

Animal Law Committee

Submission on the Regulation of Australian Agriculture

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*Regulation of Agriculture
Productivity Commission
Locked Bag 2, Collins Street East
MELBOURNE VIC 8003
agriculture@pc.gov.au*

Contact:

Renée Bianchi

President, NSW Young Lawyers

Amanda Richman

Chair, NSW Young Lawyers Animal Law Committee

Contributors:

Tara Clarke

*Submissions Coordinator, NSW Young Lawyers
Animal Law Committee*

Michelle Yu

Amanda Richman

Chair, NSW Young Lawyers Animal Law Committee

NSW Young Lawyers
Animal Law Committee
170 Phillip Street
Sydney NSW 2000

ylgeneral@lawsociety.com.au
www.younglawyers.com.au

The NSW Young Lawyers Animal Law Committee (**the Committee**) is grateful for the opportunity to make a submission to the Productivity Commission on the Regulation of Australian Agriculture (**the Draft Report**). The Committee commends the Productivity Commission for seeking to evaluate and shape the direction of Australia's agricultural industry and particularly for its acknowledgement in the Draft Report of the importance of animal welfare.

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 16 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises a group of over 390 members interested in animal welfare and laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use their legal skills and the law to help improve the lives of animals.

Summary

In this submission, the Committee has made comments and recommendations in relation to land use regulation, animal welfare regulation and labelling. In summary, the Committee makes the following comments and recommendations:

- 'Right to farm' laws or policies are inappropriate to the extent they, *a priori*, render irrelevant animal welfare or environmental concerns at the local planning and development application stages, or to the extent that they eliminate redress for third persons impacted by agricultural activities.
- In all planning and development application processes in respect of agricultural use of land:
 - the process should be transparent and open to public consultation;
 - the decision making body should make clear to all stakeholders the factors that will be considered in the process; and
 - issues of relevance to the public generally, including animal welfare and environmental protection, should be mandatory considerations and balanced appropriately against competing interests.

- The Committee strongly supports Draft Recommendation 5.1 in the Draft Report, namely the establishment of an independent body tasked with developing national standards and guidelines for animal welfare.
- Independent statutory animal welfare bodies should be established at both the federal and state and territory levels, and these bodies should report to the respective Attorney-General's Departments.
- The Federal independent body should be responsible for setting national animal welfare standards, for research regarding animal welfare science and community views, and for the enforcement of Federal animal welfare laws.
- The state and territory independent bodies should be responsible for the enforcement of animal welfare laws in their respective jurisdictions.
- The independent bodies should be funded through reallocation of funds currently provided to the department of agriculture (or equivalent) in each jurisdiction and to Research and Development Corporations (as the independent bodies will be assuming some of their functions). Funding can also be obtained through imposing levies on industry participants.
- Standards for free-range labelling should be based on evidence of both consumer expectations and hen welfare. They should neither be based on the current practices of large producers, nor influenced by the cost to producers associated with meeting higher standards. Producers who choose not to bear the costs of meeting consumer expectations associated with a particular label should market their products truthfully and not use that label on their products.

Discussion

Land use regulation

Information Request 2.1: What are the advantages and disadvantages of 'right to farm' legislation? Are there any other measures that could improve the resolution of conflicts between agricultural and residential land uses?

The Draft Report defines 'right to farm' laws as laws barring actions in nuisance against agricultural land uses, or laws that protect incumbent agricultural land use activities. Participants in the agricultural sector made submissions in support of 'right to farm' laws, highlighting the economic importance of agricultural activity as justification for such laws.¹

The Committee appreciates that agricultural activity is important to both the Australian economy and local economies. However, this general proposition is (i) true of many industries in Australia and (ii) not necessarily true in respect of every instance of

¹ See e.g. the initial submission by the Australian Food and Grocery Council, at 11.

agricultural land use. Further, certain forms of agricultural production have the potential to impose external costs on other stakeholders including neighbouring communities, and may also involve unacceptable compromises to animal welfare or environmental protection. Such negative externalities may outweigh the economic benefits. Accordingly, the general proposition that agricultural activity is economically important does not of itself justify 'right to farm' laws or policies.

