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23 April 2008

Dear Committee Members

Senate Inquiry into Meat Marketing

I am writing to you in relation to the Senate Inquiry into Meat Marketing which was referred to the Standing Committee on Rural and Regional Affairs and Transport on 19 March 2008 (**the Inquiry**). Please note that this letter and its attachments are intended to serve as Voiceless's submission to the Inquiry.

In May 2007 Voiceless produced a major report on the issue of animal-derived food product labelling entitled, *From Label to Liable: Scams, Scandals and Secrecy; Lifting the Veil on Animal-Derived Food Product Labelling in Australia* (**the Report**), a copy of which is **enclosed** for your information. The Report examines the labelling of animal-derived food products in Australia and ultimately concludes that the current labelling regime is largely failing consumers.

As you will see, the Report covers a number of important aspects of the labelling of animal-derived food products. Bearing in mind the Terms of Reference of the Inquiry, of particular relevance are the following key findings from the Report:

- The majority of Australia's animal-derived food products, which include meat products such as pork and chicken, are sourced from factory farms, in which animals endure a life of institutionalised cruelty.
- If a product label does not refer to a farm production method, there is a strong likelihood that its contents have been sourced from a factory farm.
- While Australia has consumer protection laws and food safety laws which cover many aspects of food labelling, there is **no federal legislation** which requires production systems for animal-derived food products such as meat, to be identified on product labels.

- Ambiguously worded food labels such as 'farm fresh' or 'naturally perfect' reinforce the likelihood of consumers being misled as to the true origin of the product.
- A number of terms are currently used to differentiate animal products. These include free range, organic free range, select free range, bred free-range, barn raised, grain-fed, corn-fed, organic and biodynamic. Most of these terms are not defined in legislation, which means there is broad scope for consumer uncertainty as to their meaning.
- Codes of practice and industry or third party accreditation schemes have emerged to address consumer concerns about the treatment of farm animals. However, these schemes do not offer uniform animal protection standards and consumers may place too much emphasis on their animal welfare claims.

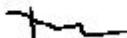
In summary, *From Label to Liable* makes clear that the present regime for the labelling of animal-derived food products is limiting the ability of consumers to make informed and ethical food choices. By corollary, this includes the branding and marketing of meat. In Voiceless's submission, the Committee is in a unique position to influence the development of policies and regulations concerning this issue. I urge you to give serious consideration to the introduction of a mandatory labelling regime for animal-derived food products, including meat. These laws should be seen as the next step in truth-in-labelling following the introduction of labelling of genetically modified organisms (GMOs) in 2001 and Country of Origin standards for labelling in 2005.

I hope you find the information contained in our Report useful and that you will consider it in relation to the Inquiry.

I also take this opportunity to **enclose** a copy of an article by Voiceless's Corporate Counsel, Katrina Sharman, regarding the issue of food labelling. The article has been published in the latest edition of the Australian Law Reform Commission's highly-regarded Journal 'Reform'.

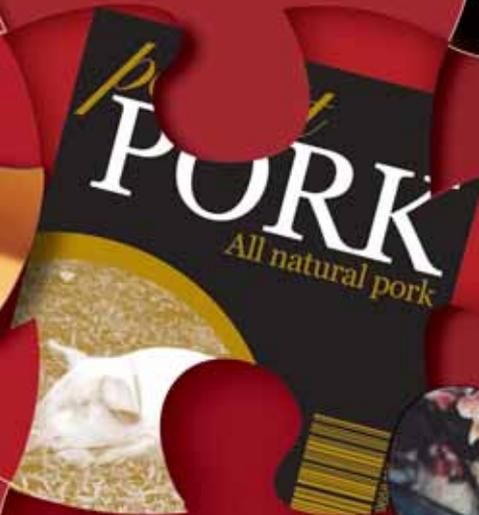
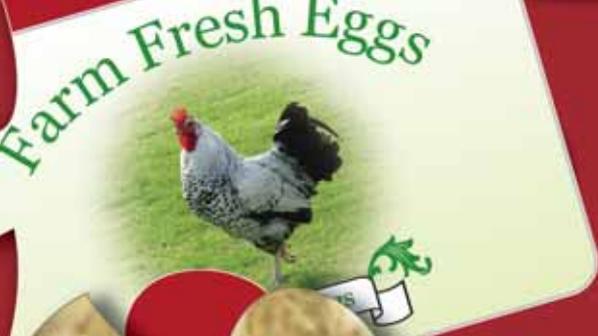
Should you wish to explore these issues further, or should you require further information, I would be delighted to discuss this matter with you at any time. To arrange a meeting, please contact me on (02) 9357 0777 or Katrina Sharman, on (02) 9357 0713 or by e.mail at ksharman@voiceless.org.au

Yours sincerely



Brian Sherman AM
Director

enclosure



From Label to Liable:

Scams, Scandals and Secrecy

Lifting the Veil on Animal-Derived Food Product Labelling in Australia

A report prepared by Voiceless, May 2007





ABOUT VOICELESS

Voiceless is a non profit Australian organisation established in 2004 by father and daughter team Brian Sherman AM and Ondine Sherman. Voiceless's mission is to promote respect and compassion for animals, increase awareness of the conditions in which they live and take action to protect animals from suffering.

Its aims are to:

1. give grants to organisations that share its vision;
2. educate Australians and in particular young Australians; and
3. work to modify or create legislation and policies to protect animals.

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Nobel Prize for Literature Winner 2003 and author of 'Lives of Animals' and 'Elizabeth Costello'

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For further information visit www.voiceless.org.au

This report has been written by Katrina Sharman with editorial and research support from Brian Sherman AM and Ondine Sherman. Special acknowledgements to Daniel Webster, Emma Bull, Elaine Morris, Elizabeth Usher and Caroline Hoetzer for their assistance in the preparation of this report.

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From Label To Liable: Lifting the Veil on Animal-Derived Food Product Labelling in Australia

Food. It's the subject of art, conversation, politics and poetry – an essential element to sustain life. We are constantly being told that 'we are what we eat'; yet as we dip into our supermarket freezers and reach for that neatly packaged pizza or chicken breast, how many of us pause to consider exactly where it came from?

The nature of food production, especially the manufacturing of animal-derived food products, has changed dramatically over the last few decades as producers compete on cost, scale and efficiency to meet growing consumer demand. This largely unseen 'food revolution'¹ has transformed the lives of more than 540 million farm animals who produce or comprise the core ingredients of Australia's most popular meals.²

The days in which farm animals grazed in open fields and carried out natural behaviours such as dust bathing and foraging in dirt and grass have long departed. Most of their complex social interactions and nurturing instincts such as building nests and raising their young are now denied, with the bulk of animals in Australia (and indeed around the world) suffering behind closed doors in large industrial facilities known as 'factory farms'.

Hundreds of millions of pigs and chickens across our continent now spend their lives confined in cages or crammed together in giant factory farms. They never see the sun or feel the grass or dirt under their feet. Large numbers of animals are denied access to basic natural materials such as sand and straw and live their 'productive' lives surrounded by concrete and steel. Many are routinely mutilated with no pain relief or dosed with antibiotics to ensure that their overcrowded and stressful living conditions do not lead to self-mutilation, injuries or outbreaks of disease.

On the other side of the paddock, many farm animals who have traditionally been raised outdoors, including millions of cows (and increasingly, sheep) now spend a significant part of their lives in crowded, barren and filthy feedlots³ with thousands of others.⁴ Condemned to confinement, these complex, social and intelligent animals are unable to graze or express many of their normal behaviours.⁵ They too, are part of a factory farming process designed to carry them from 'factory to fork' with maximum efficiency and minimum welfare.

Factory farming is hidden from the public eye, unknown to many consumers who still believe that animals are raised on 'Old McDonald's farm'. It is quietly sanctioned by a legal system which permits the use of many inhumane practices to raise animals for meat, eggs and dairy products. Savvy producers have utilised this veil of secrecy by hiding behind rustic marketing imagery, sanitised packaging and feel-good labels like 'farm fresh'.

Things however, are about to change. The days of unconstrained, unseen factory farming are over. In recent times, the veil of secrecy has been lifted by a range of events – including the work of animal protection groups and an increased focus on the environmental and human health effects of factory farming. An ethical

* All references to internet webpages are valid at <6 March 2007> unless otherwise stated.

- 1 John Robbins, *The Food Revolution: How Your Diet Can Help Save Your Life and the World* (2001).
- 2 Comprised of 419 million poultry, 94 million sheep, 24.1 million cattle, 2.55 million pigs; See Department of Agriculture, Fisheries and Forestry, Commonwealth Government, *Australian Agriculture and Food Sector Stocktake* (2005).
- 3 Farm Sanctuary, *The Welfare of Cattle in Beef Production*, 2 <<http://www.farmsanctuary.org/campaign/beef.pdf>>.
- 4 Garry Griffith, Anna Coddington & Scott Murdoch, *Beef Feedlot Supply Response in Australia* (2004) 12 *Agribusiness Review* <<http://www.agrifood.info/review/2004/Griffith.html>>.
- 5 'Producers Turning to Feedlots', *Landline*, 12 June 2005 <<http://www.abc.net.au/landline/content/2005/s1385270.htm>>.

food movement is emerging in Australia and overseas and with it, consumers are dictating a new course in food production.

Prompted by a torrent of media and literary debate, consumers are increasingly calling for the right to make informed food choices. Inherent in this call is the demand for truth in food labelling. To date, Australian producers have responded to changing consumer sentiment by eagerly embracing third party certification programs promising 'free-range' and 'organic' standards, as well as a number of animal industry accreditation schemes. However, in the absence of a legislative regime for labelling animal-derived food products, these programs provide limited assurance to consumers who may be deceived by feel-good marketing images and labels implying high animal welfare standards.

This Report has been produced by Voiceless to highlight the inadequacies in the current system of labelling animal-derived food products in Australia. It surveys the existing voluntary labelling regimes and highlights international trends towards mandatory labelling.

We believe this Report will encourage consumers to consider how their food travels from 'farm to fork'. We hope that it will lead lawmakers to make the changes necessary to ensure that consumers have the ability to make animal-friendly choices at the supermarket.

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This report has been produced by Voiceless and endorsed by:

Animals Australia

Compassion In World Farming (CIWF)

World Society for the Protection of Animals (WSPA)

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I. EXECUTIVE SUMMARY

Millions of animals in Australia today are raised in factory farms, in cages of steel and cement, to satisfy the demands of consumers who are mostly unaware of the pain and suffering behind their food choices.

However the veil of secrecy which has shielded generations of consumers from the truth about animal-derived food products is now being lifted. Australians, like other members of the global community, have been appalled to learn of the cruelty associated with products such as factory farmed meat, dairy and egg products. Consequently, increasing numbers of consumers are saying 'no to animal suffering' by voting for humanely produced products at the supermarket, or abstaining from animal-derived food products altogether.

This Report examines the labelling of animal-derived food products in Australia and demonstrates that the current labelling regime is largely failing consumers. The absence of uniform, enforceable laws requiring the labelling of animal products by production system has led to the proliferation of third party labelling schemes and the abuse of consumer goodwill by savvy marketers. A number of scams and scandals in Australia and overseas have heightened consumer mistrust and scepticism.

If the Australian Government is committed to enabling consumers to make informed food choices, it must give serious and immediate consideration to implementing a regulatory scheme for the labelling of animal-derived food products. Only then, will Australian consumers be able to change the lives of millions of animals by taking a meaningful stand against institutionalised cruelty.

SUMMARY OF FACTS:

Animal Protection and the New Consumer Revolution

- More than 540 million farm animals are raised in Australia every year for food or food production purposes. The overwhelming majority of these animals spend their lives suffering in factory

farms, confined indoors in cages or stalls and subjected to mutilations without pain relief.

- The suffering of farm animals has traditionally occurred behind closed doors; however in recent times public awareness about the suffering of animals has increased. This has led to marked changes in the community's attitudes towards animals.
- The animal protection movement is now comparable in force to the environmental protection movement 20 years ago.
- Animal protection has become an international social justice movement. This is demonstrated by the use of animal welfare as a successful political platform.
- Increased awareness about the suffering of farm or 'production' animals has prompted a 'seismic shift' in public attitudes.
- Across the globe, producers and retailers are responding to consumer demand by adapting their product lines to include humanely produced animal products. Large corporations and educational institutions are also introducing 'cage-free' dining facilities.
- Demand for free-range and organic products is exploding, as are vegetarian and vegan product lines.

