealth government, all jurisdictions, the industry and RSPCA and Animals Australia. It may assist for the Model Code review to be commenced or concluded before any regulatory change is made around this issue so as to assist Treasury and the Consumer Forum to clarify questions they may have or so as to minimise the regulations being enacted.

If this is necessary, VFF Egg Group assumes that the ACCC would not be impeded in continuing to police the appropriate sections of the Competition and Consumer Act in the interests of not misleading consumers.

The VFF Egg Group does not sanction or encourage the use of exaggerated or misleading representations. In particular, free range farmers should not be permitted to represent factual matters that are inaccurate such as the extent to which hens are outdoors or the outdoor stocking density.

A farmer or marketer would need to consider whether their production systems are configured in such a way to provide confidence that they can substantiate the way the eggs are marketed on their packaging or advertising.

This position is distinct from whether the eggs were produced using a production system in which hens have access to the outdoors and should appropriately be defined as free range.

VFF Egg Group would like to see clarity between these two issues.

The VFF Egg Group proposed straightforward definition is capable of being complied with by current free range farmers and new entrants to the category regardless of the number of birds or the type of shedding used.

The proposed straightforward definition is also capable of being monitored and enforced by regulators as it is based on the structure of the production systems rather than a particular outcome.

The key benefit of the VFF Egg Group proposed straightforward definition is that it would facilitate competition.

A standard based on a definition of free range that does not reflect consumer expectations and the current industry practice would have the effect of significantly distorting competition as it would favour some suppliers over others.

Instead of excluding competitors from the free range category, the VFF Egg Group proposed straightforward definition is inclusive in that it sets a minimum standard that can be achieved by all existing free range egg farmers and does not restrain competition or innovation or flexibility of farmers to respond to changed consumer concerns. Our straightforward definition also does not impede on the ability of competitors to seek to increase sales by offering differentiated free range production systems.

6.3 Data and Cost of Compliance

The data for the Free Range egg share of the national egg market also needs some revision.

The VFF Egg Group has detailed information regarding the proportion of free range birds and eggs in the total market. This market includes multiple channels: supermarkets (~52%), box market including food service (~36%), processing (~12%).

Most of the channels are self-explanatory apart from the box market. The egg industry refers to small supermarkets (eg those held under franchise), non-supermarket retail (eg butchers, health food shops, milk bars), and cafes, restaurants etc as the box market. Apart from health food shops, cage eggs are the majority of sales in the box market. There are very few barn laid eggs sold in this market and approximately 25% of the eggs sold in the box market are free range.

Free range eggs are also sold at farmers markets and other markets as well as directly at schools, door to door and in other places. The eggs sold door to door and in other places are not included in the figures in this submission as the hens used to produce these eggs are

often bought 'second-hand' from commercial egg farmers. Therefore, they are difficult to quantify and not included in the Commonwealth Levies Office data. The eggs from these hens are often sold in second-hand cartons which are marked with the brand of other egg farmers or marketers, so they do not show up in scandata or other available information.

The cost of compliance in Appendix G of the RIS is based 108 free range egg farmers. This figure is a long way from the number of Victorian farmers, small holder and backyarder keepers of hens, much less the national figure.

The sale of eggs is regulated under the Food Act. Under this Act a sale is defined to include bartering and gifts as well as through stores, markets etc. Therefore, the only people who are not seen to sell eggs from their hens are those who use all the eggs within their immediate household.

VFF Egg Group understands that any proposed Information Standard would apply to those who sell eggs to the consumer, those who sell to those who sell to the consumer, and so on up the supply chain.

Therefore, the VFF Egg Group maintains that it is appropriate to include each of: commercial egg farmers, commercial egg marketers, egg distributors who have their own labels, retailers who have their own labels, small holders, backyard hen keepers, and pure poultry breeders. All these categories sell free range eggs for retail sale, whether sold directly to the consumer or as a wholesale sale.

Data put together for the FSANZ RIS for Egg Primary Production and Processing Standard process shows that in 2010 there were around 7000 producers of eggs in Victoria.