It is essential that third parties concerned about negative externalities of agricultural use of land are given a voice in local planning and development application processes and that their concerns are considered and appropriately balanced against the interests of the relevant commercial parties. The importance of third party involvement in these processes was highlighted by the volume of submissions and complaints made to the NSW Harden Shire Council in response to a development application for an intensive piggery.² Submissions were made by the general public as well as local residents (including local farmers) and raised a range of issues including animal cruelty, soil and groundwater contamination, odour, traffic noise and Aboriginal Heritage.³ The Committee submits that public concern of such magnitude and range should not be dismissed out of hand.

It is also essential that third parties who are actually impacted by negative externalities of agricultural activities have the same avenues of redress as they would as against a participant in any other industry. The Committee considers there is no justification for exempting participants in the agricultural industry from any common law action, and doing so would create a significant imbalance between the rights of agricultural industry participants and third parties impacted by agricultural activities.

The Committee recommends that:

1. all planning and development application processes in respect of agricultural use of land be transparent and open to public consultation;
2. the decision making body should make clear to all stakeholders the factors that will be considered in the process; and

² The number of submissions was reported in local media to be over 800: John McLaurin, 'Piggery decision extends out' (17 February 2016) *Harden Murrumburrah Express* <<http://www.hardenexpress.com.au/story/3734352/stalled-additional-information-required-from-piggery-owners/>>.

³ Amelia Mills, 'Opposition to Harden's proposed Blantyre Farms piggery has received record number of complaints' (11 February 2016) *The Daily Advertiser* <<http://www.dailyadvertiser.com.au/story/3721727/piggery-opposition-on-high/>>.

3. issues of relevance to the public generally, including animal welfare and environmental protection, should be mandatory considerations and balanced appropriately against competing interests.

Animal welfare regulation

Draft Recommendation 5.1: The Australian Government should take responsibility for ensuring that scientific principles guide the development of farm animal welfare standards. To do this, an independent body tasked with developing national standards and guidelines for farm animal welfare should be established.

The body should be responsible for determining if new standards are required and, if so, for managing the regulatory impact assessment process for the proposed standards. It should include an animal science and community ethics advisory committee to provide independent evidence on animal welfare science and research on community values.

The Committee supports Draft Recommendation 5.1. Animal welfare is important to the Australian public:

- Data from market researcher Euromonitor International has shown Australia's packaged vegan food market is currently worth almost \$136 million, set to reach \$215 million by 2020, and is the third fastest growing vegan market in the world.⁴
- An Australian survey conducted between 2000-2004 found that 48% of people were more likely to buy free-range eggs than they were in previous years.⁵
- The retail market share for non-cage eggs has doubled in size from 24.8% of the market in 2005 to 50% in the 2012/13 financial year.⁶
- Australia's two major food retailers – Coles and Woolworths – have both made announcements that they will increase the animal welfare standards employed in the production of their branded products.⁷

⁴ See Lucy Cormack, 'Australia is the third-fastest growing vegan market in the world' *The Sydney Morning Herald* (5 June 2016) available here: <<http://www.smh.com.au/business/consumer-affairs/australia-is-the-thirdfastest-growing-vegan-market-in-the-world-20160601-gp972u.html>>.

⁵ Franklin, 'Human-nonhuman animal relationships in Australia: An overview of results from the first national survey and follow-up case studies 2000-2004', *Society & Animals*, 2007, vol. 15, pp 7-27).