Lifting the veil of secrecy

- A veil of secrecy shields consumers from the truth about how animals are raised for food in factory farms.
- Marketers use positive imagery on animal-derived food products encouraging consumers to disassociate products from the horrendous reality of factory-farming.
- Ambiguously worded food labels such as 'farm fresh' or 'naturally perfect' reinforce the likelihood of consumers being misled as to the true origin of the product.

Introducing Truth in Labelling

- In order to make informed decisions, consumers need information about the production systems



from which animal-derived food products are sourced.

- If a product label is silent as to its farm production method, there is a strong likelihood that it has been sourced from a factory farmed animal.
- There are a number of terms currently used to differentiate the source of animal products. These include caged/battery eggs, barn laid eggs, free-range eggs, open-range or range eggs, grain fed, free-range, bred free-range, organic and biodynamic.
- Most of these commonly accepted terms are not defined in legislation, which means there is broad scope for consumer uncertainty as to their true meaning.
- Different production systems impose varying degrees of suffering on animals, ranging from factory farming systems such as caged/battery eggs and grain fed which cause substantial emotional and psychological suffering, to organic systems which cause less suffering.

Labelling of Animal Derived Food Products in Australia

- Although current laws require certain information about animal-derived food products to be disclosed on product labels, the Australian Capital Territory and Tasmania are the only jurisdictions that expressly require production systems to be identified. Their production system labelling requirements are limited to eggs.
- In the absence of mandatory labelling legislation, consumer protection laws have an important role to play in encouraging responsible labelling of animal-derived food products.
- Food labelling laws also facilitate truth in labelling; however these laws are no substitute for a mandatory labelling regime linked to animal production systems.
- In the absence of a mandatory labelling scheme, a number of voluntary third party certification and animal industry quality assurance schemes have emerged to profit from consumer concern for animals in the marketplace.

- These schemes apply a variety of standards and consumers may, in some cases, overstate the significance of their animal welfare claims.

Animal Welfare Labelling- An International Overview

- The European Union (EU) is demonstrating world leadership in mandatory labelling of animal-derived food products, having introduced mandatory labelling of egg production systems in 2004. The EU is also contemplating introducing an 'EU Animal Welfare Label' in the next five years.
- Switzerland has banned the domestic production of battery eggs. Battery eggs are only permitted to be imported when they are marked with the words 'Produced in battery cages, which are not permitted in Switzerland'.
- Mandatory labelling may face a challenge as a breach of World Trade Organisation (WTO) rules. This has not yet occurred in respect of EU mandatory egg labelling; however if it were to occur, there appear to be a number of justifications available under international trade instruments which would exempt mandatory labelling from being classified as discriminatory treatment.

Labelling Scams and Scandals

- The absence of a mandatory labelling regime for animal-derived food products has prompted concerns about the presence of specious standards and the widespread deception of consumers both in Australia and overseas.
- Recent allegations concerning the mislabelling of free-range eggs in Australia highlight the limitations of current reactionary laws.
- Imprecise definitions of production methods facilitated the avoidance of penalty by a New Zealand producer in relation to its use of the term 'barn raised'.
- A US-based organisation, Compassion Over Killing, was successful in its proceedings to remove use of the label 'Animal Care Certified' on eggs produced in battery cages.

- People for the Ethical Treatment of Animals was denied its claim for misleading advertising of dairy products as the respondent in the matter was not a legal person for the purpose of the relevant legislation.
- Third party vegetarian and vegan certification schemes have arisen to offer comfort to consumers that they are making an informed choice; however these are no substitute for a regulatory regime that clearly identifies vegetarian and vegan food products.

What Consumers Want

- Animal-derived food product labels should be limited to a few words defined in legislation and linked to uniform animal protection standards.
- Terms such as ‘caged’, ‘bred free-range’ or ‘free-range’ are currently of limited value as they are neither defined in legislation nor linked to enforceable standards.
- A ‘traffic light’ labelling system could be implemented to differentiate between low, medium and high levels of animal welfare. However in order to be effective it would need to be linked to clearly understood, enforceable standards.
- Manufacturers can be quick to exploit consumer uncertainty in the name of good animal welfare where strict standards are not in place.
- The placement of photos or images of animals in battery cages and sow stalls on products such as caged eggs or factory farmed ham and pork products would help eradicate confusion brought about by misleading labelling or insufficiently clear terms.

Vegetarianism, Veganism and Hidden Animal Products

- There are no enforceable standards in Australia which require the labelling of vegetarian or vegan products.
- Certain producers attempt to attract vegetarian and vegan consumers with labelling reading ‘suitable for vegetarians and vegans’.
- Many people with vegetarian and vegan dietary requirements inadvertently purchase animal-derived food products.
- The failure to include information stating that a product contains animal by-products undermines a consumer’s moral or health choice to be vegetarian or vegan.



2. ANIMAL PROTECTION AND THE NEW CONSUMER REVOLUTION

I. A growing movement

a) Each year more than 540 million farm animals are raised in Australia for food or food production purposes. Most of these animals never live to see the sun or feel the earth under their feet. The overwhelming majority spend their lives confined indoors, where they are denied their natural behaviours and interactions and are subject to mutilations without pain relief.

b) Until recently, the suffering of farm animals has largely occurred behind closed doors; however in recent times public awareness about the suffering of animals has increased. This has led to marked changes in the community's attitudes towards animals.

c) The animal protection movement has been growing in size and legitimacy, both in Australia and around the world. It is now comparable in force to the environmental movement 20 years ago. Back then, environmentalists were considered 'radical greenies'. Today, almost 3 million Australians donate time or money to help protect the environment and 89% of Australians purchase environmentally friendly products.⁶

d) The animal protection movement is following suit and animal protection is becoming a concern of many mainstream Australians. For example, Australia's peak animal protection body, Animals Australia, has experienced more than 400% growth in its support base in the past three years.⁷ Other indicators that public perceptions of animals are changing include:

i) A survey carried out by Roy Morgan Research revealed that the percentage of Australians who consider animal welfare and cruelty to animals to be an important social issue increased from 29% to 54% between 1994 and 2000.⁸

ii) In the 2005-06 budget, the Federal Government allocated \$6 million to the implementation of an Australian Animal Welfare Strategy,⁹ designed to achieve an enhanced national approach to animal welfare.¹⁰

iii) In the 2006-07 budget, the Federal Government introduced legislation intended to create a new deductible gift recipient category for animal welfare.¹¹

iv) In a 2006 national survey, participants identified factory farming practices and treatment of livestock as amongst the most prominent issues in Australian animal welfare.¹²

e) This change in public sentiment towards the suffering of animals is not confined to Australia. In fact, support for the animal protection movement is gathering momentum well beyond our shores. For example:

i) North America's largest and most powerful animal protection organisation, The Humane Society of the United States (HSUS), has nearly 10 million members.¹³ It seeks to create meaningful social change for animals and to fight cruelty and animal abuse in all its forms through education, litigation and lobbying.¹⁴

6 Australian Bureau of Statistics, *Environmental Issues: People's Views and Practices*, 24 November 2004 <<http://www.abs.gov.au/ausstats>>.

7 Glenys Oogies, Executive Director, Animals Australia, *pers comm*, 15 December 2006.

8 Meat and Livestock Australia, *Animal Welfare Issues Survey 2000*, March 2002, 6.

9 Department of Agriculture, Fisheries and Forestry, Commonwealth Government, *National Implementation Plan of the Australian Animal Welfare Strategy*, (2006) <http://www.affa.gov.au/corporate_docs/publications/pdf/animalplanthealth/animal_welfare/aaws_implementation_april06.pdf>.

10 Department of Agriculture, Fisheries and Forestry, Commonwealth Government, *Australian Animal Welfare Strategy*, (2005) <http://www.affa.gov.au/corporate_docs/publications/pdf/animalplanthealth/animal_welfare/Aaw_Strategy_Final.pdf>.

11 Although this legislation was not intended to enable all animal protection organisations to attract funds from individuals and family foundations (registered as prescribed private funds), its introduction indicates that the government is increasingly willing to recognise the community's interest in animal welfare. See *Tax Laws Amendment (Measures No. 3) Bill 2006*, Item 4.1.6.

12 TNS Social Research Consultants, *Attitudes Toward Animal Welfare*, July 2006, 3.2.

13 The Humane Society of the United States, *About Us* <http://www.hsus.org/about_us/>.

14 *Ibid*.

ii) *The World Society for the Protection of Animals* (WSPA), which is the world's largest network of animal protection societies, has more than 770 member organisations in 147 countries.¹⁵ WSPA is currently acting as Secretariat for the inter-governmental steering committee of the initiative to achieve a *Universal Declaration on Animal Welfare*. This initiative aims to achieve global consideration of the welfare of sentient animals and recognition of animal welfare as an issue of importance as part of the social development of nations worldwide. At the time this Report was prepared, more than 500,000 people had signed an online petition in favour of the Declaration.¹⁶

iii) A recent EU survey found that 63% of people believe that the level of welfare/protection of farm animals is "very poor" or "poor" and 88% believed that more needs to be done to improve the level of welfare/protection of farm animals.¹⁷ In March 2007, a further survey revealed that 62% of all Europeans would be willing to change their usual place of shopping in order to buy more animal friendly food products.¹⁸

iv) In November 2006, a political party known as The Party for the Animals (Partij voor de Dieren) won two seats in the Netherlands parliament.¹⁹ The party, which has prompted the establishment of a political party known as 'Animals Count' in the United Kingdom,²⁰ is the first political party in the world to have parliamentary representatives elected solely on the basis of an animal welfare agenda.

II. Signs of a consumer revolution

a) A seemingly small change in public attitudes can often lead to a societal 'seismic shift'.²¹ The current shift in community sentiment towards farm or 'production' animals is one such example. It is evidenced by an increase in media speculation, literature, public debate and discussion about ethical eating in the national and international press.²² It marks the beginning of a consumer movement against the unseen and unconscionable treatment of animals.

b) Across the globe, consumers are empowering themselves to effect social change by voting with their wallets. This is manifesting itself in increased demand for humanely produced food and for alternatives to animal-derived food products. The following are some unequivocal signs of the new 'demand-led' revolution.

c) Europe

- i) In a recent European Union study:
 1. 75% of participants indicated that they believe they can influence animal welfare through what they choose to buy;²³
 2. 57% of participants indicated that they would be willing to pay more for eggs sourced from animal welfare friendly systems.²⁴
- ii) In recognition of changing consumer expectations, the EU has recently implemented a major overhaul of food laws and control systems to guarantee food safety and uphold the informed choice of consumers.²⁵

15 WSPA is represented on numerous international bodies and also has consultative status at the United Nations and the Council of Europe: See World Society for the Protection of Animals, *About Us* <<http://www.wspa-international.org/about.asp>>.

16 World Society for the Protection of Animals, *Animals Matter to Me* <<http://www.animalsmatter.org/default.asp>>.

17 Special Eurobarometer, *Attitudes of Consumers Towards the Welfare of Farmed Animals*, June 2005 <http://ec.europa.eu/food/animal/welfare/euro_barometer25_en.pdf>.

18 Special Eurobarometer, *Attitudes of EU Citizens Towards Animal Welfare*, March 2007, 38 <http://ec.europa.eu/food/animal/welfare/survey/sp_barometer_aw_en.pdf>.

19 Kies Partij Voor de Dieren, *Party for the Animals Gains 2 Parliamentary Seats in the Netherlands*, 23 November 2006 <<http://www.partijvoordedieren.nl/content/view/129>>.

20 Animals Count, *Launch Animals Count Major Success* <http://www.animalscount.org/launch_animals_count_major_success.html>.

21 Commission of the European Communities, *Commission Working Document on a Community Action Plan on the Protection and Welfare of Animals 2006-2010*, 23 January 2006, 11 <http://ec.europa.eu/food/animal/welfare/work_doc_strategic_basis230106_en.pdf>.

22 'So, Just How Unethical is Your Supper? What Joanna Blythman Won't Eat', *Observer Food Monthly*, 20 August 2006; Michael Harden, 'Hard to Swallow', *The Age* (Melbourne), 22 August 2006; 'Voting with their Forks', *Los Angeles Times* (Los Angeles), 16 August 2006. Peter Singer and Jim Mason, *The Ethics of What We Eat: Why Our Food Choices Matter* (Rodale Books, 2006) and Michael Pollan, *The Omnivore's Dilemma: A Natural History of Four Meals* (The Penguin Press, 2006) provide opportunities for consumers to re-engage with where their food comes from, what they are putting into their bodies and how much the cheap food they are buying actually costs.

23 Special Eurobarometer, *Attitudes of Consumers towards the Welfare of Farmed Animals*, above n 17, 46.

24 *Ibid*, 51.