VFF Egg Group has assumed that, since Victoria has 24-25% of national egg production, it has the same percentage of free range egg production. Therefore the cost of compliance on a national basis is four times the Victorian figure.

VFF Egg Group can easily see a situation in which free range producers who are put in a position of not being able to prove compliance with a standard will strongly advocate for compensation as the costs which will be imposed on them will be very large.

7. Conclusion

VFF Egg Group strongly supports the free range egg labelling process and considers that that greater clarity in the definition of free range eggs has the potential to deliver significant net benefits for consumers and the industry.

VFF Egg Group also supports consumer protection regulation and the principle that consumers should not be misled in relation to aspects of free range production systems and regulatory intervention to ensure that consumers are not misled.

VFF Egg Group is unhappy with the 'most birds, most days approach because it:

- seeks to define free range by reference to misrepresentations that have been the subject of enforcement action;
- is based on case law which has not considered, and cannot provide meaningful guidance on the meaning of free range;
- reduces the ability of free range farmers' to respond to changed consumer interests
- is very difficult to enforce or show compliance. This contradicts the Cutting RedTape Website's definition of regulation, which is 'Regulation may be defined as *"Any rule endorsed by government where there is an expectation of compliance"*.'
- is based on and consistent with consumer expectations and current industry practice
- would significantly add to the costs of supplying free range eggs and may trigger a compensation claim for the farmers affected
- would significantly distort the competitive process by imposing a definition of free range that the vast majority of free range egg supplier could not be confident they could meet.

VFF Egg Group proposes a straightforward definition, but not an information standard, based on free range production systems that:

- provide for hens that are not in cages,
- allow hens the ability to move around freely in their shed
- allow hens access to an outdoor range for at least 6 hours per day and
- have a stocking density of no more than 1 hen per square metre.

It is for these reasons that VFF Egg Group urges the Treasury to adopt the proposed straightforward definition and bring clarity to this issue.

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Attachment A - Focus Questions

VFF Egg Group has answered a number of the focus questions - predominantly those which refer to data or specific issues it can assist with.

1. VFF Egg Group supports the Australian Government's approach to reduce and minimise red tape and regulation. VFF Egg Group requires good evidence in order to be persuaded that such regulation is necessary. This includes proof that the problem exists outside of media speculation and activist groups.
2. VFF Egg Group supports the information and criteria on the Australian Government's website: www.cuttingredtape.gov.au . It agrees with the 10 Principles listed on the website, especially:
 - Regulation should be imposed only when it can be shown to offer an overall net benefit
 - The cost burden of new regulation must be offset fully by reductions in existing regulatory burden.

The website also asks a series of questions re regulation. In particular the question: "**Why is government action needed?**" applies to the issue of Free Range Egg labelling. Combined with the high cost of compliance shown in Attachment B, the VFF Egg Group is not convinced by the RIS that such regulation is necessary.

However, VFF Egg Group is prepared to work with ACCC and Victorian Consumer Affairs to assist by having a straightforward definition of free range for the labelling of eggs. VFF Egg Group supports the ACCC pursuing non-compliance within the Australian Consumer Law.

Key focus questions	
1	<p><u><i>Do production system claims for eggs such as 'free range' sometimes mislead consumers? Is this the case for other claims, including 'barn' or 'cage' laid?</i></u></p> <p>There have been instances in which the extent to which free range hens spend time outdoors have been exaggerated or misrepresented but there is no evidence that this has involve widespread misleading conduct which is outside of the current</p>