⁶ Australian Egg Corporation Limited, *Woolworths and cage eggs*, media statement, 4 October 2013; IBIS World, *Industry Report: Egg Farming in Australia*, 2013

⁷ See e.g. Coles Limited, 'Better Animal Welfare at Coles!', Coles Blog (9 January 2013) <http://blog.coles.com.au/2013/01/09/better-animal-welfare-at-coles/>, accessed on 6 April 2014); and Woolworths Limited, 'Animal Welfare' (undated) http://www.woolworthslimited.com.au/page/A_Trusted_Company/Responsibile_Sourcing/Animal_Welfare/. Australian Pork Limited has committed to voluntarily phasing out sow stalls by 2017 (Australian Pork Limited, 'Housing' < <http://australianpork.com.au/industry-focus/animal-welfare/housing/>>, accessed on 6 April 2014).

- The Australian Competition and Consumer Commission (**ACCC**) has recognised that consumers are increasingly distinguishing products based on animal welfare standards and so has sought to crack down on producers who make misleading or deceptive animal welfare claims. The ACCC has also successfully prosecuted several producers of animal products for inappropriately labelling their products to represent that the animals used in production were kept in better conditions than they were.⁸

There is also some evidence that animal welfare is important to Australia's export markets.⁹

Further and as acknowledged by the then Australian Government Department of Agriculture, improved standards can contribute to higher competitiveness, leading to better domestic and export market access, higher prices and enhanced sustainability.¹⁰ However, to meet community expectations regarding animal welfare and to ensure the competitiveness of Australia's agricultural sector, both domestically and internationally, the Committee considers that it is imperative that there is strong animal welfare regulation.

It should not be assumed that, left unregulated, industry will achieve high animal welfare standards. As acknowledged in the Draft Report, high animal welfare and production do not necessarily go hand-in-hand (and indeed animal welfare can sometimes conflict with commercial incentives).¹¹ Nor can it be assumed that, if the agricultural industry is left unregulated, market forces will drive producers towards animal welfare practices that meet community standards (as suggested by one industry body).¹² Market forces are an imperfect means of achieving acceptable standards in production methods, particularly in circumstances where there is no requirement for producers to disclose how products were produced, and even where claims are made about production process, consumers cannot independently verify these claims. This means that producers who do employ higher animal welfare standards are not necessarily able to distinguish their products, or obtain a competitive advantage over other producers, notwithstanding trends in consumer demand. In any event, the Committee submits that there should be minimum animal

⁸ See e.g. *ACCC v G.O. Drew Pty Ltd* [2007] FCA 1246; *ACCC v C.I. & Co Pty Ltd* [2010] FCA 1511; *ACCC v Bruhn* [2012] FCA 959; *ACCC v Turi Foods Pty Ltd (No 2)* [2012] FCA 19; *ACCC v Luv-a-Duck Pty Ltd* [2013] FCA 1136; *ACCC v Pepe's Ducks Ltd* [2013] FCA 570; and *ACCC v Pirovic Enterprises Pty Ltd (No 2)* [2014] FCA 1028).

⁹ A study assessing public attitudes to animal welfare in China found that 86% of respondents believed it was necessary to enact animal welfare legislation, and 89.5% stated that they were willing to pay for improved animal welfare standards: Zhao, Y, Wu, S, 'Willingness to pay: Animal welfare and related influencing factors in China', *Journal of Applied Animal Welfare Science*, 2013 vol 14, at 150-161. It has been reported that European wool buyers were refusing to use Australian wool because of the use of growers using mulesing: Hailey Renault, 'Wool buyer warns rising demand for non mulesed wool will affect Australian growers still using the practice' *ABC Rural* (4 March 2016) available here <<http://www.abc.net.au/news/2016-03-04/wool-welfare-demands-to-affect-growers/7220472>>.

¹⁰ Draft Report at 174.

¹¹ Draft Report at 175.