25 Health and Consumer Voice Newsletter from European Commission's Health and Consumer Protection DG, *Commission Adopts Communication on Better Training for Safer Food*, November 2006 <http://ec.europa.eu/dgs/health_consumer/consumervoice/cvsp_112006_en.pdf>.



d) United Kingdom

- i) Recent surveys reveal that 55% of people would pay more for food produced by companies with a good animal welfare record²⁶ and 82% of adults would like to see a return to more traditional methods of farming, even if this means paying more for food;²⁷
- ii) Sales of organic, free-range and Fairtrade²⁸ foods in the UK have surged 62% in the past 4 years.²⁹
- iii) Sales of meat from free-range chickens are growing at 10 times the rate of sales of meat from chickens raised on factory farms.³⁰
- iv) Freedom Food, the only assurance scheme in the UK solely dedicated to animal welfare, has experienced significant growth in the last two years. The scheme now accounts for 90% of free-range egg sales and has also recorded more than 160% growth in its sales of chicken meat.³¹
- v) Ethical spending on food topped £4bn (AUS \$9.9bn) in 2004 and has increased substantially since. According to a senior economist with the UK Meat and Livestock Commission, 'consumers are more concerned about food production than ever before and farmers and growers are responding accordingly'.³²

e) North America

- i) In March 2006, Dartmouth College (New Hampshire) became the first Ivy League

institution to adopt a cage-free dining policy. It joined more than 80 colleges in the US promoting a 'cage-free campus',³³ including some of the country's largest universities such as the University of Wisconsin, Madison.³⁴ Additionally, in Canada a premier agricultural university, the University of Guelph, has switched to cage-free eggs with additional costs voluntarily covered by staff and students.³⁵

- ii) A growing number of corporate dining facilities across the USA have also introduced cage-free policies. Some of the better known 'cage-free companies' include: America Online (AOL)³⁶ and Google.³⁷ Major food service providers are also introducing their clients to the concept of cruelty-free cafeterias. For example, Bon Appetit,³⁸ which services approximately 400 cafes for major corporations including Yahoo!, Oracle Corp., Cisco Systems, Adidas, Best Buy, and Nordstrom, has a cage-free policy.³⁹

- iii) In January 2007, the world's largest pork producer, Smithfield Foods, which raises 14 million pigs every year, announced that it would phase out sow stalls over the next decade.⁴⁰ The decision, which was quickly followed by Canadian producer, Maple Leaf Foods,⁴¹ was reportedly a response to concerns raised by purchasers such as McDonald's and several leading supermarket chains.⁴²

26 Waitrose, *Corporate Social Responsibility Report* (2006), 8 <<http://www.johnlewispartnership.co.uk/Display.aspx?MasterId=81f00253-1639-4749-a590-d2cd32540b62&NavigationId=613>> at 5 February 2007.

27 Phil Macnaghten, *Animal Futures: Public Attitudes and Sensibilities Towards Animals and Biotechnology in Contemporary Britain: A Report by the Institute for Environment, Philosophy and Public Policy for the Agricultural and Environmental Biotechnology Commission*, October 2001, 46 <http://www.aebc.gov.uk/aebc/pdf/macnaghten_animals_futures.pdf>.

28 Fairtrade, *What is Fairtrade* <http://www.fairtrade.org.uk/about_what_is_fairtrade.htm>.

29 Rachel Sanderson, 'Green is the New Black in Ethical Britain – Report', *Reuters*, 13 October 2006.

30 Farmed Animal Watch, *Chicken Meat and Egg Sales – UK and US*, 17 August 2006 <<http://www.farmedanimal.net/faw/faw6-30.htm>>.

31 Eurogroup for Animals, *Comments on DG Sanco Consultative Document Labelling*, 16 June 2006, 2

<<http://www.eurogroupanimalwelfare.org/consumers/pdf/labellingpaperjune06.pdf>>.

32 Tony Fowler, quoted in: Jim Buchan, 'How Ethics Can Impact on the UK's Shopping Habits', *The Scotsman* (Scotland), 12 July 2006 <<http://thescotzman.scotzman.com/business.cfm?id=1012812006>>.

33 Zach Smith, 'DDS switches to eggs from cage-free chickens', *The Dartmouth Online* (United States), 30 March 2006 <<http://www.thedartmouth.com/article.php?aid=2006033001040>>.

34 University of Wisconsin, Oshkosh, *Campuses Decide to Purchase Cage-Free* <http://www.uwosh.edu/programs/enviro_studies/Campus%20Dining/eggs_campuses.html>.

35 Tobi Cohen, 'University of Guelph Cracks Under Pressure to Serve Free-run Eggs', *Canada.com*, 23 March 2007 <<http://www.canada.com/topics/news/agriculture/story.html?id=dbb06d43-4740-475a-a32c-0ecc85be589e&rfp=dta>>.

36 Elizabeth Weise, 'Cage-free Hens Pushed to Roost', *USA Today* (United States), 10 April 2006 <http://www.usatoday.com/news/health/2006-04-10-eggs-cage_x.htm>.

37 The Humane Society of the United States, *Google Search Finds New Cage-free Egg Policy*, 12 May 2006 <http://www.hsus.org/farm/news/ournews/google_cage_free.html>.

38 The Humane Society of the United States, *Bon Appetit Puts the Chicken Before the Egg*, 18 October 2005 <http://www.hsus.org/farm/camp/nbel/cagefreecampus/bon_appetit_puts_chicken_before_egg.html>; See also The Humane Society of the United States, *JoPa and JoPa Café Put the Chicken Before the Egg*, 4 December 2006 <http://www.hsus.org/farm/news/pressrel/jopa_and_cafe_cage_free.html>.

39 The Humane Society of the United States, *Google Search Finds New Cage-free Egg Policy*, above n 37.

40 Smithfield Foods, *Smithfield Foods Makes Landmark Decision Regarding Animal Management*, 25 January 2007 <http://www.smithfieldfoods.com/Enviro/Press/press_view.asp?ID=394>.

41 Maple Leaf Foods, *Maple Leaf Endorses US Industry Direction on Sow Stalls* <http://investor.mapleleaf.ca/phoenix.zhtml?c=88490&p=irol-newsArticle&ID=956262&highlight_>.

42 Mark Kaufman, 'Largest Pork Producer to Phase Out Crates', *The Washington Post* (United States), 26 January 2007 <<http://www.washingtonpost.com/wp-dyn/content/article/2007/01/25/AR2007012501785.html>>.

f) International corporate and fast food concern

i) Consumer concern, particularly in Europe and the USA, has led to major food producers and food retailers changing their purchasing policies and ceasing to buy caged-eggs or other factory farmed products. These include:

1. Burger King,⁴³ Wholefoods,⁴⁴ Wild Oats Natural MarketPlace,⁴⁵ Earthfare,⁴⁶ Jimbos ... Naturally,⁴⁷ Chipotle Mexican Grill,⁴⁸ Ben & Jerry's⁴⁹ and Trader Joes,⁵⁰ in the United States and
2. Sainsbury's,⁵¹ Marks and Spencer,⁵² McDonald's,⁵³ Little Chef roadside diners,⁵⁴ ASDA,⁵⁵ Waitrose,⁵⁶ Starbucks Coffee,⁵⁷ Pret-a-Manger,⁵⁸ Ugo Foods Group,⁵⁹ J D Wetherspoon⁶⁰ and Eden Project,⁶¹ in the United Kingdom and

3. Albert Heijn, a subsidiary of Ahold (Netherlands),⁶² Irma (Denmark),⁶³ Makro (Belgium),⁶⁴ Colruyt (Belgium),⁶⁵ Naturata (Germany),⁶⁶ Coop Italia (Italy),⁶⁷ Biocoop (France),⁶⁸ Ecobotiga La Magrana (Spain),⁶⁹ REWE Group (Austria),⁷⁰ PPH Tast (Poland),⁷¹ J Recheis Teigwaren (Austria)⁷² and Jumbo (Netherlands) in continental Europe.

g) Australia

- i) In 2006, the free-range egg market comprised 20.3% of the total volume of the grocery/retail egg market share in Australia, or 30.6% of the total market value.⁷³ This represents more than a 200% increase since 2000.⁷⁴
- ii) The free-range chicken market has grown rapidly in recent years with Inglewood Farms, which produces more than 60% of Australia's

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- 43 Andrew Martin, 'Burger King Shifts Policy on Animals', *The New York Times* (United States), 18 March 2007 <<http://www.nytimes.com/2007/03/28/business/28burger.html?em&ex=1175572800&en=6e52639740815826&ei=5070>>.
- 44 The Humane Society of the United States, *Wild Oats and Whole Foods Show Compassion with Cage-Free Egg Policies* <http://www.hsus.org/farm/camp/nbe/wildoats/wild_oats.html>; Environmental News Services, *Wild Oats Markets will Sell Only Eggs from Cage-free Chickens*, 3 June 2005 <www.ens-newswire.com/ens/jun2005/2005-06-03-09.asp#anchor7>.
- 45 Ibid.
- 46 The Humane Society of the United States, *Google Search Finds New Cage-free Egg Policy*, above n 37.
- 47 Ibid.
- 48 John Schmeltzer, 'U.S. Develops Taste for Meat Seasoned with Sun, Fresh Air', *Chicago Tribune* (United States), 18 September 2005.
- 49 'Ben & Jerry's Will Get Eggs from Cage-free Hens', *Times Argus* (United States), 27 September 2006 <<http://www.timesargus.com/apps/pbcs.dll/article?AID=/20060927/NEWS/609270347/1003/NEWS02>>.
- 50 Trader Joes has resolved to only use cage-free eggs for its own brand. Trader Joes, *Info Bay: A Note About Eggs* <http://www.traderjoes.com/action_issues.html#Eggs>.
- 51 J Sainsbury plc, *Egg Sourcing* <<http://www.j-sainsbury.com/files/reports/cr2006/index.asp?pageid=111>>.
- 52 'NI Farms Cash in on 'Free-range' Market', *BBC News* (United Kingdom), 29 March 2002 <http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/1900376.stm>; Compassion in World Farming, *Marks & Spencer Make Major Improvements for Farm Animals*, 15 January 2007 <http://www.ciwf.org.uk/home/news_MandS.shtml>.
- 53 'McDonald's praised for happy cows', *BBC News* (United Kingdom), 13 October 2005 <<http://news.bbc.co.uk/2/hi/business/4338308.stm>>.
- 54 Compassion in World Farming, *Little Chef Goes Cage-free*, 21 November 2006 <http://www.ciwf.org.uk/home/news_littlechef.shtml> at 5 February 2007.
- 55 The Humane Society of the United States, *Campaign Victory: Trader Joe's Goes Cage Free with Its Brand Eggs*, 8 November 2005, <http://www.hsus.org/farm/camp/nbe/traderjoes/trader_joes_goes_cage_free.html>.
- 56 Compassion in World Farming, *Get Involved as a Consumer* <<http://www.ciwf.org/involved/consumer.html>>.
- 57 Compassion in World Farming, *The Good Egg Awards* <<http://www.ciwf.org.uk/thegoodeggawards/pages/award-winners.asp>>.
- 58 Ibid.
- 59 Ibid.
- 60 Ibid.
- 61 Ibid.
- 62 Ahold, *Animal Welfare* <<http://www.ahold.com/page/4167.aspx>>.
- 63 Irma, *Products* <http://www.irma.dk/includefiles/MODULER/CCMS/show_page.asp?iMappelID=107&SideNavn=Irma+in+English>.
- 64 SAFE, *Supermarket Battery Egg Ban* <<http://www.safe.org.nz/Campaigns/Battery-Hens/>>.
- 65 Compassion in World Farming, above n 57.
- 66 Ibid.
- 67 Ibid.
- 68 Ibid.
- 69 Ibid.
- 70 Ibid.
- 71 Ibid.
- 72 Ibid.
- 73 Australian Egg Corporation, *Egg Industry Overview* (2006) <[http://www.aecl.org/Images/2006%20egg%20industry%20statistics%20\(2\).pdf](http://www.aecl.org/Images/2006%20egg%20industry%20statistics%20(2).pdf)>.
- 74 The free-range egg market was estimated to be 5.5% in June 2000; SCARM Working Group, *Synopsis Report on the Review of Layer Hen Housing and Labelling of Eggs in Australia*, June 2000 <http://www.affa.gov.au/corporate_docs/publications/pdf/animalplanthealth/layerhenhousing/synopsis.pdf>.



