



22 February 2018

Kathleen Plowman
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Dear Ms Plowman

Australian Animal Welfare Standards and Guidelines for Poultry

The Society refers to the draft Australian Animal Welfare Standards and Guidelines for Poultry (“draft Standards”). The Society notes that there is currently a *Model Code of Practice for the Welfare of Animals: Domestic Poultry* that has been in place across Australia since 2002 (“current Code”).¹

The Society notes that the draft Standards seek to update the current Code and the consultation seeks feedback in relation how well the draft Standards will ensure the welfare of poultry. The Society further notes the final Australian Animal Welfare Standards and Guidelines for Poultry will be provided to state and territory governments for their noting/endorsement.

The draft Standards and associated Regulation Impact Statement (“RIS”) have been considered the by the Society’s Animal Law Committee, who have informed the views expressed in the Society’s submission. The Society has had regard to *the Animal Welfare Act 1985* (SA) in considering the issues raised this submission, specifically the provisions contained section 13 in relation to the ill treatment of animals.

The Society refers to the *Public Consultation for Australian Animal Welfare Standards and Guidelines – Poultry RIS Questions* (“RIS consultation questions”) which contains specific consultation questions related to the RIS. The Society has addressed a number of the RIS consultation questions which accompany the draft Standards. The submission that follows adopts the numbering of the RIS questions.

¹ Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals: Domestic Poultry*, 4th ed, October 2002 <<http://dpiwve.tas.gov.au/Documents/Animal-Welfare-Guidelines---Poultry-Code-4th-Edition.pdf>>.

8. National consistency in animal welfare standards for poultry

- 8.1. The Society supports national consistency in animal welfare standards for poultry.²
- 8.2. One approach to developing sound policy and undertaking a thorough assessment of a proposed policy, is what is known as a ‘triple bottom line’ assessment.³ This involves an assessment that encompasses the impact of a proposed policy on environmental, social and economic factors.⁴ In relation to nationally consistent animal welfare standards, it is arguable that the environmental factor relates to poultry, the social factor relates to the consumers/purchasers of poultry products and the economic factor relates to poultry farmers.
- 8.3. By way of example, the Canadian Poultry Code states that it aims to achieve a workable balance *between “welfare needs of animals and the capabilities of farmers”* whilst still producing the *“same number of eggs”* to meet the demand of consumers.⁵ It is arguable that the draft Standards lack an emphasis on consumer expectations/preferences and animal welfare.
- 8.4. The food market is a national market that allows for the production and distribution of food between all States and Territories in Australia. Having nationally consistent standards is likely to achieve greater animal welfare, create traceability of food production practices for all consumers and create equity for poultry farmers.⁶
- 8.5. Inconsistency between animal welfare codes among jurisdictions can make *“it difficult to effectively inform consumers”* of the relevant animal welfare standards.⁷ This is concerning because, by way of example, the Victorian government assert that 98% of Victorians believe that protecting the welfare of

² See, for example, Law Society of South Australia, submission to the Commonwealth Treasury on *Free Range Egg Labelling Consultation Paper*, 27 November 2015.

³ ACT Government, *Triple Bottom Line Assessment for the ACT Government* (2012), 1 <http://www.cmd.act.gov.au/data/assets/pdf_file/0020/331373/TBL_Assessment_Framework.pdf>.

⁴ *Ibid*, 2.

⁵ National Farm Animal Care Council, *Code of Practice for the Care and Handling of Pullets and Laying Hens 2017* (Canada), p 5 <http://www.nfacc.ca/pdfs/pullets_and_laying_hens_code_of_practice.pdf>.

⁶ See Law Society of South Australia, Submission to the Attorney General’s Department (SA) on the *Industry Code for Growing Free Range Eggs in South Australia*, 23 July 2013, 2, 6.

⁷ Commonwealth, Productivity Commission Inquiry Report, *Regulation of Australian Agriculture* (2016), No.79, 11, <<https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture-overview.pdf>>. See also Law Society of South Australia, Submission to the Attorney-General’s Department (SA) on *Fair Trading (SA Free-Range Egg Industry Code) Regulations 2015*, 20 March 2015, [3] and [4] and Law Society of South Australia, Submission to the Attorney General’s Department (SA) on the *Industry Code for Growing Free Range Eggs in South Australia*, 23 July 2013, 2.

animals is important.⁸ For that reason, it is arguable that there needs to be a common agreement between industry and animal welfare groups that reflects community expectations in respect of animal welfare.

