



Animal Defenders  
Office

*Using the law to protect animals*

## Submission on Free Range Egg Labelling Consultation Paper

Small Business, Competition and Consumer Policy Division  
The Treasury  
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## About Us

The Animal Defenders Office (ADO) is an incorporated, non-profit community legal practice that specialises in animal law. Our mission is to use the law to protect animals, which includes:

- assisting individuals and groups to secure animal interests through existing legal mechanisms;
- increasing public awareness of animal protection matters; and
- working to advance animal interests through law reform.

The ADO has been in operation since December 2013. Further information about the ADO can be found at [www.ado.org.au](http://www.ado.org.au)

## About this submission

The ADO's mission is to use the law to protect the interests of animals and *to enable compassionate choices for humans* (emphasis added).

The ADO therefore appreciates the opportunity to provide feedback on the Free Range Egg Labelling Consultation Paper (the Paper).

Providing more information and certainty about egg production systems for consumers is a direct way to improve the ability of humans to make compassionate choices about food products. This submission is based on the generally accepted view that consumers who purchase free range eggs do so primarily for ethical and animal welfare considerations.<sup>1</sup>

The ADO understands that the objective of the Paper 'is to increase consumer certainty, not to prescribe a particular set of production practices or regulate animal welfare' (p9). However our interests are triggered if it is assumed that there is a link between clearer labelling, and improved animal welfare outcomes for food animals. The link may be tenuous, but we have accepted that assumption for the purposes of this submission.

The ADO also believes that consumers should be able to make consumer choices based on animal welfare considerations. It is anticipated that the number of consumers in Australia who make such choices will continue to grow as consumers become more educated, earn higher incomes, and as a consequence make more sophisticated choices and decisions. Labels should therefore accurately represent the welfare conditions of animals, otherwise this is an empty 'right' for consumers.

## Summary of responses

The ADO supports the introduction of an information standard that compels all egg producers to label their eggs as 'cage', 'barn', 'access to range' or 'free range'.

The benefits of introducing an information standard with these categories include:

- greater transparency in labelling
- greater consumer confidence
- greater trust between consumer and producers/industry, and

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<sup>1</sup> Julie Dang & Associates Pty Ltd, *Production methods understanding & QA evaluation: A market research report*, Prepared for Australian Egg Corporation Ltd, May 2012, [www.aecl.org/dmsdocument/465](http://www.aecl.org/dmsdocument/465).

- ideally, improved conditions in animal welfare as consumer demand for improved welfare products grows and more producers transition to such systems as a result.

Consumers would benefit from a clarification of the meaning of terms such as ‘free range’ because it would increase the ability of consumers to exercise their right to make consumer choices based on animal welfare grounds.

Moreover the mandatory use of uniform descriptors of production systems on egg labels should improve consumer confidence that egg labels accurately reflect the conditions under which the eggs were produced.

Our responses to the questions in the Paper are set out below.

### **1. 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?**

There exists considerable confusion amongst consumers about the definition of ‘free range’ eggs. Consumers quite reasonably expect that ‘free range’ means that egg laying hens live their lives in comfortable conditions (ie not cages) and spend much of their day ranging outdoors in largely green, rural environments. In contrast, current market ‘free range’ claims include crowded facilities that require that hens only have *access* to an outside area—regardless of size, quality, and level of actual use by hens.

Anecdotally, ‘free range’ suggests conditions akin to a ‘backyard chook’ scenario with ‘more space than hens’.

If eggs are labelled as ‘free range’ but are produced in conditions that do not align with these common perceptions of ‘free range’ conditions, then consumers will be misled.

#### *Barn/Cage systems*

If claims about ‘barn’ and ‘cage’ laid eggs imply that the conditions of the hens used in the systems are better than they actually are (eg ‘enriched’ cages, or barns with ‘room to roam’), then these will mislead those consumers who purchase such products based on the products’ animal welfare claims (rather than, say, price).

