

Submission on the Animal Welfare Standards and Guidelines for Poultry

22 February 2018

Animal Welfare Standards Public Consultation

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NSW Young Lawyers Animal Law Committee (**the Committee**) is grateful for the opportunity to make a submission to Animal Health Australia in relation to the Draft Australian Animal Welfare Standards and Guidelines for Poultry (**the Draft Standards**). The Committee considers it important that nationally-consistent and enforceable standards are in place to improve the welfare conditions of poultry used in food production in Australia.

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 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) 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 400 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 cruelty, 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 of Recommendations

Committee understands that the need for national, enforceable standards is recognised by both industry and animal protection groups. Accordingly, the Committee does not propose to elaborate on this point.

However, the Committee has serious concerns that:

- the Draft Standards will not ensure the welfare of poultry in Australia to an acceptable standard as they are intended to do; and
- the Regulatory Impact Statement (**RIS**) does not properly assess the costs and benefits of phasing out conventional or battery cages for laying hens.

The Committee addresses these points further in this submission.

Standards development process

One of the objectives of creating national and enforceable standards is to ensure community confidence in Australia's livestock industries. As recognised by the Australian Veterinary Association and the Australian Productivity Commission, industry's best defence against suggestions of animal cruelty is to demonstrate compliance with recognised, science-based, balanced and enforceable animal welfare standards.¹

The Committee is concerned the following issues undermine the credibility of the Draft Standards as a bench-mark for animal welfare:

- documents obtained under a freedom of information request by the Animal Law Institute (a not-for-profit organisation) suggest that:
 - members of the NSW Department of Primary Industries took part in meetings with poultry producers before the standards-writing process had begun to 'set the scene for SAG [stakeholder advisory group meetings]' including 'what will be accepted / not accepted';²
 - industry representatives privately met with the independent chairman of the new standards committee prior to his appointment;
 - a veterinary officer for the NSW Department of Primary Industries suggested removing the requirement that birds have 'sufficient space to stand and stretch limbs' because 'you can't do this in a battery cage';
 - the two not-for-profit animal protection organisations, Animals Australia and the RSPCA, had to pay \$3000 each to cover the costs of considering extra policy options for hen-stocking densities³
 - the standards writing process was otherwise funded by industry-stakeholders and the NSW government gave precedence to the views of 'funding partners', including in relation to whether a full and independent review of scientific literature should be undertaken;⁴
 - the NSW government was not prepared to undertake a full and independent review of scientific literature.⁵ This is particularly concerning given that the Commonwealth Government Productivity Commission final report 'Regulation of Australian Agriculture'

¹ Australian Veterinary Association submission to the Australian Productivity Commission inquiry into the regulation of Australian agriculture, as cited in Australian Productivity Commission, 'Regulation of Australian Agriculture', Report No 79, 15 November 2016, at 214.

² ABC, 'Allegations of backroom deals to keep battery hen eggs on the market', aired Thursday 21 Dec 2017.

³ Professor Thomas Clarke, who heads the Corporate Governance Research Centre at the University of Technology Sydney has been reported as saying that the practice of stakeholders having to pay for policy considerations to be heard was 'worrying' and in his experience, not consistent with the practices of accountable government. On the above-mentioned ABC 7.30 report, Professor Thomas Clarke said of the process generally, 'It looks from all appearances as an act of systematic corruption which we thought we had banished from the government in Australia...': James Thomas and Alison Branley, 'Egg farmers accused of colluding with Government department to sabotage moves to outlaw battery hens', ABC (21 Dec 2017) at <http://www.abc.net.au/news/2017-12-21/egg-farmers-accused-of-colluding-with-nsw-government/9229242>.

⁴ James Thomas and Alison Branley, note 3.