- 8.6. Inconsistent animal welfare standards across jurisdictions can create “unnecessary regulatory burden that adds to the cost of doing business and makes it more difficult for farmers to understand their obligations”.⁹ Having a nationally consistent approach would ensure that the costs incurred by poultry farmers is the same in every jurisdiction, with the same return, and farmers are aware of their obligations, regardless of the jurisdiction they are in.¹⁰
- 8.7. A final reason why national Standards are necessary is because whilst individual states and territories can, for example, legislate to ban battery cages in their particular state, market competition legislation prevents an individual state or territory from banning the sale of battery cage eggs that originate from another state or territory.¹¹ For example, whilst the ACT has banned battery hens¹² it cannot prevent battery cage eggs from interstate being sold in the ACT. National Standards would prevent this inconsistency.

13. Conventional cages (“battery cages”) for layer hens

- 13.1. The Society notes that the draft Standards continue to permit battery cages for hens.¹³ The keeping of the status quo would appear to be contrary to the views of animal welfare organisations, some State and Territory governments, retailers, consumers and scientists. By way of example:
- 13.1.1. The ACT banned battery cages in 2014.¹⁴
- 13.1.2. Tasmania prohibited any new battery cages being built from 2013.¹⁵
- 13.1.3. The Western Australia government has rejected the draft Standards¹⁶ and has raised a possible ban of battery cages at State level with a 10-

⁸ The State of Victoria, *Animal Welfare Action Plan* (24 January 2018) Agriculture Victoria (video 1 min 30 seconds) <<http://agriculture.vic.gov.au/agriculture/animal-health-and-welfare/animal-welfare/animal-welfare-action-plan>>

⁹ Above, n. 7 (Productivity Commission Inquiry Report).

¹⁰ See Law Society of South Australia, Submission to the Attorney-General’s Department (SA) on *Fair Trading (SA Free-Range Egg Industry Code) Regulations 2015*, 20 March 2015, at [5].

¹¹ *Mutual Recognition Act 1992 (Cth)* provides that good that be lawfully sold in one Australian jurisdiction can be sold in another Australian jurisdiction without having to meet additional requirements.

¹² *Animal Welfare Act 1992 (ACT)*, s 9A.

¹³ Animal Health Australia, *Proposed Draft Australian Animal Welfare Standards and Guidelines for Poultry, Public Consultation*, November 2017, SB1.2 – SB1.5 <<http://www.animalwelfarestandards.net.au/files/2015/07/Public-Cons-Version-Poultry-SnG-Nov-2017.pdf>>.

¹⁴ Above, n 12.

¹⁵ *Animal Welfare (Domestic Poultry) Regulations* (Tas), r 5.

year phase out period.¹⁷

13.1.4. The proportion of battery cage eggs sold in supermarkets in Australia has fallen from 75% to 49% over the past decade.¹⁸

13.1.5. Coles brand eggs have been cage free since 2013 and Woolworths has committed to phasing out caged eggs by the end of the year.¹⁹

13.1.6. When the Commonwealth government refused to fund an independent scientific review of hen welfare literature, the Victoria government instituted its own.²⁰ In 2017, the Victorian Government poultry welfare report found that battery cage hens were exposed to the myriad of health issues including five times more fractures, cannibalism and prevention of basic movements.²¹

13.2. In addition, the draft Standards would appear to be inconsistent with a number of countries and regions in the world that have specifically banned battery cages or are in the process of a phase out.

European Union

13.3. The European Union began phasing out battery cages for laying hens in 1999 when member states were given until 1 January 2012 to rid their farms completely of battery cages.²²

¹⁶ Media Statement, "Proposed poultry standards fall short", *Government of Western Australia*, 27 November 2017, <https://www.mediastatements.wa.gov.au/Pages/McGowan/2017/11/Proposed-poultry-standards-fall-short.aspx>.

¹⁷ Nick Butterly, "Govt moves to clean up battery egg industry", *PerthNow*, 31 January 2018, <https://www.perthnow.com.au/business/govt-moves-to-clean-up-battery-egg-industry-ng-b88729707>.