¹² NSW Farmer's Association submission.

welfare standards to protect animals used in production regardless of consumer requirements (ultimately, animal welfare standards are intended to protect animals themselves, and not merely consumers).¹³

In the Committee's view, the current regulatory framework does not ensure adequate protection of animal welfare for the following reasons (each of which have also been identified in the Draft Report):

- since 2013, Australia has lacked any valid form of federal governance or leadership in animal welfare after the Federal Government withdrew support and funding from key animal protection initiatives;
- at both the federal and state and territory level, the regulation and governance of animal protection has been delegated to government departments that possess a real or perceived conflict of interest as they are also responsible for ensuring the profitability of the agricultural industry. This raises concerns that animal welfare laws are not being appropriately enforced. In some jurisdictions, RSPCA bodies are responsible for enforcing animal welfare laws. However, the RSCPA is not sufficiently resourced by the government to detect contraventions of, and enforce, animal welfare laws.¹⁴ As a result, the detection of contraventions of animal welfare law has, in large part, been left to individuals and animal welfare groups. Had it not been for the work of these parties, illegal activities resulting in the abuse of animals would likely remain undetected.¹⁵ The Committee considers that circumstances where individuals and charities are required to take on the role of investigating and detecting contraventions indicate that there is a significant deficiency in the enforcement of the law; and
- there are significant concerns that industry representatives have a disproportionate influence over the animal welfare standard setting process.¹⁶ This may ultimately have the consequence that husbandry practices that have

¹³ See e.g. s 3 of the *Prevention of Cruelty to Animals Act 1979 (NSW)* which provides that one of the objects of the Act is to 'prevent cruelty to animals'.

¹⁴ For example, the RSPCA NSW receives less than 2% of its funding in regular funding from the NSW Government and 0% from the Federal Government. It costs on average \$34 million for the RSPCA NSW to operate each year: <<https://www.rspcansw.org.au/about/about-rspca-nsw>>. Further the number of investigators in Australia is disproportionate to the number of complaints which the RSPCA handles. The RSPCA has 98 inspectors, and in 2012-13 investigated 49,861 cruelty complaints across Australia (excluding the Northern Territory where enforcement is the sole responsibility of the Territory Government): <<http://www.rspca.org.au/facts/annual-statistics/cruelty-complaints#sthash.ZZ6TGjuH.dpuf>> .

¹⁵ For example, covert footage obtained by individual activists was used to detect contraventions of animal welfare laws at the Hawkesbury Valley Meat Processors at Wilberforce and at the abattoir in Tahmoor (the subject of this media release: http://www.foodauthority.nsw.gov.au/news/media-releases/mr-17-May-12-animal-welfare-training-abattoirs/#.UVTn4Rwwo_U). Evidence obtained by animal welfare groups was also instrumental in initiating cases brought by the ACCC for misleading and deceptive conduct including: *ACCC v Turi Foods Pty Ltd* [2013] FCA 1109; *ACCC v Luv-a-Duck Pty Ltd* [2013] FCA 1136; and *ACCC v Pepe's Ducks Ltd* [2013] FCA 570.

¹⁶ E.g. Animals Australia 'Submission to the Regulation of Australian Agriculture Issues Paper' (19 February 2016) available here: <http://www.pc.gov.au/__data/assets/pdf_file/0009/196128/sub053-agriculture.pdf at p 6 - 10>.

been effectively granted immunity from animal cruelty allegations may in fact fall below community expectations of acceptable animal welfare standards. The Committee submits that disproportionate industry influence can lead to poor animal welfare standards.

In many respects, Australia's animal welfare standards are lower than many other countries. The World Animal Protection's Animal Protection Index grades Australia as a 'C' in both animal protection standards overall, and for protecting animals used in farming. Australia is trailing behind its neighbour and competitor, New Zealand, which received an 'A' on both measures.¹⁷ It is interesting to note reports that New Zealand has taken market share from Australia in international markets for animal products.¹⁸

The Committee's view is that independent animal welfare bodies at the Federal and state and territory levels, with authority to set animal welfare standards and with responsibility for enforcement, may help address these issues.

