



SUBMISSION ON THE DRAFT INDUSTRY CODE FOR GROWING FREE-RANGE EGGS IN SOUTH AUSTRALIA

20 March 2015

Voiceless Limited

ACN 108 494 631
2 Paddington Street
Paddington NSW 2021

P +61 2 9357 0703

F +61 2 9357 0711

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ABOUT VOICELESS

As an innovator, capacity builder and ideas-generator, Voiceless plays a leading role in the development of a cutting edge social justice movement, animal protection.

With a highly professional and well-educated team, Voiceless brings together like-minded compassionate Australians from the legal, academic, non-profit and education sectors to form strong and effective networks.

Voiceless believes in the provision of quality information, analysis and resources to inspire debate and discussion and to empower individuals and organisations to generate positive social change.

Voiceless is a non-profit Australian organisation established in May 2004 by father and daughter team Brian and Ondine Sherman.

To build and fortify the animal protection movement, Voiceless:

- gives grants to key projects which create the groundswell for social change;
- cultivates the animal law community through the provision of leadership, educational opportunities and resources; and
- raises awareness of animal protection issues within the education system in order to strengthen democratic skills, promote critical thinking and encourage advocacy amongst students.

PATRONS

J.M. COETZEE, Nobel Prize for Literature Winner 2003, author of 'Lives of Animals' and 'Elizabeth Costello'

BRIAN SHERMAN AM, businessman and philanthropist

DR JANE GOODALL, world-renowned primatologist and animal advocate

THE HON MICHAEL KIRBY AC CMG, former judge of the High Court of Australia

AMBASSADORS

HUGO WEAVING, Actor: Oranges and Sunshine, Last Ride, Little Fish, Lord of the Rings Trilogy, Matrix Trilogy, The Adventures of Priscilla Queen of the Desert

EMILY BARCLAY, Actor: Prime Mover, Piece of my Heart, Suburban Mayhem, In My Father's Den

ABBIE CORNISH, Actor: w.e., Suckerpunch, Limitless, Bright Star, Stop Loss, Elizabeth: The Golden Age, A Good Year, Somersault, Candy

For further information visit <http://www.voiceless.org.au>

All correspondence in relation to this submission should be directed to:

Mr Emmanuel Giuffre
Voiceless
2 Paddington Street
Paddington NSW 2021 AUSTRALIA
T: + 612 9357 0713
F: + 612 9357 0711
Email: emmanuel@voiceless.org.au

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Voiceless commends the South Australian Government on its proposal and for inviting submissions from the public. Voiceless acknowledges the draft *Fair Trading (SA Free-range Egg Industry Code) Regulations 2015* (Regulations) and draft Certified Rules are a step in the right direction.

Voiceless makes the following specific comments and/or suggested amendments to both the Regulations and the Certified Rules:

1. Fair Trading (SA Free-range Egg Industry Code) Regulations 2015

- 1.1. s 5(1) – Amend to include civil penalties for contravention of the *Animal Welfare Act 1985* (SA) and *Animal Welfare Regulations 2012* (SA); the *Australian Animal Welfare Standards and Guidelines, Land Transport of Livestock*; and the *Model Code of Practice for the Welfare of Animals, Livestock and Poultry at Slaughtering Establishments (Abattoirs, Slaughterhouses and Knackeries)*, all as amended from time to time.
- 1.2. Sch 1 s 3(b) – Amend as follows: “the egg producer complies, and continues to comply for the duration of the certification, with the certified rules for that trade mark.”

Comment: Amendment sought to clarify the Trade Mark may only be used where producers have consistently complied with the Regulations and Certified Rules, and to ensure producers remain vigilant with the production methods used on foods marketed to consumers as certification compliant for the duration of certification.

2. Draft Certified Rules

- 2.1. r 5(e) – Amend as follows: “will abide by these Certified Rules and the Standards, and continue to comply with these Certified Rules and Standards for the duration of the certification.”

Comment: See comment at para 1.2 above.

- 2.2. r 6 – Amend to clarify that the alternative accreditation scheme must impose welfare standards of an equal or higher standard than that which is proscribed by the Certified Rules and Standards. The Rule should clarify that the auditing requirements under the alternative accreditation must also be as stringent or more stringent to those prescribed under the Certified Rules.
- 2.3. rr 6, 8, 28, 29, 33 and 35 – Amend to replace the South Australian Department of Primary Industries and Regions (PIRSA) with an auditor that is independent from government and industry.