Anecdotally there does not appear to be a clear understanding about barn production systems—that is, what their defining features are, or their impacts on the welfare of the hens used in such systems.

#### *Mode of sale*

Given that many ‘non grocery retail’ businesses make claims regarding the production system of the eggs they use eg restaurants and cafés, the problem does extend beyond the grocery retail market.

The ADO suggests that any solution adopted should apply to eggs sold in any type of retail situation (eg supermarkets, farmers markets), eggs used in restaurants and cafés, and eggs used as ingredients in products.

**2. How much detriment have consumers suffered due to misleading production system claims for eggs?**

Consumers pay a premium for 'free range' eggs relative to 'barn' laid and 'cage' eggs. This premium is paid for the peace of mind that comes with the belief that they are supporting a production system that better aligns with their personal animal welfare concerns. The damage caused to consumers from misleading production system claims therefore includes the financial damage that comes from paying extra for something that they are not getting (in this case, avoided animal welfare concerns) and the mental hurt caused by realising they have inadvertently supported a production system that does not align with their personal animal welfare concerns.

**3. What detriment have producers and retailers suffered due to misleading production system claims for eggs made by competitors?**

Confusion about the actual meaning of the 'free range' label has diminished the label's brand value. This means that those egg producers that provide higher animal welfare outcomes for their hens (through lower hen densities per square metre, and through their access to, and use of, high quality outside areas) have less ability to distinguish themselves from lower welfare 'free range' egg producers.

This means that higher welfare producers are likely to earn a lower rate of return on egg production relative to lower welfare producers, as higher welfare producers are unable to charge a higher price to cover the additional costs that come with lower density production systems.

**4. Do producers face significant uncertainty about how to ensure they do not make misleading production system claims for eggs?**

Producers are currently provided with little guidance as to what constitutes a defensible 'free range' claim. The industry defined National Model Code of Practice remains voluntary, and 'free range' producers are allowed to operate at hen densities many times the recommended level under the code. This in turn creates considerable uncertainty as to whether an individual producer's 'free range' claim risks misleading consumers. This uncertainty will remain as long as the voluntary industry code remains the only form of guidance for producers.

**5. An information standard for eggs labelled 'free range' could mandate that the eggs come from flocks in which *most hens go outside on most ordinary days*. Would this reduce the problem?**

In *ACCC v Pirovic Enterprises (No 2)* [2014] FCA 1028 the Court stated that eggs should only be labelled as free range where the layer hens were able to, and did, move around freely on an open range on most ordinary days.

The ADO recommends that the concept of ‘most hens going outside on most ordinary days’ be mandated as a fundamental feature of a free range production system. Such a concept is consistent with consumer expectations and understandings of the production of free range eggs.

The meaning of ‘ordinary’ as defined in the *Pirovic* judgement would appear to be reasonable from a consumer’s point of view—that is, it could be said to conform to a reasonable person’s understanding of ‘ordinary’.

Labelling all free range eggs in this way would increase consumer confidence and certainty about free range egg labelling.

On its own, however, it is not sufficient as stocking density is the other key aspect of free range systems. Consumers concerned about animal welfare (being the majority of free range egg buyers) should be informed about stocking density, even if they are not currently aware of it as an issue. This point is discussed further below.

**6. Do ‘free range’ egg producers want detailed guidance on production factors that reliably lead to compliance with the requirement that *most hens go outside on most ordinary days*?**

No response.

**7. 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:**

**a) included as a ‘defence’ as part of an information standard?**

Any guidance for producers on ‘free range’ egg production factors should be included as a defence only if the production factors equal or exceed ‘best practice’ free range egg production. That is, the ADO agrees with the statement in the Paper that: ‘Any defence could not be a ‘weaker’ test than the primary obligation’ (p20).