⁵ James Thomas and Alison Branley, note 3.

discussed potential bias in the scientific evidence used to inform animal welfare standards, codes and guidelines.⁶ The Western Australian Government and the Victorian Government raised concerns about the fact the NSW government was not prepared to undertake an independent review of scientific literature, and the Victorian government subsequently conducted its own review. The Committee notes that the findings of the Victorian Government's review are not reflected in the Draft Standards or the RIS (as expanded on in subsequent sections of this submission); and

- the stakeholder advisory group comprises 18 organisations, 14 of which are industry organisations and only two of which are animal protection organisations. This represents a significant imbalance of views influencing the development of the Draft Standards, a concern which has been raised by the Australian Productivity Commission but apparently not addressed.

As recognised in the RIS and by the Australian Government Productivity Commission, animal welfare and production / profitability do not always go hand-in-hand.⁷ It is possible to have a productive animal that is in a poor state of welfare.⁸ Further, some welfare measures come at a cost for producers with little or no offsetting gains to the business,⁹ meaning there can be insufficient economic incentive for a poultry farm to reduce risks to welfare.¹⁰ Given it is arguable that producers have this inherent conflict of interest, the Committee considers it is important that the NSW government implement checks and balances to ensure industry does not have a disproportionate level of influence and control over the process of revising the Draft Standards going forward.

The Draft Standards and the RIS

The Committee is concerned that the limitations in the standard-setting process discussed above have been reflected in the RIS, and as a result, some aspects of the RIS appear to reflect an industry-friendly view rather than an objective view. Given the RIS is an integral part of the public consultation process; the Committee is concerned this could skew the results of that process. For example:

- the RIS states that 'cruelty and other unlawful practices can already be prosecuted under cruelty and other offence provisions of animal welfare legislation'.¹¹ The Committee is concerned that this does not present a complete picture of the applicable legislative framework. For example, despite the preceding extract of the RIS, the RIS does not mention that animals used in agriculture generally do not benefit from animal welfare legislation, because significant exemptions exist for the treatment of

⁶ Australian Productivity Commission, note 1, p 225.

⁷ Australian Productivity Commission, note 1, p 203.

⁸ RIS, pp 45-47.

⁹ Australian Productivity Commission, note 1, p 204.

¹⁰ RIS, p 45-47. This is particularly the case given existing confusion around welfare labelling which makes it difficult for producers who adopt higher welfare measures to distinguish themselves in the market and sell their products at a premium. For example, as of 18 April 2018, producers who stock hens at densities of up to 10,000 birds per hectare can sell their eggs as 'free range' (Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017). This means that producers who stock hens at 1500 birds per hectare (which is the maximum stocking density allowed by many private free-range accreditors) and do not engage in practices such as routine beak trimming, are considered by consumers to be in the same welfare category as producers who stock their birds at densities of 10,000 birds per hectare and engage in practices such as routine beak trimming, notwithstanding the very different costs of production and welfare outcomes.

¹¹ RIS, p 29.

farm animals. Under most anti-cruelty statutes, compliance with an industry guideline (including codes of practice that the RIS recognises to be inadequate) may operate as a defence or exception from a cruelty prosecution. For example, in NSW compliance with the 'Model Code of Practice for the Welfare of Animals – Domestic Poultry' is sufficient to meet producers' obligations under the *Prevention of Cruelty to Animals Act 1979 (NSW)*;¹²

- the RIS suggests that animal welfare concerns do not arise at a systematic level, and to the extent practices need to be changed, these are only practices engaged in by a minority of producers or by rogue operators.¹³ The Committee questions the accuracy of this suggestion being made in the RIS in circumstances where most of the welfare concerns raised by RSPCA Australia and Animals Australia in their dissenting report are in relation to practices which are widespread in the industry (for example, the use of conventional or battery cages and the circumstances in which and the methods by which beak trimming can be performed);¹⁴ and
- one of the purposes of the RIS is to compare and contrast the costs and benefits of Options A to G. The Committee is concerned that the RIS does not include a fair comparison of the costs and benefits, and this could skew the results of the public consultation. Further detail on this issue is provided below in response to 'Public consultation question 1'.