	ability of the ACL to pursue.
2	<p><u><i>If so, how much detriment have consumers suffered due to misleading production system claims for eggs?</i></u></p> <p>Consumer detriment is impossible to quantify but VFF Egg Group considers it is likely to be limited and in proportion to the limited scope of misleading claims regarding free range egg production.</p>
3	<p><u><i>Do farmers face significant uncertainty about how to ensure they do not make misleading production system claims for eggs?</i></u></p> <p>The 'most birds outside on most ordinary days' definition of free range causes substantial uncertainty. The uncertainty created by this approach could be addressed through the introduction of the straightforward definition proposed by VFF Egg Group.</p>
4	<p><u><i>Any detailed guidance on 'free range' egg production factors would need to be developed in consultation with industry. If this guidance is desired, should it be:</i></u></p> <ul style="list-style-type: none"> • <u><i>included as a 'defence' as part of an information standard?</i></u> • <u><i>published by the Australian Competition and Consumer Commission (ACCC) as clear guidance about the current law?</i></u> • <u><i>delayed until after the review of the 'Model Code of Practice for the Welfare of Animals — Domestic Poultry' has been completed?</i></u> <p>The production of eggs is not illegal and should not require a defence. There is sufficient guidance available in relation to the current law apart from the aviary production system. What is lacking is a straightforward definition that clarifies the meaning of free range under competition law and in accordance with consumer expectations. This would have no impact on the review of the Model Code. However, the review of the Model Code may affect the standard. This could be dealt with by either delaying the clarification of the definition or by clarifying it now and then making any necessary changes to the standard after the Model Code is completed. By not having an information standard, such changes could be made more easily than if an information standard was in place.</p>
5	<p><u><i>Should an information standard require prominent disclosure on 'free range' egg cartons of the indoor or outdoor stocking density of hens, or any other practices?</i></u></p> <p>There is no basis for mandatory labelling requirements at all. There should be no restriction on farmers accurately labelling their products with reference to aspects of their production systems that they anticipate consumers will value.</p> <p>Consumers are qualified and adept at determining the information they value and competition will ensure that consumers receive the information that they demand.</p>
6	<p><u><i>Should an information standard require prominent disclosure of production</i></u></p>

	<p><u>methods for all hen eggs:</u></p> <ul style="list-style-type: none"> • <u>as either ‘free range’, ‘barn’ or ‘cage’ eggs?</u> • <u>including optional categories such as ‘access to range’ and ‘premium free range’?</u> <ul style="list-style-type: none"> • There is no basis for regulations that restrict the categories in which farmers should be permitted to sell eggs. Such an approach would involve the restriction of competition, flexibility and innovation.
7	<p><u>How do free range egg farmers monitor compliance with the requirement that most hens move about freely on the open range on most ordinary days?</u></p> <p>It is not possible to monitor compliance with the requirement that most hens move about freely on the open range on most ordinary days.</p> <p>VFF Egg Group understands that some free range egg farmers have configured their production systems in a manner that makes it likely that most hens are outside on most days. However, these may well be non-compliant with biosecurity and animal welfare requirements under State law.</p>
8	<p><u>Is there a burden on egg farmers if independent jurisdictions continue to manage the problem themselves, through state and territory specific voluntary codes and standards? Would a national approach alleviate any burden?</u></p> <p>VFF Egg Group considers there is significant benefit in resolving the issue of the definition of free range on a national basis for competition law ie within the ACL within the current Constitution. Voluntary codes under a CTM are already subject to the ACL.</p>
9	<p><u>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?</u></p> <p>VFF Egg Group considers that the issue of outdoor stocking density is seen by many as an animal welfare issue and is likely to generate a spectrum of views on behalf of stakeholders. It is important that a definition is not implemented in which a position on stocking density is adopted which does not align with consumer expectations and industry practice or impede the Competition process.</p>
10	<p><u>Should the proposed information standard apply to eggs sold at the farm door, or at farmer’s markets, to retail consumers?</u></p> <p>The basic standard proposed by VFF Egg Group should apply to all free range eggs produced. It should permit but not require the labelling of free range eggs as free range. This would apply to eggs sold in any retail channel.</p>
11	<p><u>Should the proposed information standard apply to eggs sold at a wholesale level?</u></p>