**b) published by the Australian Competition and Consumer Commission (ACCC) as clear guidance about the current law?**

If the above threshold test is met, then the ADO supports the development and issuance of ACCC guidance on the use of the term ‘free range’ by producers. Voluntary industry codes have failed to prevent and address consumer confusion in the free range egg market. As the body tasked with prosecuting misleading claims made by producers and promoting consumer welfare more broadly, the ACCC is well placed to address confusion in the ‘free range’ egg market.

**c) delayed until after the review of the ‘Model Code of Practice for the Welfare of Animals—Domestic Poultry’ has been completed?**

The guidance should not be delayed until after the review of the Code of Practice. If anything, the Code of Practice review should be informed by the free range egg production guidelines.

**8. 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?**

As mentioned above, mandating that free range eggs come from ‘flocks in which most hens go outside on most ordinary days’ would only go some way to alleviating market confusion about the animal welfare properties of ‘free range’ eggs. Questions of hen density, the size and quality of the outside areas, and the length of time that hens can remain outside would remain.

The ADO understands that the value of stocking density information to consumers is high—almost as high as information about the hens’ access to outdoors. The ADO therefore supports a standard that requires that the production system’s stocking density be prominently displayed on its egg packaging.

*Measuring point*

Stocking density should be measured when all hens are outside—that is, the maximum possible density. This would presumably ensure the highest animal welfare outcome in terms of space to roam.

*Representation*

Ideally stocking density would be represented on packaging by an easily understood star rating or graphic as suggested in the Paper: ‘Another option is to use a graphic to show the number of hens that would fit into a designated area’ (p22).

The ADO supports the standard being prescriptive regarding the format, size and placement of the disclosure of stocking density. Anything that ensures consistency of information and appearance is encouraged. It would also enhance consumer confidence in the information provided on the label.

*Other animal welfare indicators*

The ADO recommends that information about animal husbandry practices such as debeaking, and other practices that have significant impacts on animal welfare, should also be included on egg packaging.<sup>2</sup>

Consumers could access the information online via a scannable link or other method included on the packaging.

As well, or instead, the information could be produced on the label in a format consumers could take in at a glance eg a simple graphic or table.

*Mode of sale/use*

The proposed information standard requiring information about stocking density and other animal welfare indicators should apply to eggs sold in any context and to any consumers, and to eggs used in products such as café food for consumption on the premises.

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<sup>2</sup> The Paper refers to research that suggests that ‘no added benefit would be gained from packaging eggs with extra descriptors, such as beak treatment or stocking density descriptors’ (p22). The ADO notes, however, that this research was carried out by the egg industry (AECL 2012 focus group research [www.aecl.org/dmsdocument/463](http://www.aecl.org/dmsdocument/463), p45), so it carries less weight than if undertaken by an independent body.

**9. Should an information standard require prominent disclosure of production methods for all hen eggs:**

**a) as either 'free range', 'barn' or 'cage' eggs?**

The ADO supports the proposal that an information standard require prominent disclosure of production methods for *all* hen eggs. Otherwise the transparency burden falls unfairly on free range egg producers and may lead to some free range egg producers changing to less animal-welfare orientated production systems. There is no compelling reason why greater transparency requirements and associated costs should be imposed on some producers and not others.

Moreover all consumers should be informed about the impact on the welfare of animals of the product they choose.

*Which terms?*

The Paper states that:

Option 3 would make an information standard that compels all egg producers to label their eggs as 'cage', 'barn' or 'free range'. Two variations of Option 3 are also considered: 'premium free range' (Option 3a; free range plus additional animal welfare conditions) and 'access to range' (Option 3b; a category between barn and free range in terms of hens' access to the outdoors). (p27)

The Paper also notes that:

...while the core definition of free range proposed in the information standards codifies the existing obligations under the ACL and the related case law, there may be some producers that currently label their eggs as free range but will not meet this definition. (p29)

The ADO agrees with those consumers, animal experts and egg producers who state that eggs should be labelled as 'free range' only if the outdoor stocking density is less than 1,500 hens/ha.<sup>3</sup>

The ADO therefore recommends that the term 'free range' should be applied only to the high end of the egg market; that is, those production systems with best practice animal welfare outcomes (ie what the Paper suggests could be referred to as 'premium free range').