The Committee is also concerned that the limitations in the standard-setting process discussed above have resulted in Draft Standards which do not adequately address animal welfare concerns. Further detail on this issue is provided below in response to Public Consultation question 10.

Public consultation question 1: Do you agree with the above summary list of the advantages and disadvantages of layer hen farming systems? Do you think that any advantages or disadvantages are missing from this list? If so, please include them in your written submission.

The Committee is concerned the RIS does not provide an accurate assessment of the advantages and disadvantages of the different layer hen farming systems. The Committee considers that the following are significant limitations in the RIS:

- The RIS does not recognise the following disadvantages associated with conventional or battery cage systems:
 - **Increased risk of diseases linked to a sedentary lifestyle.** The RIS states that the caged farming system has the lowest incidence of disease due to a high level of biosecurity and ease of system control. While this may be accurate in relation to some infectious diseases, in the Committee's view, this is not a fair representation of the advantages and disadvantages of caged systems. The RIS does not recognise the fact that caged farming systems increase the risk of certain non-infectious diseases. For example, according to the scientific literature review commissioned by the Victorian government, caged systems result in increased risk of haemorrhagic fatty liver syndrome, as the hens cannot exercise as a method for excess energy loss.¹⁵ Caged systems also increase the risk of bone disorder and

¹² Primary Industries Standing Committee Model Code of Practice for the Welfare of Animals, Domestic Poultry 4th Edition, <http://www.publish.csiro.au/Books/download.cfm?ID=3451>.

¹³ RIS, pp 31 and 51.

¹⁴ RIS, pp 25-26.

¹⁵ Agriculture Victoria, Farmed Bird Welfare Science Review (October 2017) p 38.

osteoporosis because restrictions of movement are particularly severe.¹⁶ The RIS does reference 'a greater risk of leg weakness and bone fractures ... in conventional cages than in other systems'¹⁷ but does not include the fact that these issues can result in total lameness, paralysis, collapse and death.¹⁸

- **Increased risk of fractures during depopulation.** During depopulation, birds are caught manually by their legs and, in cage systems, pulled through cage fronts before being carried by the legs in groups and placed rapidly into transport crates or modules. The considerably reduced bone strength of caged birds makes them more susceptible to sustaining fractures in their legs and wings during this process. Research has found that fractures at depopulation are nearly five times more common in hens from conventional cages than from other systems.¹⁹
- **Increased risk of abrasion and consequent feather loss.** Hens in conventional and furnished cages experience worse overall feather cover on the wings and belly due to abrasion against the sides of the cages.²⁰ The RIS does not address this risk, while emphasising the risk of feather loss due to pecking in other layer hen farming systems. The Committee is concerned this omission inaccurately represents the advantages and disadvantages of different housing systems with regard to feather loss, particularly because contemporary research suggests feather loss in cage systems is significantly greater than in free-range hens (24.7% of hens in conventional cage systems experienced feather loss compared to 15.5% of free-range hens).²¹
- **The extent of restriction on movement.** While the RIS acknowledges in the summary table that 'conventional cages provide the lowest freedom to express innate behaviours'²² this description severely understates this 'disadvantage'. At the high stocking rates and small cage sizes typical of a conventional cage, hens are effectively prevented from performing even simple locomotor and comfort movements.²³
- The RIS does not provide any comparison between conventional / battery cages and enriched / furnished cages in the summary table. The Committee considers this is a significant omission in circumstances where one of the options for consideration is the phase-out of conventional cages. Enriched or furnished cages have the following animal welfare advantages over conventional or battery cages:
 - Lower mortality rate;²⁴

¹⁶ Agriculture Victoria, note 15, pp 29 to 31.

¹⁷ RIS p 34.

¹⁸ Agriculture Victoria, note 15, pp 29 to 30.