¹⁸ Australian Egg Corporation Limited, 2017, p. 3; Australian Egg Corporation Limited, 2006 Annual Report, p. 4. Australian Egg Corporation Limited Annual Reports: <https://www.australianeggs.org.au/who-we-are/annual-reports/#item-744>.

¹⁹ Sarah Whyte, "Woolworths to phase out all battery hen eggs", *Sydney Morning Herald*, 4 October 2013, www.smh.com.au/environment/animals/woolworths-to-phase-out-all-battery-hen-eggs-20131003-2uxhf.html.

²⁰ J. Thomas & A. Branley, "Egg farmers accused of colluding with Government department to sabotage moves to outlaw battery hens", *ABC News*, 21 December 2017, <http://www.abc.net.au/news/2017-12-21/egg-farmers-accused-of-colluding-with-nsw-government/9229242>.

²¹ Nicol, C. J., Bouwsema, J. et. Al, *Farmed Bird Welfare Science Review*, October 2017, Agriculture Victoria, http://agriculture.vic.gov.au/_data/assets/pdf_file/0019/370126/Farmed-Bird-Welfare-Science-Review-Oct-2017.pdf.

²² [Council Directive 1999/74/EU](#), Article 5. See for example, legislation implemented in the United Kingdom confirming the Directive: Welfare of Farmed Animals (England) Regulations 2000, Sch 3, para 9. <http://www.legislation.gov.uk/ukxi/2007/2078/schedule/3/paragraph/9>. The Society notes that battery cages have been banned in Switzerland since 1992: Swiss Animal Welfare Ordinance of 27 May 1981.

- 13.4. No new battery cages could be brought into existence in the European Union from 2002.²³

New Zealand

- 13.5. A phase out of battery cages began in New Zealand on 7 December 2012:²⁴
- (a) Cages installed prior to 31 December 1999 must be replaced by 31 December 2018;²⁵
 - (b) Cages installed prior to 31 December 2001 must be replaced by 31 December 2020;²⁶
 - (c) All other cages must be replaced by 31 December 2022.²⁷
- 13.6. New Zealand reviewed its phasing out of battery cages for layer hens in 2013 following a concern that the government had underestimated the problems that the poultry industry would have in meeting the transition timetable.²⁸
- 13.7. Ultimately, it was determined that egg price and supply volatility could be significantly reduced by a delay to each of the transition steps by two years, while still retaining the final date when cages will be prohibited.²⁹
- 13.8. Since the introduction of the phasing out of the Code, the New Zealand Egg Producers Federation have reported a decrease in the use of battery cages from 81.9% in December 2013 to 67.1% in December 2016.³⁰

Canada

- 13.9. The phase-out of battery cages for laying hens was led by the Canadian egg farmers industry in early 2016.³¹
- 13.10. The phase out was enshrined in the *Code of Practice for the Care and Handling of Pullets and Laying Hens* in 2017 which requires that battery cages be phased out by 1 July 2036.³²

²³ Above, n 22, Article 5.2.

²⁴ [Animal Welfare \(Layer Hens\) Code of Welfare 2012](#), issued by Gazette on 6 December 2012, pursuant to section 75 of the *Animal Welfare Act 1999*.

²⁵ Ibid, Minimum Standard No. 12(b).

²⁶ Ibid, 12(c).

²⁷ Ibid, 12(d).

²⁸ [Animal Welfare \(Layer Hens\) Code of Welfare Amendment 2013 Report](#) at [2].

²⁹ Ibid, [10].

³⁰ [Egg Producers Federation of New Zealand Inc., Annual Report 2016, p. 2.](#)

³¹ Egg Farmers of Canada, *Egg Farmers of Canada announces industry-wide transition away from conventional housing* (5 February 2016) <<http://www.eggfarmers.ca/press/egg-farmers-of-canada-announces-industry-wide-transition-away-from-conventional-housing/>>.