free-range chickens, reporting a tripling in sales over a 6 month period.⁷⁵

iii) In a 2005 survey carried out in the ACT, 84% of participants felt that it was cruel to keep hens in battery cages and 73% supported a prohibition on such cages.⁷⁶

iv) In a 2006 survey focussing on Australian attitudes towards meat, 63% of participants indicated that they would be more inclined to buy free-range pig products after becoming aware of the plight of factory farmed pigs.⁷⁷ This appears to be supported by the emergence of a range of small-goods labelled 'bred free-range' in major supermarkets such as Coles and Woolworths.⁷⁸

v) Trends have been emerging in the way consumers choose to purchase their products. For example, it has become increasingly common for consumers to base their buying decisions on more than convenience and price.⁷⁹ Animal welfare concerns now feature prominently in the list of determinants of consumers' purchasing patterns.⁸⁰ A 2001 survey of Queenslanders' attitudes towards buying meat revealed that consumers ranked the humane treatment of animals ahead of price.⁸¹

h) Organic growth

i) The organic industry, which consumers associate with the humane treatment of animals, is one of the fastest developing sectors in the food industry both in Australia and overseas, with growth

rates expected to continue at 10% to 30% p.a.⁸² In 2001, worldwide organic markets were estimated at US\$26 billion, with the main producers being the United States (US\$10 billion), Western Europe (US\$12 billion) and Japan (US\$2.5 billion).⁸³

ii) Mainstream German supermarkets, which have expanded into the organic market in the past decade, increased their organic sales by 25% in 2006 to 2 billion euros. This increase is supported by figures indicating that 80% of the German population buy at least some organic food.⁸⁴

iii) Australia has a small but growing organic market with close to 2000 certified organic producers, processors and retailers.⁸⁵ These enterprises collectively account for products with an estimated value of \$180 million at the farm gate.⁸⁶

iv) In a 2001 survey of 1200 Australian consumers, 'over 40% of respondents claimed to have consumed at least some certified organic food over the preceding 12 months'.⁸⁷

v) Macro Wholefoods, a chain that sells mainly organic food, is rapidly growing, having increased its business by 400% in the last twelve months alone.⁸⁸ It now operates eight stores in two Australian states.⁸⁹ It has also been named by IGD as one of the 'Ten to Watch' retailers of all time.⁹⁰ Australia's major retail supermarkets are also rapidly expanding their organic range.⁹¹

75 'Demand soars for organic chicken meat', *ABC Rural News* (Australia), 30 November 2005 <<http://www.abc.net.au/rural/content/2005/s1519954.htm>>.

76 Oriima Research Report 2005, *Free-Range Eggs - Community Survey Report*, September 2005, 8.

77 Findings based on questions included in a National Omnibus survey of 1001 people (2 - 4 June 2006) (Research by OmniAccess Consumer Omnibus and Connect Research and Strategy).

78 For example see KR Castlemaine, 'Bred-free' Range <http://svc185.wic006v.server-web.com/products.cfm?pc_id=6>; Otway Pork, 'Bred-free' Products: <<http://www.otwaypork.com.au/OtwayStory.htm>>.

79 There is an emerging school of thought that says that food choices should be about more than convenience and price. See Michael Harden, 'Hard to swallow', 22 August 2006, *Vegetarian Network* (Victoria) <<http://www.vnv.org.au/Articles/HardToSwallow.htm>>.

80 A Smith, 'Queenslander's attitudes towards everyday food items', *Rural Ind. Bus. Serv. Grp. News 2*, 2001, quoted in G.J. Coleman and M. Hay (eds.), *Consumer Attitudes and Behaviour Relevant to Pork Production*, Animal Welfare Centre, Monash University, AAPV Canberra Conference Proceedings 3-6 May 2004.

81 Ibid, 134..

82 David McKinna, Australian Government Rural Industries Research and Development Corporation, *Export Potential for Organics: Opportunities and Barriers*, June 2006, 3; Andre Leu, Organic Federation of Australia Ltd, *Organic Industry Booming*, 23 June 2006 <http://www.ofa.org.au/Media/organic_industry_booming.doc>.

83 Steven McCoy, Department of Agriculture Western Australia, *Organic Agriculture - Introduction*, Farmnote 21/2002, (2002) <<http://www.agric.wa.gov.au/pls/portal30/docs/FOLDER/IKMP/FM/ORGAN/F02102.PDF>>

84 'Mainstream German Retailers Move into Organic Food', *Reuters*, 16 February 2007 <<http://planetark.com/dailynewsstory.cfm/newsid/40368/story.htm>>.

85 'Australia Already No 1 in Organic Farming', *Farmonline*, 25 October 2006 <www.farmonline.com.au>.

86 Research and Consultancy Outgoing Services, *Organic Agriculture Industry: Vision Australia*, February 2005 <<http://www.researchandmarkets.com/reports/c41418>>.

87 Dr Darren Halpin, Department of Agriculture, Fisheries and Forestry, Commonwealth Government, *The Australian Organic Industry: A Profile* (2004), 26.

88 Pierce Cody, 'Organics Get on Board' (Paper presented to Austock Group', Melbourne, 29 January 2007).

89 Peter Singer and Jim Mason, above n 22, 3; Macro Wholefoods Market, *Our Stores* <<http://www.macrowholefoods.com.au>>.

90 Farmonline, 'Macro Wholefoods one of IGD's 10 to Watch retailers', 2 April 2007.

91 Michele Smith, 'Organic Produce in Australia's major supermarkets', *Australian Organic Journal*, Spring 2006, 20; CHOICE, *Free-Range Meat*, 03/07, <<http://www.choice.com.au/viewArticle.aspx?id=105632&catId=100288&tid=100008&p=1&title=Free-range+meat>>.

i) Vegetarianism and veganism

i) In addition to the growing market for humanely produced products, new awareness about the suffering of animals in food production has prompted some consumers to abstain from meat and/or animal products. Vegetarianism and veganism are growing markets with approximately 3.5 million vegetarians and 250,000 vegans in the UK⁹² and 12 million (self-described) vegetarians in Europe.⁹³ According to recent studies, between 1%⁹⁴ and 7%⁹⁵ of Americans describe themselves as vegetarian and 24% of adults in the US⁹⁶ and 30% of adults in Australia⁹⁷ 'usually or sometimes' maintain a vegetarian diet.

ii) India boasts the highest percentage of vegetarians in the world. With a population of approximately one billion people, 40% are practising vegetarians.⁹⁸ Many Indians are

influenced by the concept of 'ahimsa', or 'non-violence', which is integral to the practice of Jainism and very closely connected to Hinduism and Buddhism. In 1999, Pizza Hut opened its first all-vegetarian restaurant in India, after market research showed that 80% of the local population preferred vegetarian dining.⁹⁹

iii) In Australia, vegetarian and vegan related issues and businesses are becoming more prominent and moving into the mainstream. There appears to be little market research available to quantify this trend, however, the demand for vegetarian food is apparent on restaurant menus and exemplified by new magazines and websites dedicated to this market. For example, last year a magazine promoting vegetarian and vegan food won a major award at the Australian Home Based Business Awards.¹⁰⁰

ANIMAL PROTECTION AND THE NEW CONSUMER REVOLUTION – KEY POINTS

- More than 540 million farm animals are raised in Australia every year for food or food production purposes. The overwhelming majority of these animals spend their lives suffering in factory farms, confined indoors in cages or stalls and subjected to mutilations without pain relief.
- The suffering of farm animals has traditionally occurred behind closed doors; however, in recent times public awareness about the suffering of animals has increased. This has led to marked changes in the community's attitudes towards animals.
- The animal protection movement is now comparable in force to the environmental protection movement 20 years ago.
- Animal protection has become an international social justice movement. This is demonstrated by the successful use of animal welfare as a political platform.
- Increased awareness about the suffering of farm or 'production' animals has prompted a 'seismic shift' in public attitudes.
- Across the globe, producers and retailers are responding to consumer demand by adapting their product lines to include humanely produced animal products. Large corporations and educational institutions are also introducing 'cage-free' dining facilities.
- Demand for free-range and organic products is exploding, as are vegetarian and vegan product lines.

92 Public Service Lifestyle, *New Vegan/Veggie Labels* <<http://www.publicservantlifestyle.co.uk/1743>>.

93 Food Navigator, *Animal Scares Create Demand for Vegetarian Ingredients*, 13 January 2006 <<http://www.foodnavigator-usa.com/news/ng.asp?n=65085-dsm-vegetarian-food-safety-gelatine>>.

94 Humane Research Council, *Advocating Meat Reduction and Vegetarianism in the U.S.* (HRC, 2007), 5.

95 Dwyer, J. 'Vegetarian Diets' in Caballero B, Ed. *Encyclopedia of Food Sciences and Nutrition*, 2003, 2nd Ed. Amsterdam: Academic Press, 5974.

96 Health Focus International, *HealthFocus International Trend Study: United States*, (2006).

97 Health Focus International, *HealthFocus International Trend Study: Australia*, (2005).

98 European Vegetarian Union, *How Many Veggies ... ?*, <<http://www.european-vegetarian.org/lang/en/info/howmany.php>>.

99 Rediff, *Pizza Hut Tops off India Foray with Jain-style Offerings*, 21 July 1999 <<http://www.rediff.com/business/1999/jul/21pizza.htm>>.

100 *Australian Home Based Business Awards*, <<http://www.homebasedbusinessawards.com.au/>>; See also Aduki magazine <<http://www.aduki.net.au/>>.



III. Lifting the veil of secrecy

a) One of the traditional obstacles to the expansion of markets for humanely produced animal food products is the presence of a 'veil of secrecy' which shields consumers from the truth about how animals are raised for food in factory farms. This veil has largely disempowered consumers from taking personal action to prevent animals from suffering.

b) Factory farms are removed from the public eye, unmarked and nondescript. Most of us drive by them completely unaware of the tens of thousands of animals contained inside. The public are denied access to these farms and even the media face significant difficulties reporting the 'inside story'. Consequently 'uncensored' images of the lives of these animals are extremely difficult to obtain.¹⁰¹

c) Cleverly, farming industries rarely represent factory farmed animals in their marketing and labelling of products such as meat, dairy and eggs. They know that if they were to show the reality of life for animals on their farms, their products would not sell as well. Rather, they encourage consumers to disassociate food from animals by using pretty imagery such as flowers and butterflies¹⁰² as part of their public relations spin. In circumstances where animals are linked to food products, labels often present a 'romantic view' of rural life. Consumers see images of rustic scenes, farmhouses, happy families, cows and chickens frolicking in green fields with cheerful, animated farmers. They don't see the factory farm reality of animals in permanent indoor confinement, denied all freedom to carry out their natural behaviour.

d) Misunderstanding about the true origin of animal-derived food products is often enhanced by the use of imprecise or suggestive wording such as 'farm fresh' or 'naturally perfect'. These terms increase the likelihood of consumers being misled as to the life of the animal behind the product.

LIFTING THE VEIL OF SECRECY – KEY POINTS

- A veil of secrecy shields consumers from the truth about how animals are raised for food in factory farms.
- Marketers use positive imagery on animal-derived food products encouraging consumers to disassociate products from the horrendous reality of factory-farming.
- Ambiguously worded food labels such as 'farm fresh' or 'naturally perfect' reinforce the likelihood of consumers being misled as to the true origin of the product.

IV. Introducing truth in labelling

a) Truth in labelling of animal-derived food products enables and encourages consumers to make informed choices about the products they are buying. This is achieved by disclosing the true nature of the animal production systems that consumers are supporting when they purchase particular products.

b) The following are examples of terms currently used to describe different kinds of animal production systems in Australia that influence consumer choice. If a product label is silent as to its farm production method, given that the overwhelming majority of animals are now raised intensively, there is a strong likelihood that the product has been sourced from a factory farmed animal.

c) Marketing and labelling claims

i) Caged/Battery eggs

1. Battery or caged-egg production is a form of factory farming (intensive production). Birds in 'cage systems' are housed in cages within a shed for their entire lives.¹⁰³ Typically, a hen will share her cage with 3 or 4 others¹⁰⁴ and has a space approximately the size of an A4 sheet of paper

¹⁰¹ Peter Singer and Jim Mason, above n 22, 5-9.

¹⁰² See Australian Pork Limited March 2004 and Summer 2004/05 advertising campaigns <<http://www.australianpork.com.au/>>.

¹⁰³ Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, 4th ed., (2002) [2.1.1.1].

¹⁰⁴ Animals Australia, *Battery Hens*, March 2004 <<http://www.animalsaustralia.org/print.asp?idL1=1273&idL2=1286>>.

in which to move.¹⁰⁵ Cages are often stacked on top of each other in rows in order to maximise production in the available shed space.