Information Request 5.1: The Commission is seeking feedback on:

- ***the most effective governance structure for an independent body tasked with assessing and developing standards and guidelines for farm animal welfare;***
- ***what the body's responsibilities should include (and whether it should make decisions or recommendations and if the latter, to whom);***
- ***what processes the body should use to inform and gauge community values on animal welfare; and***
- ***how such a body should be funded.***

As discussed above, the Committee supports the introduction of independent bodies of animal welfare at both federal and state and territory levels. In the Committee's view, the Federal Government should be responsible for ensuring that minimum state and territory animal welfare standards are consistent and meet community expectations and the demands of Australia's domestic and export markets. However, state and territory bodies should retain responsibility for regulating and enforcing animal welfare within their jurisdictions and more progressive jurisdictions should be able to introduce higher animal welfare standards than those contained in the national standards.

¹⁷ The World Animal Protection launched the Animal Protection Index in 2014. The index judges 50 countries on their policy and legislation for animals. The index shows that Australia is one of the countries found to be lacking in terms of animal welfare. The index can be accessed here:

<<http://www.worldanimalprotection.org/news/ground-breaking-animal-protection-index-assesses-animal-welfare-around-world>>.

¹⁸ Andrew White, 'Food exporters lose out in China', *The Australian* (25 March 2014)

<<http://www.theaustralian.com.au/business/in-depth/food-exporters-lose-out-in-china/story-fni2wt8c-1226863700456>> accessed on 30 March 2014.

At the Federal level, the Committee supports a statutory independent animal welfare body that reports to the Attorney-General's Department (to ensure separation from the Department of Agriculture and Water Resources and thereby avoid existing conflict-of-interest concerns). The independent body should comprise:

- an Animal Welfare Advisory Committee responsible for advising the independent body and the government on animal welfare matters, areas for policy and law reform, and developing Standards and Guidelines. This body should be comprised of appropriately qualified and experienced staff and stakeholders from animal welfare NGOs, consumer groups, independent animal welfare scientists, animal welfare ethicists, representatives from state and territory government and industry representatives. Members with an agricultural background should not outnumber the other staff;
- an Independent Animal Welfare Science and Community Ethics Advisory Body responsible for researching, as well as advising the independent body and the government, on animal welfare science and community views on animal welfare. This body should ensure that research is not monopolised by research funded and / or commissioned by the agriculture industry and to that end, should have powers to commission its own independent research. Research regarding community values should build on an initial baseline survey developed by an independent consultant (with input from industry and non-industry stakeholders). The survey should be repeated on a bi-annual basis and reports should be publicly available. Surveys should take into account consumer purchasing data (including consumption of higher animal welfare, or animal-free products), community behaviour patterns (such as membership to animal protection groups, vegan societies or organisations and participation at related events), and the growth of vegan or vegetarian businesses (including restaurants, manufacturers of pre-packaged food, and clothing and cosmetic brands). This body should be comprised of independent animal welfare scientists and ethicists; and
- an Animal Welfare Enforcement Body, responsible for overseeing the enforcement of Federal animal welfare laws (including ESCAS in the live export context), and advising the independent body and the government on areas for improvement.

The federal independent body should also be responsible for disseminating information to the community on farm animal practices and animal welfare. This information must be based on independent, peer-reviewed research (as distinct from industry marketing).

The Committee also recommends the establishment of statutory independent animal welfare bodies in each state and territory (in place of any existing animal welfare advisory bodies).¹⁹ The various state and territory independent bodies should assume responsibility for animal welfare enforcement functions from the state and territory departments of agriculture (or equivalent).