Comment: Voiceless considers an auditing body, independent of the South Australian Government and industry, should be engaged to undertake auditing of certified facilities. This will ensure the South Australian Government does not come under political pressure from either individual producers, industry or the broader farming community should it be

required to strictly enforce the terms of the scheme. To avoid any potential conflict of interest (either real or perceived by consumers), Voiceless considers it inappropriate for an industry-appointed auditor to perform this function.

- 2.4. rr 12 and 13 – Amend to make clear the producer may not make use of the Trade Mark on any products that were not produced in compliance with the Certified Rules and Standards.

Comment: Voiceless notes that there is a 60 day transitional period (Rule 13), at the expiry of which, the producer must ensure the Trade Mark is not used on future products. However, the provision does not expressly make clear that the producer is not permitted to use the Trade Mark on products that were not produced in accordance with the Certified Rules and Standards during this period. While this obligation may be implicit, Voiceless believes further clarity is required.

- 2.5. r 14 – Amend as follows: “...the Commissioner in his absolute discretion may (subject to Rule 37);”

Comment: Consequential amendment given Voiceless’s suggested amendments to Rule 37 (provided at paras 2.11- 2.13). In the case of a Major Non-Compliance, we have suggested any breach of the welfare Standards should constitute a Major Non-Compliance, and the Commissioner **must** suspend the Certification of the egg producer in the case of all Major Non-Compliance, thereby triggering the audit/rectification process under Rule 37. Refer to our suggested amendments in paras 2.11-2.13 below.

- 2.6. r 14 – Add new Rule 14 (g) as follows: “impose a civil penalty pursuant to s 5(1) Fair Trading (SA Free-range Industry Code) Regulations 2015.”

- 2.7. r 15 (j) – Amend as follows: “to advise the Commissioner in writing of any matter which may ~~have a material~~ impact on the egg producer’s compliance with the Certified Rules and Standards and/or eligibility for Certification or its continuance.”

Comment: The auditor ought to be responsible for determining whether any matter is material and has the potential to impact on the eggs producer’s compliance with certification. If left to the producer, potentially serious contraventions will likely be downgraded and will not come to the attention of the auditor.

- 2.8. r 19 – Amend as follows: “The SA Free-Range Egg Certification Trade Mark may not be applied in any manner that relates to a service or product to which the Certification does not apply, or which is in any way non-compliant with these Certified Rules and Standards.”

- 2.9. r 29 – Correction of typo as follows: “(see Rule ~~38~~ 39).”

- 2.10. rr 34 and 35 – Voiceless suggests random visits must be undertaken twice annually, and these should be unplanned and unannounced, so that egg producers will not have the

opportunity to rectify any non-compliances prior to audit. In this way, we would argue that random audits are more important to ensuring compliance than planned audits. These random audits should be in addition to planned audits, which we recommend should also be undertaken at least twice annually.

- 2.11. r 37 – Amend as follows: “The Commissioner ~~may (in his or her absolute discretion)~~ must also suspend the Certification of the egg producer.”

Comment: We believe the above suggested amendment is reasonable, particularly given the welfare Standards imposed are already quite lenient and compliance should not be onerous on genuine free-range producers. Further, the Certified Rules already make provision for “Minor Non-Compliances”. The Certified Rules must provide sufficient protection for consumers who are relying upon the scheme. Allowing producers to continue to use the Trade Mark, despite a Major Non-Compliance, both undermines the integrity of the Certified Rules and has the potential to expose both the producer and (quite possibly) the certifier to liability for misleading and deceptive representations under relevant consumer protection legislation.

- 2.12. r 37 – Amend to provide an obligation to notify consumers of any Major Non-Compliances on the public register on the Commissioner’s website and, if deemed necessary by the Commissioner, to require the producer to recall products so as not to mislead or deceive consumers. Again, this amendment is necessary from a consumer protection perspective, and to ensure both the producer and potentially the certifier are not open to liability under relevant consumer protection legislation.

- 2.13. r 39 – Amend to make clear that *any* contravention of the welfare Standards will constitute a Major Non-Compliance.