2. Hens kept in battery cages have no room to exercise and can barely stretch their wings.¹⁰⁶ There are no nests in which to lay their eggs and no litter for scratching, pecking or dust bathing.¹⁰⁷ Battery hens generally have their beaks trimmed without pain relief to control injuries caused by cannibalism, bullying, stress, feather and vent pecking.¹⁰⁸ Most battery hens will spend the entirety of their 'productive' life in these surroundings where they will endure considerable physical and psychological suffering.¹⁰⁹

ii) Barn laid eggs

1. Birds in barn systems are not caged but are housed in either a single or multi-tier shed. Within the sheds,¹¹⁰ hens have room to move around and are provided with perches, nest boxes in which they can lay their eggs and litter areas to scratch and dust bathe in.¹¹¹ They can roam throughout their shed but are never let outside.

2. Although this system of hen housing has been promoted as a humane alternative to caged systems, hens are still subjected to limited beak trimming.¹¹² Hens in barns may be kept in large flock sizes exceeding 5000, at a stocking density of 12 birds per square metre.¹¹³

iii) Free-range, open-range or range eggs

1. At present, there is no regulatory definition of free-range, open-range or range, although guidelines are provided by the *Model Code of Practice for the Welfare of Animals – Domestic Poultry* ('Poultry Code').¹¹⁴ These guidelines, which operate in addition to state and territory anticruelty/animal welfare laws, require that birds in free-range systems:

- a. Are housed in sheds and have access to an outdoor range during daylight for a minimum of eight hours per day;¹¹⁵
- b. Have access to shaded areas and shelter from wind and rain;¹¹⁶
- c. Are protected from predators at all times;¹¹⁷ and
- d. Have 'permanent access to a weatherproof house with a deep litter or slatted floor equipped with feeders, drinkers, nest boxes and perches'.¹¹⁸

2. Free-range systems represent the most 'natural' form of egg production because they allow hens to carry out most normal behavioural activities such as nesting, dust bathing, perching, moving around freely and experiencing natural environmental conditions such as sunlight, fresh air and flora.¹¹⁹ Hens raised in a free-range environment may be kept in flocks of varying size; however the Poultry Code suggests that free-range hens should not be kept at a density exceeding 1,500 per hectare.¹²⁰

105 Ibid.

106 Ibid.

107 Ibid.

108 The *Model Code of Practice for the Welfare of Animals: Domestic Poultry* sanctions the use of beak trimming at [12.5] and [13.2.2], above n 103; Dr Phil Glatz, 'Beak Trimming', *Australian Poultry CRC* <<https://poultry.crccentric.com.au/getdoc.php?doc=4d89f2a4300a81fd>>.

109 *Animals Australia*, above n 104; RSPCA Australia, *Make a Choice: Battery Cages*, <<http://www.rspca.org.au/campaign/battery.asp>>.

110 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103 [2.1.1.2]; See also RSPCA, *Laying Hens – Campaign Facts* (2006) <<http://www.rspca.org.uk/servlet/Satellite?pagename=RSPCA/RSPCARedirect&pg=eggshomepage&marker=1&articleId=1130764902419>>.

111 RSPCA, above n 110.

112 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103, [13.2.2].

113 This figure applies to non-accredited barns as opposed to those accredited by RSPCA Australia. See: RSPCA Australia, *Choose Wisely* <<http://www.rspca.org.au/campaign/choosewiselyfaq.asp>> and page 22 below.

114 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103.

115 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103, [2.4.5.3].

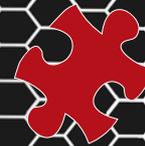
116 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103, [2.4.5.4].

117 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103, [2.4.5.5].

118 Department of Primary Industries, Agriculture, New South Wales Government, *Free-range Eggs*, 29 November 2004 <<http://www.agric.nsw.gov.au/reader/poultry/free-range-eggs.htm>>.

119 Department of Primary Industries, Victorian Government, *Victorian Egg Industry*, 2006 <<http://www.dpi.vic.gov.au/dpi/nrenfa.nsf/FID/736B38C5C0E781494A256DEA00129223?Open&Layout=DPI+Site~PrinterFriendly>>.

120 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103, Appendix 2.1.4.



iv) Grain fed beef

1. Although cattle may be fed a range of feeds, in Australia the term 'grain fed' is generally used to describe animals that are raised or finished in accredited feedlots.¹²¹ A feedlot is a 'confined yard with watering and feeding facilities where cattle are hand or mechanically fed for the purpose of production'.¹²² Cattle raised in feedlots may also be fed antibiotics to promote growth and to curb disease.¹²³

2. Feedlotting is a form of factory-farming that, in order to facilitate the fattening process, prevents cattle from engaging in adequate exercise.¹²⁴ Animals raised or kept in this environment may experience high levels of stress associated with weaning, handling, transport, dietary changes, dehydration, dust and co-mingling (aggregation of herds).¹²⁵ Confined in outdoor yards, cattle also experience weather extremes,¹²⁶ often without access to sufficient protection (trees or natural wind blocks) that would be available to them in free-range environments.

3. There is a growing body of scientific evidence to support the fact that cattle raised or finished in feedlots endure considerable physical and psychological suffering.¹²⁷

v) Free-range

1. Like most terms used to describe animal-derived food products, the phrase 'free-range' has no regulatory definition. Some industries have established free-range accreditation schemes and there are also

references to 'free-range' in certain Federal Codes of Practice for Animal Welfare.¹²⁸

2. In the absence of a legislative definition of 'free-range', the term 'free-range' has been subject to different interpretations by both producers and consumers. Many producers consider that free-range farming practices involve adherence to the 'Five Freedoms', first articulated by the UK's Farm Animal Welfare Council.¹²⁹ These are:¹³⁰

- a. Freedom from Hunger and Thirst - by ready access to fresh water and a diet to maintain full health and vigour.
- b. Freedom from Discomfort - by providing an appropriate environment including shelter and a comfortable resting area.
- c. Freedom from Pain, Injury or Disease - by prevention or rapid diagnosis and treatment.
- d. Freedom to Express Normal Behaviour - by providing sufficient space, proper facilities and company of the animal's own kind.
- e. Freedom from Fear and Distress - by ensuring conditions and treatment which avoid mental suffering.

3. While the Five Freedoms may be a good 'starting point', animals raised in free-range conditions are often denied complex social interactions and may also be subjected to human interference (mutilations, artificial insemination, routine antibiotics, forced confinement etc) or human-induced deprivation (limiting food, premature weaning etc). Consumers purchasing 'free-range' products may

121 A specific Grain Fed Beef symbol has been designed for this purpose; Aus-Meat® Limited, *Beef and Veal Language*, 2 <<http://www.ausmeat.com.au/sales/pdf/BV-lang-A4.pdf>>.

122 Primary Industries Standing Committee, *National Guidelines for Beef Cattle Feedlots in Australia*, 2nd ed., (2002), 1 <<http://downloads.publish.csiro.au/books/download.cfm?ID=114>>.

123 Roger Sneath and Steve Wood, Department of Primary Industries and Fisheries, Queensland Government, *Beef Cattle Feedlots – Diet Components*, 16 October 2006 <<http://www2.dpi.qld.gov.au/beef/3445.html>>.

124 Animal Liberation NSW, *Cattle Feedlots* <<http://www.animal-lib.org.au/lists/feedlots/feedlots.shtml>>.

125 Bovine Respiratory Disease, which is caused by a combination of stress and infectious agents, is the most common cause of illness and mortality in Australian feedlots. See: Meat and Livestock Australia, *Online Tips & Tools: Controlling Bovine Respiratory Disease in Feedlot Cattle*, Feedlot FL:06; Sharon Pettiford and Bob Gaden, 'L 6 New cattle vaccines boost feedlot performance and herd fertility', *CRC Outcomes- Meat, Science, Nutrition and Health*, January 2005 <http://www.beef.crc.org.au/nutrition/level_l/l_6.htm>.

126 Ibid.

127 Louise Fitzgerald, 'Improving the Welfare of Feedlot Cattle', *Veterinary Education and Information Network*, 2003 <<http://vein.library.usyd.edu.au/links/Essays/2003/fitzgerald.html>>.

128 For example, see the *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103, 2.1.2.3. There does not appear to be a comparable provision in the Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals – Pigs*, 2nd edition, 2003.

129 For example, these principles (and others) appear to have been adopted by the Free Range Pork Farmers Association Inc. See: Free Range Pork Farmers of Australia <<http://www.freerangepork.com.au/pork>>.

130 Farm Animal Welfare Council, *Five Freedoms* <<http://www.fawc.org.uk/freedoms.htm>>.

be unaware that these practices continue to be carried out on millions of free-range animals.

4. Several varieties of meat are labelled 'free-range' including pork, beef, poultry and lamb.

vi) Bred free-range

1. The term 'bred free-range' appears to have emerged as a subset of free-range farming, particularly for pork products. It can be viewed as a response by certain pork producers to increased public scrutiny of the treatment of female pigs (sows) in factory farms.

2. Sows that are 'bred free-range' generally spend their pregnancy outdoors in a natural environment, instead of being kept in metal sow stalls which severely restrict their natural behaviours. In 'bred free-range' farming systems, piglets are born (farrowed) outdoors. They may be prematurely weaned¹³¹ and may also be subject to mutilations such as teeth clipping and tail docking in some instances.¹³² After they have been weaned, 'bred free-range' pigs are generally raised in large hooped roof shelters (best known by the name 'ecoselters'[®]) with straw bedding.¹³³ This means that they are unable to forage outdoors for most of their lives.

vii) Organic and bio-dynamic

1. Organic animal-derived food products are products sourced from animals that are born or raised on organic farms.¹³⁴ In order to retain their organic status, these animals must remain in an environment that complies with the organic standards throughout their lives.¹³⁵

2. In Australian organic systems, animal welfare is said to be treated as a priority. Living conditions must provide for the natural needs of the animal such as free movement (including free ranging during daylight hours), food, water, shelter and shade.¹³⁶ Artificial insemination is not recommended for breeding purposes; however, there is no prohibition on its use.¹³⁷

3. Although animals in organic systems may enjoy a better quality of life than those confined in factory farms the following practices, although recognised as causing pain and suffering, are still permitted on organic farms: castration, tail docking of lambs, de-horning, placement of nose-rings in bulls, mulesing, removable nose-rings for pigs and ear tagging.¹³⁸ It is not mandatory for the animals to be afforded any pain relief during these procedures. However, the standards suggest that any pain be kept to a 'minimum level and duration'.¹³⁹

131 RSPCA Australia, *Accreditation Standards for Pig Housing and Production*, (endorsed 2004), 7.1.2.

132 The RSPCA's Accreditation Standards for Pigs recommend that these practices be avoided where possible; however the practices are not prohibited. See: *Ibid*, 8.3 and 8.4.

133 Some piglets that are bred free range are sent to conventional (factory farming) facilities after they are weaned. When these pigs are slaughtered, the pig meat is not sold under the 'bred free range' label accredited by the RSPCA; however this Report has not sought to investigate whether pig meat sold under other 'bred free range' labels is sourced from pigs that are sent to factory farms after they have been weaned. See generally: Compassion in World Farming, *Pig Case Study Australia 2: Free-range Pig Breeding System*, Otway Pork Pty Ltd, Winchelsea, Victoria <http://www.ciwf.org/publications/GAP/GAP_Case_Studies_Australia_2.pdf>; Melina Tensen, Scientific Officer (Farm Animals), RSPCA Australia, *pers comm*, 23 April 2007; Free Range Pork Farmers of Australia <<http://www.freerangepork.com.au/>>.

134 Organic Industry Export Consultative Committee, *National Standard for Organic and Bio-dynamic Produce*, 3.10 <http://www.daff.gov.au/corporate_docs/publications/pdf/quarantine/topolicy/national_standards.pdf>; Some animals involved in the production of organic food may be brought from outside (external) sources as 'in conversion livestock'. See: Australian Certified Organic, *Australian Organic Standard*, March 2006, paras 5.1.7 - 5.1.15.

135 *National Standard for Organic and Bio-dynamic Produce*, above n 134, 3.11.2.

136 *National Standard for Organic and Bio-dynamic Produce*, above n 134, 3.15.

137 *National Standard for Organic and Bio-dynamic Produce*, above n 134, 3.12.