The Committee proposes the following sources of funding for the federal, and state and territory independent bodies:

- reallocating a portion of the funds currently provided to the various departments of agriculture to reflect the fact that many of the proposed functions and responsibilities of the proposed statutory bodies would be assumed from those departments;
- reallocating Commonwealth subsidiaries and funds currently provided to industry-based Research and Development Corporations to the Federal independent body (as the Federal independent body would assume some of the functions of the Research and Development Corporations); and
- imposing levies on producers of animal-derived agricultural products (either directly or through representative bodies such as Australian Pork Limited). The Committee takes the view it is reasonable that a portion of the costs involved in governing and regulating the industry be borne by industry (to the extent this cost is passed on to consumers, arguably the higher retail price would be a more accurate reflection of the true cost of production).

Food labelling

The importance of clear labelling in relation to animal welfare claims

Food labels help consumers select products that best satisfy their preferences, and enable producers whose products meet attributes favoured by consumers to differentiate their products in the market. Product differentiation through labelling is particularly important when:

- the attributes favoured by consumers result in higher production costs (as producers then need to be able to charge a premium price, or gain more sales to cover those costs); and
- the consumer is not able to identify whether a product has those attributes other than through labelling.

¹⁹ Similar to the structure that already exists for food regulation in Australia, which has a Commonwealth statutory body (Food Standards Australia) and equivalent state and territory level statutory bodies.

Animal welfare standards in production processes fall into this category and so it is essential that producers are able to differentiate their products through labelling. There are costs imposed on both consumers and producers when labels connoting higher animal welfare standards do not align with consumers' expectations of what those labels mean. Consumers pay a cost when production methods that they value, and for which they have paid a higher price, have not been used. Producers also bear a cost where they have made investments in production methods that align with consumers' preferences, but are unable to differentiate their products and charge a price premium over other producers who do not meet these same criteria. This was recognised (at least to some extent) in the Draft Report with respect to egg products.²⁰ However, these issues also apply to free range and organic labels applied to other animal-derived products, particularly chicken, duck and pig meat products.

A significant portion of consumers place high value on products being 'free range'. In a 2012 focus group study conducted on behalf of the Australian Egg Corporation Limited (**AECL**), participants who were all regular consumers of free range eggs indicated that if the price of free range eggs were to increase they would be more likely to buy fewer eggs (as opposed to purchasing eggs produced in a lower standard production system).²¹

Consumers' expectations of free range labels

The Committee accepts that it can be difficult to identify what consumers' expectations of free range production processes are, particularly as consumers are not necessarily knowledgeable about farming and animal husbandry practices, and producer metrics such as stocking densities can be meaningless to consumers. However, the Committee submits that at a minimum, the following parameters should be used to ensure appropriate usage of the free range label:

- ***Stocking densities should accord with consumers' high level expectations of free range production.*** Consumers' understanding of the term 'free range' is likely to be more high level than a specific stocking density. Recent Federal Court decisions have held that the term 'free range' represents to consumers that animals used in the production system 'can and do move about freely on an open range on most ordinary days'.²² These decisions are consistent with an AECL 2012 study, which found that consumers perceive 'free range' to mean that hens have a better environment (they are out in the sun and able to run across green

²⁰ Draft Report, at 355.

²¹ Brand Story, 'Protect Equilibrium, Qualitative research to determine consumer perceptions of free-range stocking densities' (online), 11 May 2012 <www.aecl.org/dmsdocument/463> at 11.

²² *Australian Competition and Consumer Commission v Pirovic Enterprises Pty Ltd (No 2)* [2014] FCA 1028; *Australian Competition and Consumer Commission v Snowdale Holdings Pty Ltd* [2016] FCA 541; *Australian Competition and Consumer Commission v Derodi Pty Ltd* [2016] FCA 365; *Australian Competition and Consumer Commission v RL Adams Pty Ltd* [2015] FCA 1016.

fields), are fed natural foods, and are healthy, happy and not stressed.²³

Similarly, CHOICE's 2014 survey study found that consumers believe 'free range' designates systems where hens are free to roam, access the outdoors and are cage free.²⁴ Accordingly, it may not be the stocking density *per se* that matters to consumers; rather it is what the stocking density means for the welfare of the animals involved.