USA

- 13.11. American hens produce more than 83 billion eggs a year.³³ There have been recent efforts in the United States to ban battery cages on a national level. In 2012, the Humane Society partnered with the United Egg Producers, which represents farmers that own 95% of America's egg laying hens, to introduce a Bill to Congress that would have outlawed battery cages nationwide.³⁴ The Bill was defeated following significant opposition and lobbying from pork and veal farmers who were worried that stricter regulations on the treatment of hens could lead to similar rules for pigs and cows.³⁵
- 13.12. At least 10 states in the United States have banned battery cages and almost every major fast food producer and restaurant chain has committed to a phase out.³⁶ For example:
- 13.12.1. California passed a law to ban battery cages on 4 November 2008 with a phase out period until 1 January 2015 since which time battery cages have been banned.³⁷ California prohibited the purchase of interstate eggs from egg producers that used battery cages from 1 January 2015.³⁸
- 13.12.2. Michigan passed a law in 2009 requiring egg producers to phase out battery cages by 2020.³⁹
- 13.12.3. Ohio, America's second largest egg-producing state, banned the building of battery cages from 29 September 2011 and required existing battery cages be phased out by 29 September 2016.⁴⁰
- 13.12.4. Massachusetts passed a law in 2016 banning battery cages with a phase out to be completed by 2022.⁴¹

³² Above n 5, [2.5]

³³ David Gelles, "Eggs That Clear the Cages, but Maybe Not the Conscience", *New York Times*, 16 July 2016 <https://www.nytimes.com/2016/07/17/business/eggs-that-clear-the-cages-but-maybe-not-the-conscience.html>.

³⁴ *Egg Products Inspection Act Amendments of 2012 (H.R. 3798)*.

³⁵ Jacob Koffler, "Why We Need Happier Chickens", *Time*, 27 August 2015 < time.com/happier-chickens/>.

³⁶ Gus Lubin, "The US is making a big shift away from factory farming", *Business Insider*, 9 February 2017 <https://www.businessinsider.com.au/factory-farming-on-the-decline-2017-2?r=US&IR=T>.

³⁷ *Prevention of Farm Animal Cruelty Act (Proposition 2)*.

³⁸ *Health and Safety Code (California)*, Division 20, Chapter 14, 6 July 2010. As at December 2014, about a third of California's eggs were sourced from farmers outside of the State: The Times Editorial Board, "California' egg-laying hens to get their breathing room", *Los Angeles Times*, 26 December 2014.

³⁹ Public Act 117 of 2009 (MI), s 46.

⁴⁰ 901:12 Ohio Livestock Care Standards Board, 9 Poultry Layers.

- 13.12.5. McDonald's and Burger King made a public commitment to switch to cage-free eggs by 2025⁴² and Nestle, the world's largest food company, made the commitment to do so by 2020.⁴³ In 2016, Walmart, America's largest food retailer, announced that it would source 100% of its eggs from cage-free hens by 2025.⁴⁴

13. Stocking densities

- 13.1. The Society notes that the draft Standards do not include any reduction to the current stocking densities available for poultry.
- 13.2. The Society notes that stocking densities for poultry that appear in the current Code and the draft Standards provide a hen with a space that is smaller than an ordinary sheet of A4 paper and prohibits wings to be outstretched.⁴⁵ The stocking densities proposed are higher than the countries that lead the world in poultry welfare:
- 13.2.1. The European Union does not have battery cages and instead has barns with a low stocking density of no more than 9 hens per m² for laying hens⁴⁶ and in respect of meat chickens, the stocking density must not exceed 33 kg/m².⁴⁷
- 13.2.2. The stocking densities in New Zealand, where battery cages are being phased out, is similar to the European Union where barns with no outdoor access are to have a maximum of 7 hens per m² and with outdoor access have a maximum of 9 hens per m².⁴⁸

⁴¹ Spencer Bull, "Massachusetts Passes Question 3, Banning Small Cages for Farm Animals", *Boston Magazine*, 8 November 2016 <https://www.bostonmagazine.com/news/2016/11/08/mass-question-3-farm-animals/>.

⁴² Associated Press in New York, "McDonald's says it will switch to cage-free eggs in the US and Canada", *The Guardian*, 9 September 2015 <https://www.theguardian.com/business/2015/sep/09/mcdonalds-scage-free-eggs-us-canada>; CBC News, "Tim Hortons and Burger King to use cage-free eggs by 2025", *CBC News*, 1 February 2016 www.cbc.ca/news/business/tim-hortons-burger-king-cage-free-eggs-1.3428987.

⁴³ Jill Ettinger, "Nestle is Gearing Up for a Major Food Industry Makeover (Vegans: Take Note)", *Organic Authority*, 2 November 2017 < www.organicauthority.com/nestle-is-gearing-up-for-a-major-food-industry-makeover-vegans-take-note/>.