138 The standards of some organic certification require these procedures to be carried out on animals before they reach a certain age. For example, see: *Australian Organic Standard*, above n 134, paras 5.1.18, 5.1.19. *National Standard for Organic and Bio-dynamic Produce*, above n 134, 3.15.3. For a discussion of the pain associated with these procedures, see: Animal Welfare Centre, *A Workshop to Identify Animal Welfare Issues Within Animal Welfare Industries* (Part of the Animal Welfare Centre- Department of Natural Resources and Environment's RD&E Planning Process), 2002, 6, 7, 21, 24; Molony, V., Kent, J.E. & Robertson, I.S., 'Assessment of Acute and Chronic Pain After Different Methods of Castration of Calves', (1995) 46 *Applied Animal Behaviour Science* 33-48, Cited in *A Summary of the Scientific Evidence Establishing Sentience in Farmed Animals. A Farm Sanctuary Report*, Sentient Beings, <http://www.sentientbeings.org/SB_report_web.pdf>; People for the Ethical Treatment of Animals, *An Examination Of Two Major Forms Of Cruelty In Australian Wool Production: Mulesing And Live Exports*, 2004 <<http://scholar.google.com/>>; Amy Simons, 'Tail Docking and Castration of Lambs', *Veterinary Education and Information Network*, 2003 <<http://vein.library.usyd.edu.au/links/Essays/2003/simon.html>>; Farm Animal Welfare Council, *Report on the Welfare of Pigs Kept Outdoors*, 1996, para 130 <<http://www.fawc.co.uk/reports/pigs/fawcp048.htm>>.

139 *National Standard for Organic and Bio-dynamic Produce*, above n 134, 3.15.5. In comparison, the Model Code for Cattle makes scant reference to pain relief aside from during the surgical tail docking of animals: *Model Code of Practice for the Welfare of Animals – Cattle*, 2nd Ed., (2004), 5.6.2.



INTRODUCING TRUTH IN LABELLING – KEY POINTS

- In order to make informed decisions, consumers need information about the production systems from which animal-derived food products are sourced.
- If a product label is 'silent' as to its farm production method, there is a strong likelihood that it has been sourced from a factory farmed animal.
- There are a number of terms currently used to differentiate the source of animal products. These include caged/battery eggs, barn laid eggs, free range, open range or range eggs, grain fed beef, free-range, bred free-range, organic and biodynamic.
- Most of these commonly accepted terms are not defined in legislation, which means there is broad scope for consumer uncertainty as to their true meaning.
- Different production systems impose varying degrees of suffering on animals, ranging from factory farming systems such as caged/battery eggs and grain fed beef which cause substantial physical and psychological suffering, to organic systems which cause less suffering.

V. Trends towards the truth

a) As discussed in Chapter 2 (above), in recent times consumers have become more concerned about the food they purchase, with trends towards ethical living on the rise. As a corollary of this, consumers have begun asking more questions about the origins of the food they are buying and the associated production processes.¹⁴⁰

b) A range of Australian organisations and leading meat industry bodies, including Australian Pork Limited, have acknowledged the right of consumers to have sufficient information to make proper purchasing decisions.¹⁴¹ However at the time of writing, there is no legislation in Australia which requires the labelling of production systems for animal-derived food products such as meat, poultry and dairy products.¹⁴²

c) Consumers use product labels to determine product choice while shopping and to learn more

about food, including how a product has been produced.¹⁴³ For the average consumer, humanely produced products cannot be easily distinguished from factory farmed products without an effective label. In fact, some product attributes may 'remain unknown to consumers upon inspection and even after consumption'.¹⁴⁴ This highlights the need for honest and clear production system information to be provided before the point of sale.

d) In response to growing calls for 'truth in labelling', certain kinds of mandatory food product labelling have come into effect in recent years. For example:

- i) In 2001, the labelling of genetically modified organisms (GMOs) became mandatory;¹⁴⁵ and
- ii) In 2005, Country of Origin standards for labelling were introduced, to enable consumers to identify Australian-made products.¹⁴⁶

e) GMO and Country of Origin labelling have received strong support from the community

¹⁴⁰ Agriculture and Food Policy Reference Group, *Ensuring a Profitable and Sustainable Agriculture and Food Sector in Australia*, 5 <http://www.agfoodgroup.gov.au/publications/Issues_Paper.pdf>.

¹⁴¹ Other organisations that have supported labelling of animal products include Animals Australia. See: Australian Pork Limited, *Submission 4 to Productivity Commission*, 2.6.7 <<http://www.apl.au.com/media/S%20-%20Fourth%20APL%20PC%20submission%20-%20Final%20-%20NON-CONFIDENTIAL3.pdf>>; Animals Australia, *Submission to The Agriculture and Food Policy Reference Group*, 2005, 7 <http://www.agfoodgroup.gov.au/publications/Animals_Australia.pdf>.

¹⁴² Limited legislative mechanisms are in place in some jurisdictions for the labelling of eggs. See: *Egg (Labelling and Sale) Act 2001 (ACT)* s 5; *Egg Industry Act 2002 (Tas)* ss 8, 19. *Food Policy Reference Group*, 2005, 7 <http://www.agfoodgroup.gov.au/publications/Animals_Australia.pdf>.

¹⁴³ Donna Paterson, Rhonda Zapelli and Anna Chalmers (NFO Donovan Research), Australian New Zealand Food Authority, *Qualitative Research with Consumers - Food Labelling Issues*, 2001, 11 <http://www.privacyconference2003.org/forms/Consumer_Research.pdf>.

¹⁴⁴ Hui-Shung (Christie) Chang, *Agribusiness Perspectives Papers 2005 – Labelling Issues of Organic and GM Foods in Australia* (Paper 67, 2005), 7 <<http://www.agrifood.info/perspectives/2005/Chang.html>>.

¹⁴⁵ *Australia New Zealand Food Standards Code*, Standard 1.5.2, (commenced December 2001).

¹⁴⁶ *Australia New Zealand Food Standards Code*, Standard 1.2.11; *Trade Practices Amendment (Country of Origin Representations) Act 1998* (Cth). Country of Origin standards have been incorporated in state and territory legislation through the adoption of the Food Standards Code. See below n158. See also *Commerce (Trade Descriptions) Act 1905* (Cth) s 7; *Commerce (Imports) Regulations 1940* (Cth) reg 8 for Country of Origin standards for imports.

because they enable consumers to make informed choices.¹⁴⁷ Current policy statements also recognise the right of consumers to have access to accurate information about the production of food even where there are no apparent public health or safety issues.¹⁴⁸ On that basis, it seems consistent with current trends towards truth in labelling to require 'production systems' to be identified on animal-derived food products.

3. LABELLING OF ANIMAL-DERIVED FOOD PRODUCTS IN AUSTRALIA

1. Mandatory labelling of animal-derived products by production system

a) Although current laws require certain information about animal-derived food products to be disclosed on product labels,¹⁴⁹ the Australian Capital Territory¹⁵⁰ and Tasmania are the only jurisdictions that expressly require production systems to be identified. However the potential benefits of their legislation are limited because the relevant Acts only apply to the labelling and sale of eggs.¹⁵¹

b) In the absence of express laws requiring the labelling of animal-derived food by production systems ('production-system labelling'), the following laws may apply:

i) Consumer protection laws

1. Consumer protection laws are intended to prevent misleading or deceptive conduct in

relation to products, including animal-derived food products. They take the form of:

- a. Fair Trading laws administered by State/Territory Departments of Fair Trading or Consumer Affairs;¹⁵² and
- b. The *Trade Practices Act 1974 (Cth)*,¹⁵³ administered by the Australian Competition and Consumer Commission (ACCC).

2. These laws serve as a mechanism to promote truth in labelling of animal-derived food products by punishing producers who make false claims about the manner in which a product was produced. For example, if a producer were to place images of hens ranging in paddocks on the front of an egg carton containing caged eggs, this may be deemed to constitute a violation of a consumer protection act.¹⁵⁴

3. In November 2006, the ACCC issued a 'Food and Beverage Industry Guideline' to assist producers with interpreting their labelling obligations under the Trade Practices Act.¹⁵⁵ It identified the importance of being able to substantiate claims made about a product (including production processes such as organic, bio-dynamic and free-range).¹⁵⁶

4. While laws such as this play an important role in encouraging responsible labelling of animal-derived food products, their effectiveness is limited by the fact that:

- a. Production-system labelling is not mandatory (except in the ACT and Tasmania as identified above) and is therefore uncommon;
- b. Producers utilise feel-good slogans such as 'farm fresh' and outdated images of 'Old McDonald's farm' that imply high welfare and confuse consumers; and
- c. Neither the ACCC nor related state/territory bodies pre-approve labels

147 Hui-Shung (Christie) Chang, above n 144, 5.

148 Food Standards Australia New Zealand, *Australia New Zealand Ministerial Council Food Regulation Ministerial Council Policy Guidelines: Country of Origin Labelling of Food*, August 2003, 1 <[http://www.foodstandards.gov.au/_srcfiles/Country_of_Origin_Labelling_Policy_Guideline\(Dec2003\).pdf](http://www.foodstandards.gov.au/_srcfiles/Country_of_Origin_Labelling_Policy_Guideline(Dec2003).pdf)>.

149 For example: *The Australia New Zealand Food Standards Code*, Standard 1.2.2 requires the name of the food, the lot identification and the name and address of the supplier to be displayed on the food packaging while Standard 1.2.5 requires that packaged food be date marked.

150 Department of Agriculture, Fisheries and Forestry, Commonwealth Government, *Review of Layer Hen Housing and Labelling of Eggs in Australia*, 2006, Ch 3, <<http://www.daff.gov.au/content/print.cfm?objectId=D2C48F86-BA1A-11A1-A2200060B0A00825&showdocs=all>>.

151 *Egg (Labelling and Sale) Act 2001 (ACT)* s 5; *Egg Industry Act 2002 (Tas)* ss 8, 19.

152 *Fair Trading Act 1992 (ACT)* s 12; *Consumer Affairs and Fair Trading Act 1990 (NT)* s 42; *Fair Trading Act 1987 (NSW)* s 42; *Fair Trading Act 1989 (Qld)* s 38; *Fair Trading Act 1987 (SA)* s 56; *Fair Trading Act 1990 (Tas)* ss 14, 16, 20; *Fair Trading Act 1985 (Vic)* s 10; *Fair Trading Act 1987 (WA)* ss 10, 12.

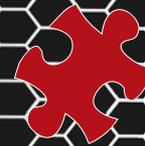
153 *Trade Practices Act 1974 (Cth)* s 52, 53.

154 *Ibid.*

155 Australian Competition and Consumer Commission, *Food Descriptors Guideline to the Trade Practices Act*, November 2006.

<<http://www.accc.gov.au/content/item.php?itemId=771468&nodeId=303812cdfa698071341bf9f1ac983066&fn=Food%20descriptors%20guidelines.pdf>>.

156 *Ibid.*



for animal-derived food products. Detection is largely based on the referral of complaints by business and consumers,¹⁵⁷ which means that many acts of non-compliance may remain uncovered. Significant time might elapse prior to action being taken which can have a negative impact on consumer confidence.

ii) Food laws

1. Australia's Federal, State and Territory food laws contain a range of requirements which seek to ensure a safe food supply.¹⁵⁸ Similarly to the consumer protection laws discussed above, the laws promote truth in labelling of animal-derived food products by prohibiting misleading conduct relating to the sale of foods including false descriptions of food and misleading labelling.¹⁵⁹

2. The food regulatory system is supplemented by the work of Food Standards Australia New Zealand ('FSANZ'), which is a bi-national statutory authority responsible for developing food standards to promote public health and informed consumer choice.¹⁶⁰

Standards developed by FSANZ are incorporated in the Australia New Zealand Food Standards Code ('the Food Code'). While the Food Code technically permits the development of standards for production-system labelling, to date, no attempts to develop such standards have been made. There is also some question as to whether the Food

Code is an appropriate instrument to develop such standards given that its primary focus is food safety and not animal welfare.

3. In August 2002, FSANZ was tasked with developing Primary Production and Processing Standards (PPPs) for inclusion in the Code.¹⁶¹ While a number of PPPs have subsequently been developed, none have addressed production-system labelling. It appears unlikely that future PPPs will do so, since the FSANZ Protocol for development of the standards states that they should not be used for that purpose.¹⁶²

II. Voluntary labelling of animal-derived food products by production system

a) In the absence of a regulatory scheme for the labelling of animal-derived food by production system, a number of third party certification and animal industry quality assurance schemes have emerged. These schemes claim to address consumer concern for animals in the marketplace; however a brief survey suggests that:

- i) The schemes apply a variety of animal welfare standards;¹⁶³
- ii) Some schemes have adopted a narrow approach to 'animal welfare' by focusing on limited needs (such as the need to range freely);¹⁶⁴
- iii) Certain schemes appear to be more prescriptive than others;¹⁶⁵

¹⁵⁷ Australian Competition and Consumer Commission, *Referral Guide* <<http://www.accc.gov.au/content/index.php/html/itemId/386270>>.