	<p>The basic standard proposed by VFF Egg Group should apply to all free range eggs produced. It should permit but not require the labelling of free range eggs as free range. This would apply to eggs sold in any wholesale channel where the eggs go on to be sold at retail.</p>
12	<p><u>Should the proposed information standard apply to other products containing eggs, either at a retail grocery level or for consumption on the premises?</u></p> <p>VFF Egg Group considers that standards with respect to products containing eggs are not required to meet any appropriately identified problem in relation to the production and supply of free range eggs.</p>
13	<p><u>Would the proposed definitions in Option 3 clearly define and capture the three broad methods of egg production?</u></p> <p>Standards with respect to barn and cage are not required to meet any appropriately identified problem in relation to the production and supply of free range eggs.</p>
14	<p><u>Should the information standard be more prescriptive regarding the format, size and placement of the required information message?</u></p> <p>VFF Egg Group considers that prescriptive standards are not required to meet any appropriately identified problem in relation to the production and supply of free range eggs.</p>
15	<p><u>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 farmers?</u></p> <p>VFF Egg Group considers there is likely to be value in categories such as 'premium free range' for individual farmers. Where farmers have invested in production systems that provide what farmers see as having other perceived hen benefits, then they should be able to inform consumers. However, it is not necessary for such a category to be regulated under prescriptive standards.</p>
16	<p><u>Would an 'access to range' category potentially increase consumer confusion about what is and what is not free range?</u></p> <p>VFF Egg Group considers that consumer expectations and industry practice support the definition of free range as including the birds having access to the range.</p>
17	<p><u>Can you provide more accurate data, including:</u></p> <ul style="list-style-type: none"> • <u>The number and size of free range egg farmers?</u> • <u>The number of free range egg products available?</u> • <u>The cost of changing egg labelling?</u> • <u>The proportion of egg products currently labelled as free range that may be produced in conditions that would not conform to the information standard?</u>

	<ul style="list-style-type: none"> • We do not have this information but there are a substantial number. It would be reasonable to assume at least one free range egg product for each commercial free range farmer, one for each free range egg distributor, one for each small holder selling free range eggs. However, in practice, most farmers will have at least 3 products ie one for each egg size. Those with hens in their backyard tend to use the egg cartons of other farmers and marketers. • We do not have this information. • An information standard based on the 'most birds, most days' approach should not be adopted over any timeframe. The VFF Egg Group proposed straightforward definition reflects consumer expectations and industry practice and could be adopted immediately, without the need for a transition period.
18	<p><u>Would Options such as option 3 significantly change the demand for or supply of eggs? Will prices for eggs, or particular categories of eggs, change?</u></p> <p>VFF Egg Group considers that imposition of prescriptive categories of production systems and marketing restrictions will needlessly stifle innovation and provide net detriments to consumers. Egg farmers should be able to develop production systems in response to customer and consumer demand. Sub-categories of eggs change to meet market demand now and should be free to continue to do so.</p>
19	<p><u>Do the definitions of 'barn' and 'cage' comply with existing industry practice? Would adoption of Option 3 cause significant structural changes in the egg industry?</u></p> <p>VFF Egg Group is not aware of any concerns being raised in relation to the definition of 'cage' or 'barn' eggs. Standards with respect to barn and cage are not required to meet any appropriately identified problem in relation to the production and supply of free range eggs.</p>
20	<p><u>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 animal welfare concerns?</u></p> <p>VFF Egg Group considers that imposition of prescriptive categories of production systems and marketing restrictions will needlessly stifle innovation and provide net detriments to consumers. Egg farmers should be able to develop production systems in response to consumer demand.</p>
21	<p><u>Is the data available to allow these (or other) methodologies to be adopted? Can</u></p>

you provide useful data, either on an individual or industry level, including on:

- The proportion of egg products currently labelled as free range that may be produced in conditions that would not conform to the information standard?

This information is not available as we do not know what, or if, the information standard will be.

- The nonfinancial benefit consumers will receive from greater certainty regarding egg labelling?

This is difficult to estimate and would depend on the particular interests of a particular consumer

- The proportion of other types of egg products that are mislabelled or misleading (including barn, cage and higher animal welfare)?

This information is not able to be researched.

- What proportion of consumers currently purchasing free range eggs would purchase access to range eggs? How much of a price differential would consumers expect? What is the production cost saving to 'access to range' farmers compared to 'free range' production?

VFF Egg Group considers that consumer expectations and industry practice support the definition of free range as including access to range. Therefore there is not a production cost saving.

- What would be the change to the volume and type of egg supply under Option 2? Under Option 3?

- This is difficult to estimate, but should not proceed as there is not a need for anything but a straightforward definition.