¹⁹ Agriculture Victoria, note 15, p 31.

²⁰ Agriculture Victoria, note 15, p 35.

²¹ Agriculture Victoria, note 15, p 35.

²² RIS p 34.

²³ Agriculture Victoria, note 15, p 46.

²⁴ Agriculture Victoria, note 15, pp 26-28.

- Increased bone strength;²⁵
- Reduced vent wounds;²⁶
- Less susceptible to elongated and damaged claws;²⁷
- Less susceptible to foot damage and compromised gait sores;²⁸
- Reduced levels of stress, improved measures of immune function and stress resilience;²⁹
- Greater ability to perform behavioural activities (walking, preening, nesting, scratching, perching and social behaviour);³⁰
- Lower levels of aggression;³¹ and
- Potentially reduced levels of fear.³²

In the Committee's view, these should have been included in the summary list of advantages and disadvantages. Meanwhile, the advantages that the RIS associates with caged-systems are equally attributable to furnished cages.

- In addition, the Committee is concerned that the RIS does not distinguish between different free range systems. The term free range covers a range of production facilities, from facilities where birds are stocked at densities of below 1500 birds per hectare to facilities with stocking densities of 10,000 birds per hectare (under the National Information Standard which comes into effect on 26 April 2018). The breadth of the variability of 'free range' production systems means it is not possible to provide an accurate comparison of advantages and disadvantages between free range and other housing systems. Some of the disadvantages listed in relation to free range systems may not apply to all free range producers. Well managed and designed free range systems can produce significantly lower low-mortality outcomes.³³ In addition, incidences of injurious pecking may be minimal in housing systems with low stocking densities and where birds use the range,³⁴ or where beneficial management strategies are adopted to reduce injurious pecking (e.g. the provision of foraging materials).³⁵

²⁵ Agriculture Victoria, note 15, p 32.

²⁶ Agriculture Victoria, note 15, p 35.

²⁷ Agriculture Victoria, note 15, p 37.

²⁸ Agriculture Victoria, note 15, p 38.

²⁹ Agriculture Victoria, note 15, p 41.

³⁰ Agriculture Victoria, note 15, p 46.

³¹ Agriculture Victoria, note 15, p 46.

³² Agriculture Victoria, note 15, p 50.

³³ Agriculture Victoria, note 15, p 30.

³⁴ Agriculture Victoria, note 15, p 35.

³⁵ Agriculture Victoria, note 15, p 35-6.

Public consultation question 10: Do you think that the proposed national standards under Option C reflect community values and expectations regarding the acceptable treatment of poultry?

In the Committee's view, the Draft Standards do not reflect community values and expectations regarding the acceptable treatment of poultry. The Draft Standards allow the continuation of the following practices which, in the Committee's view, the Australian public would not consider acceptable if they were aware of them:

- **The continued use of conventional or battery cages.** As set out above, there are numerous welfare issues associated with conventional or battery cages and the research undertaken by the Victorian government suggests that any welfare advantages associated with conventional or battery cages can be achieved with enriched or furnished cages. The Committee notes that conventional cages have been banned or are being phased out in Europe, New Zealand, Canada and certain states in the United States (California, Michigan and Oregon).³⁶
- **The continued use of beak-trimming (including non-infrared beak-trimming)** coupled with a lack of any requirement to adopt less intrusive management methods to reduce incidences of pecking. The research undertaken by the Victorian government suggests that beak-trimming can have the following negative effects on bird welfare:
 - the experience of pain during the procedure;³⁷
 - the possibility of ongoing pain (if too much of the beak is removed) caused by nerve swellings (neuromas) which can last into adulthood;³⁸
 - the deprivation of important sensory feedback from beaks;³⁹
 - compromising effective preening. This can result in an increase in both lice and mite infestations;⁴⁰
 - interrupting the birds' magnetic sense (which may impact their ability to orient and navigate in non-cage systems);⁴¹
 - reduced body weight growth and reduced feed intake;⁴²
 - increased adrenocorticotrophic hormone levels in the blood;⁴³ and

³⁶ Agriculture Victoria, note 15, p 21.