- ***Debeaking or beak trimming is not appropriate for free range egg production.*** Research suggests consumers have a strong view that debeaking or beak trimming practices are not appropriate for free range systems. Respondents to the AECL's 2012 focus group research met the idea of beak trimming with 'disgust', noting that it sounded 'cruel and horrible'²⁵ - a position that is inconsistent with the notions of high animal welfare that consumers associate with the term free range.

While some producers may submit that beak trimming is necessary to prevent birds from pecking at one another, animal welfare experts observe that pecking behaviour generally results from overcrowding and stress, nutritional deficiency and unsatisfactory housing conditions, including excessive light and temperature, insufficient or improperly placed feeders or drinking spaces.²⁶ The RSPCA in the United Kingdom notes that pecking may be perceived as redirected foraging behavior.²⁷ Veterinarian and lawyer Keith Hart, with whom the Committee has consulted, considers that 'the reason birds in layer cages peck is because of stress due to overcrowding, and the inability to indulge in many of the natural behaviours hard wired into chickens'.

The Committee submits that debeaking or beak trimming is inconsistent with the expectations consumers have of free range systems because: (i) the practice is considered 'cruel' and (ii) the practice is not necessary when hens are kept in conditions, and at stocking densities, which meet consumer expectations of free range. Accordingly, it is essential that eggs sold under the free range label are produced in facilities where

²³ Brand Story, 'Protect Equilibrium, Qualitative research to determine consumer perceptions of free-range stocking densities' (online), 11 May 2012 <www.aecl.org/dmsdocument/463> at 43 and 45.

²⁴ Rachel Clemons and Katinka Day, 'Do you shell out for free-range eggs?' CHOICE (online) 7 August 2014 <<http://www.choice.com.au/food-and-drink/meat-fish-and-eggs/eggs/articles/free-range-eggs>>.

²⁵ Brand Story, 'Project Equilibrium, Qualitative research to determine consumer perceptions of free-range stocking densities' (online), 11 May 2012 <www.aecl.org/dmsdocument/463> at 43. The report notes that consumers were subsequently given an estimate of likely increases to egg prices if the practice was discontinued and that many consumers stated that they would not or could not afford to pay for free range eggs at that price. The Committee submits this is not relevant to determining whether or not consumers are misled by the label into thinking that these practices do not occur. The standard should be consistent with consumers' overall impression of the term "free range" and should not be tailored to meet particular price points. Further, the Committee queries the accuracy of the pricing information given to consumers in the study as it does not appear consistent with CHOICE's research: Choice, 'Free Range Eggs: Making the Claim Meaningful' (online), June 2015 <<https://www.choice.com.au/~media/619b60e5a1f04b2191d09fd9dab4c72e.ashx>>.

²⁶ Organic Vet, 'Feather pecking and cannibalism' (online), undated <<http://www.organicvet.co.uk/Poultryweb/disease/feath/feath1.htm>>.

²⁷ RSPCA UK, 'Laying hens – key welfare issues' (online), undated <<http://www.rspca.org.uk/adviceandwelfare/farm/layinghens/keyissues>>.

hens are not subject to debeaking or beak trimming. The Committee takes a similar view in respect of other practices which are required in intensive production systems including tail docking and teeth trimming (pigs), forced moulting and non-therapeutic use of antibiotics.

National labelling standards

The Committee supports the introduction of national labelling standards provided they accord with consumer expectations of what the labels mean. The Committee submits that a national labelling standard that is not reflective of consumer expectations imposes a cost on both consumers and those producers who have invested in production methods that align with consumers' preferences. It is not appropriate for a standard to be tailored to fit large producers' existing or proposed production methods unless those production methods are consistent with consumer expectations, as this would entrench misleading conduct and lower animal welfare standards. If producers experience difficulties in meeting the standards associated with a particular label, then, in the Committee's view, they simply should not use that label on their products. This would allow other producers who do meet that standard to differentiate themselves in the market and capitalise on their investment.