¹⁵⁸ See *Food Standards Code* incorporated into State law by *Food Act 2003* (NSW) s 21; *Food Act 1984* (Vic) s 16; *Food Act 2006* (Qld) s 39; *Health (ANZ Food Standards Code Adoption) Regulations 2001* (WA); *Food Act 2001* (SA) s 21; *Food Act 2003* (Tas) s 21; *Food Act 2001* (ACT) s 27; *Food Act 2004* (NT) s 20. See also *Food Bill 2005* (WA) s 22.

¹⁵⁹ *Food Act 2001* (ACT) s 15, 18, 24; *Food Act 2004* (NT) s 14, 17, 21; *Food Act 2003* (NSW) s 15, 18, 21 42; *Food Act 2006* (Qld) ss 34, 37, 40; *Food Act 2001* (SA) ss 15, 18, 22; *Food Act 2003* (Tas); ss 15, 18, 22; *Food Act 1984* (Vic) ss 10, 10A, 13, 17A; *Food Bill 2005* (WA) ss 16, 19, 23.

¹⁶⁰ FSANZ, *About Us Webpage* <<http://www.foodstandards.gov.au/aboutfsanz/index.cfm>>; *Food Standards Australia New Zealand Act 1991* (Cth) ss 3A, 9, 10.

¹⁶¹ *Food Standards Australia New Zealand, Primary Production and Processing Fact Sheet* (2002) <<http://www.foodstandards.gov.au/newsroom/factsheets/factsheets2002/primaryproductionand1687.cfm>>.

¹⁶² Australia New Zealand Food Regulation Ministerial Council, *Protocol for the development of PPP Standards by FSANZ*, 3 <http://www.foodstandards.gov.au/_srcfiles/ANZFRMC%20PROTOCOL%20-%20PPP%20STDS.pdf>. For examples of the Standards, see: *Primary Production and Processing Standard for Seafood – Standard 4.2.1*, gazetted on 26 May 2005; *Primary Production and Processing Standard for Poultry Meat – P282*; *Primary Production and Processing Standard for Dairy – P296*; *Primary Production and Processing Standard for Egg – Standard* is currently being developed. A PPP Standard for meat products is expected to be developed in October 2006.

¹⁶³ For example, 'beak trimming' or 'de-beaking' is not recommended but is permitted under RSPCA standards, below n 193. It is permitted under Egg Corp Assured standards, below n 179, but prohibited under the Humane Choice Label, below n 208.

¹⁶⁴ The Egg Corp Assured standards permit the carrying out of painful procedures, such as beak trimming, even on certified 'free-range' poultry. See below n 179. In contrast, the Humane Choice Label takes a broad approach to animal welfare by prohibiting all mutilation procedures, below n 208, while these procedures are allowable in certain circumstances under RSPCA standards, below n 193.

¹⁶⁵ For example, the Humane Choice Standards – Poultry, 1.1.5 set down minimum standards for 'on ground' density while the equivalent Australian Certified Organic Standards are only intended to be used 'as a guide'. Cf Humane Choice Standards – Poultry, 1.1.5. <http://www.hsi.org.au/news_library_events/Humane%20Choice/Standards/Humane_Choice_Standards_Feb%20_06_specifics_Poultry.pdf> and Australian Certified Organic Standards, 5.2.5 and 5.2.6 <http://www.australianorganic.com.au/_files/AOS%202006%2001.03.06%20FINAL_low%20res.pdf>. The specific discrepancy noted here is not intended to suggest that either of these schemes is more prescriptive as a whole.

iv) The schemes are largely self-regulated which means that their accreditation and auditing processes are likely to vary in effectiveness;¹⁶⁶ and

v) Some schemes are more open to public input than others.¹⁶⁷

b) This Report is not intended to comprehensively investigate the relative merits of the existing third party certification and animal industry quality assurance schemes. However given the factors above, it seems likely that in some instances, consumers may be overestimating the significance of animal welfare claims.¹⁶⁸ Some examples of third party certification and animal industry quality assurance schemes are provided below.

i) **Accredited free-range associations for egg production**

1. As demand for free-range eggs has steadily increased, a number of producers of free-range eggs have formed associations to differentiate their products from those produced in factory farms.¹⁶⁹ For example, the Free Range Egg Producers Associations of New South Wales, Queensland and Victoria ('Associations') have developed their own standards for production and accreditation which operate in addition to

the requirements of the Poultry Code. Farms accredited by these Associations are entitled to use an Associations' logo.

2. Although there is some variation between the schemes, the following general observations can be made:

a. All the Associations claim to work closely with animal protection groups¹⁷⁰ and to place a strong emphasis on the ability of hens to engage in natural behaviour;¹⁷¹

b. While the definition of free-range adopted by these associations is not identical,¹⁷² they all appear to:

(i) Give effect to the Farm Animal Welfare Council's 'Five Freedoms'¹⁷³ either expressly or by implication;¹⁷⁴

(ii) Adopt a broader definition of free-range than that incorporated in the Poultry Code; and

(iii) Prohibit common factory farming practices such as: permanent confinement in cages or sheds; beak trimming and other mutilations; use of routine antibiotics; and the withholding of food and water (induced moulting).¹⁷⁵

166 For instance, Egg Corp Assured requires each egg producer to arrange an annual inspection; otherwise they will lose their accreditation. Additional inspections may be carried out by a senior auditor under the instruction of the Australian Egg Corporation. Up to one hour's notice will be given for these additional inspections. See Egg Corp Assured, *Certification Rules*, 8 <<http://www.aecl.org/Images/ECA%20Trade%20Mark%20Certification%20Rules%202005.pdf>>; Anthony Fisk, Communications Manager, Australian Egg Corporation, *pers comm*, 13 March 2007. In comparison, RSPCA auditors may visit all egg producers without any notice and must inspect at least every eight weeks. See RSPCA Guidelines (B), below n 193, 3.6.9. Audits under the Humane Choice Label scheme are expected to be carried out by the Australian organic certifier, the National Association for Sustainable Agriculture, Australia (NASAA); however as distribution under this scheme had not commenced at the time this Report was prepared, the Report has not sought to comment on the scheme's audit requirements.

167 A survey of relevant internet materials revealed that only the websites of the Australian Organic Standard and the Model Codes of Practice made explicit mention of public consultation in the production of their standards.

168 A number of accreditation schemes in the United States have been noted as having similar deficiencies, see Farm Sanctuary, *Farm Animal Welfare: An Assessment of Product Labelling Claims, Industry Quality Assurance Guidelines and Third Party Certification Standards*, 3 <http://www.farmsanctuary.org/campaign/FAWS_Report.pdf>

169 Department of Primary Industries, Agriculture, New South Wales Government *Free-range eggs*, 29 November 2004 <<http://www.agric.nsw.gov.au/reader/poultry/free-range-eggs.htm>>.

170 For example, the NSW Free Range Egg Producers Association claims to have the support of the International Fund for Animal Welfare and the Victorian and Queensland Associations claim to have Animal Liberation's support of their standards: NSW Free Range Eggs Producers Association <<http://www.agric.nsw.gov.au/reader/poultry/free-range-eggs.htm>>; Free Range Poultry Association of Queensland Incorporated, *Welfare Practices and Issues* <<http://www.freerangepoultry.com.au/Welfare/>> and Free Range Farmers Association Inc. Vic, *Welcome to the Home of Free Range Eggs* <<http://www.freerangefarmers.com.au/home.html>>.

171 For example, see: Free Range Poultry Association of Queensland Incorporated, above n 170.; Free Range Farmers Association Inc Vic, above n 170.

172 For example, the Queensland and Victorian Associations define free-range birds as 'birds kept or produced without mutilation in natural conditions, having access for their natural behavioural requirements either being run in an open range situation or an appropriately fenced and managed area', while the New South Wales Association states that a free-range egg is one produced according to the standards and in compliance with the Poultry Code. See: Free Range Farmers Association Inc Vic, *Farm Accreditation* <http://www.freerangefarmers.com.au/egg_standard.htm>; Free Range Poultry Association Queensland Incorporated, *The 'Free Range' Definition* <<http://www.freerangepoultry.com.au/Definition/>>.

173 Farm Animal Welfare Council, above n 130.

174 Free Range Poultry Association of Queensland Incorporated, above n 170; Free Range Farmers Association Inc Vic, *Hen Welfare* <http://www.freerangefarmers.com.au/hen_welfare.html>.

175 *Ibid*.



ii) **Egg Corp Assured – an industry quality assurance scheme**

1. Australian Egg Corporation Limited (AECL) has developed Egg Corp Assured (ECA), a quality assurance program for commercial egg producers.¹⁷⁶ The program addresses a wide range of issues relating to egg production including animal welfare and egg labelling.¹⁷⁷

2. All ECA members are expected to comply with AECL's Egg Labelling Guide which seeks to implement the National Standards for Egg Labelling. These standards were developed jointly by the egg industry and the state and territory governments in 2001.¹⁷⁸ They require:

- a. The words 'cage eggs', 'free-range eggs' or 'barn laid eggs' to appear on the front of each egg carton; and
- b. Details of the Poultry Code's definition of the egg production system or an industry or producer's contact details, to be provided on each egg carton.

3. The ECA scheme covers all production systems and accredited members are expected to comply with the minimum standards in the Poultry Code. This means that the following practises are permitted:

- a. De-beaking/beak trimming of birds (by producers, including those accredited as 'free-range');¹⁷⁹
- b. Forced moulting (withholding of food and water for up to 24 hours);¹⁸⁰ and
- c. Confinement in small cages or indoors (for producers accredited as 'caged egg' or 'barn laid' respectively).¹⁸¹

iii) **Organic and bio-dynamic accreditation**

1. Although the labelling of organic produce is subject to the consumer protection and food laws identified above, at present there are no laws that specifically regulate the labelling of organic products on the domestic market. Instead, certification of organic producers is carried out by one of Australia's seven approved certifying bodies.¹⁸² Most organic certifiers apply the National Australian Standards for Organic and Bio-dynamic Produce ('National Standard') developed by the Australian Quarantine Inspection Service for exported produce;¹⁸³ however some certifiers have developed their own standards which also apply to domestic sales.¹⁸⁴

2. There are a number of reasons why consumers buy organic products; however a recent survey has revealed that more than 50% of consumers buy organic because they associate it with better animal welfare.¹⁸⁵ This expectation would seem to be well-founded since the worst aspects of the factory farming system (such as permanent confinement, feed lotting and routine mutilations designed to 'control' natural behaviours and stress responses) appear to be prohibited or substantially reduced by most organic systems in Australia.¹⁸⁶

3. The National Standard provides for animals to be free-ranging during daylight hours and to have access to food, water, shelter and shade.¹⁸⁷ The Australian Organic Standard places a high priority on animal welfare, requiring that livestock must be able to perform all natural social and physical functions relevant to their breed.¹⁸⁸

176 Australian Egg Corporation Limited – Corporate Site, *Egg Corp Assured*, <<http://www.aecl.org/index.asp?pageid=363>>.

177 Ibid.

178 Australian Egg Corporation Limited – Corporate Site, *Animal Welfare* <<http://www.aecl.org/index.asp?pageid=414>>.

179 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103, [12.5] and [13.2].

180 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103, [9.5]

181 *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, above n 103, [2.3].

182 National Association for Sustainable Agriculture Australia; Australian Certified Organic; Bio-dynamic Research Institute; OGA Certified Pty Ltd; Tasmanian Organic-Dynamic Producers Inc and Organic Food Chain and Safe Food Production Queensland. See: Australian Quarantine & Inspection Service, Department of Agriculture, Fisheries and Forestry, Commonwealth Government, *Department Contacts for AQIS Organic Program and Approved Certifying Organisations* <<http://www.daff.gov.au/content/output.cfm?ObjectID=43E732B6-D4AF-43EE-8F71C0E5E1F50550>>.

183 Australian Quarantine & Inspection Service, *National Australian Standards for Organic and Bio-dynamic Produce - Edition 3.2*, October 2005 <http://www.affa.gov.au/corporate_docs/publications/pdf/quarantine/fopolicy/national_standards.pdf>.