³⁷ Agriculture Victoria, note 15, pp 55 and 166

³⁸ Agriculture Victoria, note 15, p 55.

³⁹ Agriculture Victoria, note 15, p 166.

⁴⁰ Agriculture Victoria, note 15, p 39.

⁴¹ Agriculture Victoria, note 15, p 52.

⁴² Agriculture Victoria, note 15, p 165.

⁴³ Agriculture Victoria, note 15, p 55.

- altered immune functions.⁴⁴

The research undertaken by the Victorian government also found hot blade beak-trimming was associated with greater animal welfare concerns (including more incidences of abnormalities and increased risk of nerve sensitisation and neuroma formation).⁴⁵ However the Draft Standards themselves do not prohibit the use of hot blade beak-trimming in favour of infrared methods (this is relegated to the guidelines).

- **The continued use of breeds with inherent genetic disorders.** The Victorian government's research suggested there are serious welfare issues for broiler chickens, primarily because of breeding selection practices:

The main causes of mortality in older broilers remain metabolic disease and (culling due to) severe lameness; both are a consequence of genetic selection for an excessive mass and unnatural body morphology, and both can, consequently, be selected against.⁴⁶

...

When broiler breeders are fed *ad libitum* they become overweight which has negative consequences for their health (including a risk of premature death). To counteract this they are subjected to severe feed restriction (especially during the rearing phase, before the birds become sexually mature). This feed restriction leads to chronic hunger, stereotypic behaviour, aggression and injurious pecking, and has clear negative effects upon broiler breeder welfare.⁴⁷

The Victorian government report concluded that to reduce these significant welfare concerns, the 'selection of birds requiring less feed restriction as future breeders should be a priority, even if this may involve a compromise in growth rate'.⁴⁸

Similar genetic issues are prevalent for turkeys. The Victorian government's research found:

Turkeys have been the subject of intense selection pressure. Rapid growth rates, disproportionate accumulation of breast tissue and heavy ultimate slaughter weights can lead to musculoskeletal problems and a range of developmental disorders. These can greatly reduce turkey welfare due to associated lameness, pain, increased susceptibility to fracture, inactivity and compromised behaviour. The use of strains with lower growth rates and improved musculoskeletal health outcomes will help to ensure good welfare.⁴⁹

The Draft Standards do not include any reference to appropriate bird / strain selection and so allow the continued use of breeds with inherent genetic disorders and consequent animal welfare issues.

⁴⁴ Agriculture Victoria, note 15, p 55.

⁴⁵ Agriculture Victoria, note 15, p 55.

⁴⁶ Agriculture Victoria, note 15, p 126.

⁴⁷ Agriculture Victoria, note 15, p 166.

⁴⁸ Agriculture Victoria, note 15, p 166.

⁴⁹ Agriculture Victoria, note 15, p 208.

- **The continued use of routine mutilations, which could be addressed through more appropriate breeding programs and environmental enrichment.** The Victorian report found that mating aggressiveness (which can involve forced copulation and over-mating and can leave females wounded and fearful of males) appears to have genetic origins and could be targeted in breeding programs, instead of routine mutilations.⁵⁰ Further, the Victorian government found limited evidence to support the use of mutilations such as toe and spur removal.⁵¹ The Draft Standards do not include any reference to appropriate bird selection and allow the continued use of toe and spur removal. Accordingly, the Draft Standards do not encourage breeders to adopt less invasive management practices and phase out routine mutilations.
- **The continued deprivation of water for ducks.** Deprivation of water is one of the biggest welfare concerns in intensive duck farming. Ducks are naturally aquatic animals and require access to water for several reasons including to take the pressure off their naturally weak leg and thigh joints.⁵² When ducks are deprived of water, they must hold their entire body weight on their legs. As a result, ducks can suffer from lameness, dislocated joints, broken bones and splay legs.⁵³ The Draft Standards do not address this issue. The Draft Standards only require that ducks be provided with facilities that allow them to dip their heads under water or with misters/showers that allow ducks to wet preen and to clean their eyes and nostrils.⁵⁴