The Committee submits that the national standard for free range egg labelling proposed in March 2016 does not meet consumer expectations, for the following reasons:

- it provides that hens only need 'meaningful and regular *access* [emphasis added] to an outdoor range'. This is inconsistent with the view taken by the ACCC and the Federal Court that the term free range means more than mere access, but implies actual use of an outdoor range.²⁸ It is also inconsistent with the Julie Dang & Associates 2012 research referenced in the Draft Report, which found that the term free range is clearly associated with 'outdoor roaming'.²⁹ In that same study, when participants were shown a visual of a production system where the hens were inside a barn with access to the outdoors, 37% thought that the visual was of a barn laid system and 27% thought that it showed a cage free system. Only 5% thought it was free range;³⁰
- it does not prohibit debeaking, forced moulting or the provision of non-therapeutic antibiotics. For the reasons given above, the Committee takes the view that these practices are inconsistent with consumer expectations of the meaning of the term free range. The Julie Dang & Associates 2012 study suggests that consumers

²⁸ *Australian Competition and Consumer Commission v Pirovic Enterprises Pty Ltd (No 2)* [2014] FCA 1028.

²⁹ Julie Dang & Associates Pty Ltd, 'Production methods understanding & QA evaluation: A market research report, Prepared for Australian Egg Corporation Ltd' (online), May 2012, <www.aecl.org/dmsdocument/465> at 13.

³⁰ *Ibid* at 61.

can be 'educated' into accepting practices such as debeaking if they are told that this practice 'improves hen welfare'.³¹ However, it is not clear whether participants in that study were told that debeaking is only necessary in intensive production systems. Consumers may be less ready to accept this practice if they are made aware that it is usually only required because the hens are overcrowded or stressed, as discussed above; and

- it provides for a stocking density of up to 10,000 birds per hectare. The ACCC has previously expressed the view that a stocking density of this magnitude does not meet consumer expectations.³² CHOICE's 2014 survey found that only 2% of free range egg consumers believe that 10,000 birds per hectare is an acceptable stocking density for free range eggs.³³ The Committee accepts that there is mixed evidence as to the stocking density consumers think appropriate for free range egg production. The Draft Report referenced the Julie Dang & Associates 2012 study as evidence of this. However, only around half of the participants in that study actually identified as being purchasers of free range eggs. In any event, for the reasons given above, the Committee considers that the actual stocking density may be less relevant to consumers than the implications the stocking density has for other indicators of animal welfare (such as whether debeaking is required).

The Committee considers that standards for free range labelling should be based on evidence of both consumer expectations and hen welfare. As set out above, they should neither be based on the current practices of large producers, nor influenced by the cost associated with meeting higher standards. Producers who choose not to bear the costs of meeting consumer expectations associated with a particular label should market their products truthfully and not use that label on their products.

Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

³¹ Ibid at 17.

³² Melissa Fyfe and Royce Millar, '10,000 eggs to a hectare is no free range: ACCC' *The Age* (online), 5 March 2013 <<http://www.theage.com.au/national/10000-hens-to-a-hectare-is-no-free-range-accc-20130304-2fgxg.html>>.

³³ Rachel Clemons and Katinka Day, 'Do you shell out for free-range eggs?' *Choice* (online), 7 August 2014 <<https://www.choice.com.au/food-and-drink/meat-fish-and-eggs/eggs/articles/free-range-eggs>>.

Contact:

Renée Bianchi

President

NSW Young Lawyers

Email: president@younglawyers.com.au

Alternate Contact:

Amanda Richman

Chair

NSW Young Lawyers Animal Law

Committee

Email: alc.chair@younglawyers.com.au