Since the term 'free range' is already generally well understood in the community, and could be said to equate to consumers' understanding of a 'best practice animal welfare' production system, the term should be kept for those systems. The term should not be diluted by being applied to systems where the hens may have access to outdoors but not all the time, where the stocking density is above 1,500 hens/ha, and where inhumane practices such as debeaking or forced moulting are permitted.

The ADO therefore does not support the creation of a 'premium free range' category. The words 'free range' should only be used for best practice animal welfare production systems.

Additional information relating to other 'high-end' animal welfare practices of free range producers could be added to their labels on a voluntary basis as promotional material and as a way to differentiate their product from other free range egg products.

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<sup>3</sup> The Paper, p7.

### *Non-free range systems: 'access to range', 'barn', 'cage'*

The ADO recognises that there may be a number of existing free range egg producers that could not describe their systems as free range as defined above (ie best practice animal welfare outcomes), but that are not barn or cage egg systems. The ADO suggests that these producers could use the term 'access to range'. This could be used for production systems where the hens have some access to outdoors and which are therefore neither barn nor cage egg production systems.

The provision of stocking density information on labels would be mandatory for both outdoor production systems (free range, and access to range) so that consumers could see at a glance one of the main differences between the systems.

By not using 'free range' to describe systems with less humane animal welfare practices, high-end free range egg producers would not suffer any detriment by the dilution of their valuable 'animal friendly' branding. 'Access to range' producers may in turn be encouraged to improve the animal welfare practices in their system so they could describe themselves as 'free range' with its associated high brand value.

### *Market impact*

The Paper states that:

Clear identification of all eggs for sale in the retail market may change the distribution of consumer demand between those three categories...Given cage eggs offer an affordable source of protein for less affluent consumers, a shift in supply and industry investment towards the more expensive methods of production may threaten food security for more vulnerable consumers. Price rises across the industry would have a relatively greater negative impact on consumers whose consumption preferences are necessarily driven by price rather than other factors. (p31)

This is not a compelling argument against requiring clear identification of the four types of husbandry methods suggested above (free range, access to range, barn, and cage). There are many inexpensive sources of protein with no negative animal welfare impacts eg legumes. These options are more affordable than egg products.

### *Inhibition and flexibility*

If the four types of production systems suggested above were detailed in a legislative instrument—for example an instrument made by the relevant Minister—then it could be varied relatively easily while still being subject to Parliamentary scrutiny.

Furthermore any production innovations could be included in additional promotional material on existing labels, until the system reached the next level of production (eg improvements to an 'access to range' system may ultimately result in the system meeting the requirements of a 'free range' system).

### *Transition periods*

As the main action required in adopting mandatory disclosure of production methods for all hen eggs would be updating product information on labels, websites and marketing materials, a transition period of two years would be appropriate.



**10. What are the benefits and what are the compliance costs of introducing an information standard? Do the benefits outweigh the costs?**

The development of a meaningful information standard should not be contingent upon cost-benefit analysis. Meaningful communication of a particular product's properties and production processes should not be determined by the cost of that information provision, or compliance against standards judged to be necessary to avoid market confusion, but rather seen as a simple requirement of selling products in the Australian market.

Moreover, the cost-benefit ratio of information provision and compliance is unlikely to be a function of the information standard itself, finding its own equilibrium over time as lower welfare egg producers leave the market. Those producers that judge compliance requirements to be too costly will likely move out of the 'free range' market category, thereby allowing those producers that are willing to adhere to the standard to sell their eggs at a higher price, compensating those producers for higher compliance costs in the process. If those higher prices accurately reflect the consumer welfare value placed on the purchase of 'true' 'free range' eggs then higher prices will not drive a fall in overall welfare.