⁴⁴ Walmart Media Release, "Walmart U.S. Announces Transition to Cage-Free Egg Supply Chain by 2025", 5 April 2016 <https://news.walmart.com/news-archive/2016/04/05/walmart-us-announces-transition-to-cage-free-egg-supply-chain-by-2025>.

⁴⁵ Above, n 1, Appendix 1 and n 13, pp 39-40.

⁴⁶ Above, n 22, Article 4.

⁴⁷ Ibid.

⁴⁸ Above, n 22, Minimum Standard 6.

13.2.3. In respect of meat chickens, New Zealand recommends an even lower stocking density than the European Union with 30kg per m² but provides a minimum standard of 38kg per m².⁴⁹

13.2.4. In Canada, stocking densities for laying hens are based on “enough space to move freely and be able to stand normally, turn around, and stretch wings without difficulty”.⁵⁰ Meat chickens are stocked at no greater than 34kg/m².⁵¹

14. Nests, perches and litter for all chicken layers in cage and non-cage systems

14.1. The Society notes that the current Code includes mandatory requirements in respect of nests.⁵² The Society notes that no explanation has been provided as to the reason why the draft Standards have removed this mandatory requirement and instead converted the condition to a recommendation only.⁵³

14.2. The Society notes that a requirement for nests, perches and litter is supported in:

14.2.1. the European Union that *requires* that nests, perches and litter be available for all chicken layers;⁵⁴ and

14.2.2. Canada where all hen housing systems *must* support nesting, perching and foraging behaviour by 1 July 2036.⁵⁵

15. Castration, pinioning, devoicing and beak trimming

15.1. The Society notes that since the current Code came into operation in 2002, devoicing and castration of chickens has been prohibited. The current Code makes it plain, describing devoicing and castration as “*an unacceptable practice [that] must not be undertaken*”.⁵⁶ The Society queries why such a practice has been reintroduced into the draft Standards.

15.2. The Society notes that the European Union prohibits castration, pinioning and devoicing.⁵⁷

⁴⁹ [Animal Welfare \(Meat Chickens\) Code of Welfare 2012](#), Minimum Standard 10.

⁵⁰ Above n 5 [3.5].

⁵¹ Ibid.

⁵² Above, n 1, 2.4.4.1, “*laying hens must be provided with at least 1 single bird nest per 7 hens, or for colony (multiple bird) nests, at least 1m² of nest box area per 120 hens*”.

⁵³ Above, n 13, GB1.7, “*Hens should be provided with a minimum on one single nest for every 7 birds or 1m² nesting box area for every 120 birds*”.

⁵⁴ Above n 22, Articles 4 and 6: one nest for every 7 hens, perches of 15cm per hen and litter for scratching.

⁵⁵ Above, n 32, [2.5].

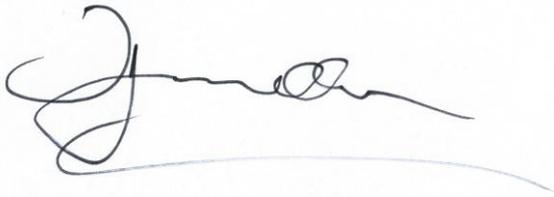
⁵⁶ Above, n 1, 13.7 and 13.8.

⁵⁷ Above, n 22, item 8, annexure.

- 15.3. The Society has previously noted the body of evidence regarding the welfare issues surrounding the practice of beak trimming.⁵⁸ The Society queries why it is proposed to change the requirement that beak trimming only be performed by veterinarians, to approve anyone perform beaking trimming provided they have “appropriate tools and methods”.⁵⁹
- 15.4. It has been an offence to conduct beak trimming in the ACT since 2014, unless performed by a veterinary surgeon for a therapeutic purpose.⁶⁰
- 15.5. The European Union provides that beak trimming may be performed by “qualified staff” and only on laying chickens less than 10 days old.⁶¹ An identical position is adopted by Canada in respect of beak trimming.⁶²

I trust these comments are of assistance. We would be pleased to provide further comment or assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Mellor', with a long horizontal flourish extending to the right.

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⁵⁸ Above, n 6, [62 (m)].

⁵⁹ Above, n 13, SA 9.14.

⁶⁰ Above, n 12, s 9C.

⁶¹ Above, n 22, item 8, annexure.

⁶² Above, n 5 [6.8].