Comment: As per our comments at para 2.11, given the welfare Standards imposed are already quite lenient, compliance should not be onerous on genuine free-range producers. Further, a breach of the Standards would reasonably be considered by consumers as a major breach of the certification scheme, and consumers would expect appropriate enforcement and/or rectification action to be taken in these circumstances.

- 2.14. r 41 – the public register could also include information on where the product is available for purchase. As discussed, the Rule should also be amended to ensure that the register is updated whenever there is a notification of a Major Non-Compliance.

- 2.15. Add new Rule – Voiceless recommends the inclusion of a new Rule which states, for the avoidance of doubt, that producers must comply, as a condition of certification, with the following: the *Animal Welfare Act 1985 (SA)* and *Animal Welfare Regulations 2012 (SA)*; the *Australian Animal Welfare Standards and Guidelines, Land Transport of Livestock*; and the *Model Code of Practice for the Welfare of Animals, Livestock and Poultry at Slaughtering Establishments (Abattoirs, Slaughterhouses and Knackeries)*, all as amended from time to time.

- 2.16. Add new Rule – Voiceless recommends the inclusion of a new Rule which states, for the avoidance of doubt, where there is an inconsistency between the Regulations and Certified Rules and any legislation, or any of the standards, guidelines or codes of practice outlined in the proposed amendment noted in para 2.15, the higher standard will apply.
- 2.17. Add new Rule - Voiceless recommends the inclusion of a new Rule which states that the Commissioner should have processes in place to allow for animal welfare organisations, veterinary groups and other members of the general public to lodge a complaint about a producer accredited under the Code. An Inspector should immediately investigate the complaint and determine whether there has been any Code non-compliance.

3. Draft Certified Rules – Standards

- 3.1. Paragraph 3 – amend numbering typo (there is no paragraph 2 in the Schedule).
- 3.2. Voiceless refers to its submission dated 15 July 2013 entitled “Submission on the proposed Industry Code for Growing Free-range Eggs in South Australia” (**Voiceless Submission 2013**), which is attached for your consideration. Voiceless refers specifically to the suggested welfare standards which we provided in sections 3 and 4 of the Voiceless Submission 2013, and recommend these be incorporated into the Standards. In particular, Voiceless recommends the following must be included into the Standards, as they are critical to ensuring hen welfare and consumers would reasonably expect these standards to be included in any genuine free-range accreditation scheme:
 - 3.2.1. Barn stocking densities must not exceed 5 hens (approx. 10kg) per square metre of usable space and flocks must not exceed 1000 hens per barn.
 - 3.2.2. All hens must be allowed to practise their normal behaviours without interference. This includes, but is not limited to, dust-bathing, scratching, stretching, wing-flapping, grooming, grazing, foraging, nesting and perching.
 - 3.2.3. Each hen house must have enough exit areas on each side of the house to give all hens ready access to the outdoors and so that all hens are able to enter and leave the house freely without obstruction.
 - 3.2.4. Housing must contain sufficient perches to enable all hens to comfortably perch at the same time. Perches must be positioned to prevent fouling on other hens.
 - 3.2.5. All hen mutilation practices are prohibited. These practices include, but are not limited to, beak trimming, wing clipping, toe trimming, devoicing or dubbing of hens.
 - 3.2.6. The tethering of hens or the confinement of hens to cages (or any similar confinement apparatus) is prohibited for any given period of time.
 - 3.2.7. The use of ‘poly-peepers’ is prohibited.

- 3.2.8. The use of antibiotics is only permitted when hens are under veterinary care. Eggs laid by hens which have been treated with antibiotics are to be immediately withdrawn from sale.
- 3.2.9. Injured or sick hens must be isolated from the rest of the flock, must be treated without delay and veterinary treatment must not be withheld. Parasites, both internal and external, must be treated promptly. Every effort must be made to minimise parasite infestations.
- 3.2.10. Mortality rates must be recorded on a daily basis. Code compliance officers must be informed if the mortality rate exceeds 0.5% in a 7 day period. In these circumstances, immediate remedial action must be taken.
- 3.2.11. Transport vehicles must be of suitable size to prevent overcrowding, damage and/or bruising.
- 3.2.12. Birds must not be lifted by their tail feathers or wings.
- 3.2.13. Unfit birds must not be transported.

Respectfully submitted by Emmanuel Giuffre, Legal Counsel, Voiceless