In addition, the Victorian report prescribes several practices and measures to ensure improved animal welfare such as certain housing conditions, lighting conditions and the provision of environmental enrichment, which vary by species. The Committee is concerned that many of these recommendations are not reflected in the Draft Standards.

Public consultation question 12: Do you believe that the net benefits to poultry welfare likely to be achieved with a 10 and 20-year phase out of conventional cages under Option D, are justified? Would the combination of costs and benefits under variations of Option D be preferable to other options, either as a stand-alone option or in combination with other options?

In the Committee's view, the net benefits to poultry welfare likely to be achieved under Option D are justified. As stated above, the Committee is concerned that the summary of 'positive and negative' welfare impacts of Option D (set out in Table 27 of the RIS) is inaccurate as it compares the costs and benefits of caged and non-cage systems rather than the costs and benefits of conventional and furnished cage systems. The Committee is concerned that this could skew the results of this public consultation.

The research conducted by the Victorian government concluded:

The conventional cage system prevents birds from performing basic movements essential for good health (walking, wing stretching) and denies birds the possibility of expressing their behavioural

⁵⁰ Agriculture Victoria, note 15, p 167.

⁵¹ Agriculture Victoria, note 15, p 167.

⁵² The Humane Society of the United States, 'An HSUS Report: The Welfare of Animals in the Duck Industry' <<http://www.humanesociety.org/assets/pdfs/farm/hsus-the-welfare-of-animals-in-the-duck-industry.pdf>>; Animal Liberation, Like a duck out of water: an expose of the Australian duck industry (October 2013) 7 <http://www.aussieducks.com.au/documents/Duck_Report.pdf>.

⁵³ The Humane Society of the United States, note 52.

⁵⁴ Draft Standard SB4.4.

needs to roost, nest and forage, or their motivation to dust-bathe, due to an inherent lack of resources. Lack of exercise weakens bones which are likely to fracture during depopulation, and leads to metabolic conditions such as haemorrhagic fatty liver syndrome. Claw breakage, plumage abrasion and poor foot health are also features of conventional cage systems. The general benefits of cage systems (such as reduced contact with faecal material, parasite load, infectious disease and relatively low mortality) are largely equalled or surpassed in furnished systems. Immune function appears to be suppressed in hens housed in conventional cages compared with hens in furnished cages, and levels of aggression are higher in conventional cage systems. The welfare problems associated with conventional cages are substantial and their benefits can be achieved in other cage systems. Birds in furnished cages have stronger bones than birds in conventional cages and a lower prevalence of injury during depopulation than hens from conventional cages.⁵⁵

In the light of the objective scientific evidence, and the fact that several other countries have already made the decision to phase out conventional/battery cages, the Committee considers it uncontroversial that the net benefits to poultry welfare likely to be achieved under Option D are justified.

Concluding Comments

For the reasons set out above, the Committee is concerned that:

- the Draft Standards will not ensure the welfare of poultry in Australia to an acceptable standard; and
- the RIS does not properly assess the costs and benefits of phasing out conventional or battery cages for laying hens, and this has the potential to skew the results of the Public Consultation.

In the Committee's view, the scientific evidence suggests there should be significant changes to the Draft Standards to ensure they more adequately protect animal welfare, as they are intended to do, and to ensure that they reflect community values and expectations. In particular, in the Committee's view, the scientific evidence supports a phase out of battery or conventional cages.

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.

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⁵⁵ Agriculture Victoria, note 15, p 59.