184 For example, see: *Australian Organic Standard*, above n 134; Kelly Burke, 'Food Labelling Plan Spells an End to Free-range-for-all', *Sydney Morning Herald*, 24 November 2006 <<http://www.smh.com.au/news/national/food-labelling-plan-spells-an-end-to-freerange-freeforall/2006/11/23/1163871546476.html>>.

185 James Meldrum, 'A Survey of Australian Organic Consumers', (2006) 65 *Australian Organic Journal* 28 <http://www.bfa.com.au/_files/x03aoj_028p.pdf>.

186 For example de-beaking and induced moulting of hens, tail docking of sows and teeth grinding of piglets. See generally *National Standard for Organic and Bio-dynamic Produce*, above n 134, 3.15.

187 *National Standard for Organic and Bio-dynamic Produce*, above n 134, 3.15.2.

188 *National Standard for Organic and Bio-dynamic Produce*, above n 134, 3.16.

iv) **Accreditation by the Royal Society for the Prevention of Cruelty to Animals (RSPCA)**

1. The RSPCA strongly disagrees with a number of common factory farming practises, including the keeping of hens in battery cages and the keeping of pigs in sow stalls.¹⁸⁹ In addition to lobbying against these practises, it has created its own accreditation schemes.¹⁹⁰

2. The RSPCA's Egg Accreditation Program promotes the sale of barn and free-range eggs. In a barn system, hens roam freely within a large barn which has litter for scratching and dust bathing. In a free-range system birds are given access to the outdoors during the day and are housed inside a barn at night. Free-range farms must also ensure that birds are offered protection from the elements and from predators when they are outside the barn.

3. Although it has been argued that barn laid eggs promote hen welfare, barn-raised hens spend their entire life indoors, generally in sheds with thousands of other birds.¹⁹¹ In RSPCA-accredited farms, hens are kept at an approximate stocking density of seven birds per square metre.¹⁹² They may also be subject to:

- a. Mutilations such as beak trimming without pain relief;¹⁹³ and
- b. Practises such as moulting (feeding of a low protein diet to induce weight loss prior to feeding up for a new laying cycle).¹⁹⁴

4. The RSPCA's Accreditation Standards for Pigs are designed to cover pig producers who keep their pigs in enhanced indoor environments (semi-intensive farms) or in well-

managed extensive outdoor systems.¹⁹⁵ The standards require the systems to cater for the behavioural and physical needs of pigs and prohibit 'the use of sow stalls or traditional farrowing crates, or housing systems that do not provide bedding or the space or environment to perform most normal behaviours'.¹⁹⁶ They were designed by the RSPCA to serve the interests of farmers who have unsuitable environments to farm pigs free-range by giving them an alternative means of indoor pig farming.

5. All pigs held under RSPCA Accredited systems must be kept in social groups deemed appropriate by the RSPCA.¹⁹⁷ Pigs have access to bedding and shelter at all times.¹⁹⁸ Farms can be inspected without notice and farmers are required to submit monthly reports to the RSPCA on the condition of the herd.¹⁹⁹ Inspections also include an audit of standards at transport and slaughter facilities.²⁰⁰ They may also be subject to:

- a. Weaning at 3 weeks of age (instead of 13-17 weeks, as occurs in naturally free-ranging animals);²⁰¹ and
- b. Mutilations such as teeth clipping and tail docking without pain relief in some instances.²⁰²

v) **Humane Society International 'Humane Choice' label**

1. The Humane Choice label is the result of a collaborative project between Humane Society International and the National Association for Sustainable Agriculture, Australia (NASAA)²⁰³ with financial support from the Voiceless Grants

189 RSPCA Australia, *National Food Accreditation – Overview* <<http://www.rspca.org.au/food/overview.asp>>.

190 Under the RSPCA's Accreditation Schemes, accredited producers pay a royalty to the RSPCA and this income is directed exclusively to the inspection of farms and management and further development of the program, and to education activities on farm animal welfare.

191 As noted at page 20 above, free-range birds may also be kept in flocks of varying size.

192 RSPCA Australia, above n 113.

193 Beak trimming is not recommended but is permitted. When it occurs, the extent of beak trimming permitted is 'minimal' compared to the industry standard. More severe trims are permitted upon receipt of veterinary advice. See: RSPCA, *Guidelines (B) – Farm Animals*, 2006, 3.66(e). Beak trimming of free-range birds also occurs under some accreditation schemes, as discussed at page 21 above.

194 *Ibid*, 3.66(g).

195 RSPCA Australia, *Pig Farming – RSPCA Accreditation Standards for Pigs* <<http://www.rspca.org.au/campaign/pigfarmstandards.asp>>.

196 *Ibid*.

197 RSPCA Australia, *Accreditation Standards for Pig Housing and Production*, (endorsed 2004), 5.4

198 *Ibid*, 5.1, 5.3.

199 *Ibid*, 14.4.

200 *Ibid*, 14.1.

201 *Ibid*, 7.1.2; CIWF Trust, *Intensive Farming and the Welfare of Farmed Animals*, 6 <<http://www.ciwf.org.uk/publications/Teachers/ITFWFA.pdf>>

202 The RSPCA's Accreditation Standards for Pigs recommend that these practices be avoided where possible; however the practices are not prohibited. See: Accreditation Standards for Pig Housing and Production, above n 197, 8.3 and 8.4.

203 The NASAA is responsible for the accreditation and auditing of producers under the 'Humane Choice' scheme.



Program.²⁰⁴ The label, under which distribution is expected to commence in July 2007, covers beef, lamb, pork, chicken and eggs. It guarantees to consumers that the animals from which their food is sourced have been:

- a. Treated with 'respect and care, from birth through to death';²⁰⁵ and
 - b. Allowed to 'satisfy their behavioural needs, to forage and move untethered and uncaged, with free access to outside areas, shade, shelter and a humane death'.²⁰⁶
2. The standards give effect to the notion of a humane death by imposing a prohibition on the consciousness of an animal during slaughter and stipulate that stunning with exposure to gas is the preferred method of inducing the animal into unconsciousness.²⁰⁷
 3. Procedures such as mulesing, nose ringing, beak trimming, or any form of mutilation are not allowed on farms that wish to utilise the Humane Choice Label.²⁰⁸ Weaning of piglets is permitted to occur at 6 weeks of age²⁰⁹ which is less than half the time that piglets would ordinarily spend weaning while in a natural state.²¹⁰
 4. While the Humane Choice label is based on the Australian Standard for organic produce,²¹¹ it attempts to integrate stricter levels of animal welfare and does not require participating farms to be certified organic.²¹²

LABELLING OF ANIMAL DERIVED FOOD PRODUCTS IN AUSTRALIA – KEY POINTS

- Although current laws require certain information about animal-derived food products to be disclosed on product labels, the Australian Capital Territory and Tasmania are the only jurisdictions that expressly require production systems to be identified. Their production system labelling requirements are limited to eggs.
- In the absence of mandatory labelling legislation, consumer protection laws have an important role to play in encouraging responsible labelling of animal-derived food products.
- Food labelling laws also facilitate truth in labelling; however these laws are no substitute for a mandatory labelling regime linked to animal production systems.
- In the absence of a mandatory labelling scheme, a number of voluntary third party certification and animal industry quality assurance schemes have emerged to profit from consumer concern for animals in the marketplace.
- These schemes apply a variety of standards and consumers may, in some cases, overstate the significance of their animal welfare claims.

204 Humane Society International received a \$20,000 grant from Voiceless Limited in 2004, to fund the development of the Humane Choice label. See: <http://www.voiceless.org.au/Grants/2004_Grants_Program/%2420%2C000_GRANTS/>.

205 Humane Society International, New 'Humane Choice' Label Aimed at Improving the Lives of Farm Animals and Building Consumer Confidence, 9 August 2006 <http://www.hsi.org.au/news_library_events/press_releases/N394_humane_choice.htm>.

206 [paraphrased], *Ibid*.

207 Humane Society International, 'Humane Choice' Standards – General <http://www.hsi.org.au/news_library_events/Humane%20Choice/Humane_Choice_Standards.pdf>. Substantively, the requirements are the same as the Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals – Livestock at Slaughtering Establishments*, 2002, however the Code's suggested method of inducing unconsciousness is captive-bolt stunning and electrified water baths for cattle and poultry respectively. Refer to clauses 2.6.2.3 and 3.5 of the Code.

208 'Humane Choice' Standards, above n 207, 1.6.

209 Piglets are granted a weaning time of at least 6 weeks after birth: Humane Society International, 'Humane Choice' Standards – Pigs, 1.5 <http://www.hsi.org.au/news_library_events/Humane%20Choice/Standards/Humane_Choice_Standards_Feb_06_specifics_Pigs.pdf>.

210 CIVWF Trust, above n 201.

211 Humane Society International, above n 205.

212 Compare the prohibition on mutilation in the 'Humane Choice' Standards, above n 207, with the allowance, under certain circumstances, of certain mutilations under the *RSPCA Standards*, above n 197, 8.

4. ANIMAL WELFARE LABELLING – AN INTERNATIONAL OVERVIEW

a) Over the last decade, mandatory labelling of certain animal-derived food products has been introduced or foreshadowed by a number of international jurisdictions. These include:

i) **European Union**

1. Since January 2004, mandatory labelling of egg production systems has been required in the European Union (EU).²¹³ Eggs are marked with a visible and legible code that indicates the poultry-farming method used.²¹⁴ An explanation of the code is obligatory on packed eggs and is provided in a notice next to loose eggs.²¹⁵ EU member states have launched information campaigns, co-financed by the European Commission, to promote consumers' awareness of the meaning of the code.²¹⁶ Eggs that are imported from non-EU member countries are required to be separately identified with their country of origin and the words 'non-EC Standards'.²¹⁷

2. In addition to the mandatory labelling of eggs by production method, producers in the EU are required to indicate farming methods on egg cartons in visible and legible type.²¹⁸ Accepted words for labelling egg cartons include 'eggs from caged hens', 'barn eggs' and 'free range

eggs'. The use of these terms is particularly significant in the EU because the words 'free range' and 'barn eggs' are defined in legislation.²¹⁹ Retailers who wish to use these terms on egg cartons must comply with detailed standards set out in EU law.

3. In 2006, the European Commission adopted an animal welfare action plan containing a number of initiatives designed to reduce the suffering of animals in Europe over the next five years. Included in the plan was a proposal for an 'EU animal welfare label', which would allow consumers 'to buy products produced under high welfare standards linked to standardised scientific indicators'.²²⁰

4. The European Commission's commitment to developing an 'animal welfare label' was reinforced at a conference held in Brussels in March 2007. The closing speech at the conference recognised the growth in market share of welfare-friendly products²²¹ and noted the potential 'win win situation' for producers wishing to capitalise on such trends by becoming part of a clear and authentic labelling system.²²²

ii) **Switzerland**

1. Battery eggs have been banned in Switzerland since 1992; however eggs are imported from non-cage systems.²²³ Swiss authorities have introduced a mandatory labelling system which requires such eggs to be marked with the words 'Produced in battery cages, which are not permitted in Switzerland'.²²⁴

213 Council Regulation 2001/05/EC of 19 December 2000 amending Regulation 1907/90/EEC on certain marketing standards on eggs [1999] OJ L 2/1 <http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_002/l_00220010105en00010003.pdf>.

214 Each egg produced in the EU has to be stamped individually with one of the following codes indicating the farming method: O = organic, 1 = free-range, 2 = barn, 3 = cage; Commission Directive 2002/4/EC of 30 January 2002 on the registration of establishments keeping laying hens, covered by Council Directive 1999/74/EC [2002] OJ L 30/44 Art 1(1)(a) <http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_030/l_03020020131en00440046.pdf>.

215 Commission Regulation (EC) No 2295/2003 introducing detailed rules for implementing Council Regulation (EEC) No 1907/90 on certain marketing standards for eggs as amended by Commission Regulation (EC) No 1515/2004.

216 For example, The Department of Agriculture and Food (Ireland), 'Minister Launches Egg Labelling Campaign' <<http://www.agriculture.gov.ie/index.jsp?file=pressrel/2004/141-2004.xml>>.

217 Council Regulation 2001/05/EC of 19 December 2000, above n 213, Article 1(2) amending Article 7 of Regulation 1907/90/EEC.

218 Council Regulation (EEC) No 1907/90 on certain marketing standards for eggs as amended by Council Regulation (EC) No 5/2001; Commission Regulation (EC) No 2295/2003 introducing detailed rules for implementing Council Regulation (EEC) No 1907/90 on certain marketing standards for eggs as amended by Commission Regulation (EC) No 1515/2004, Article 3 and Annex II.

219 Commission Regulation (EC) No 2295/2003 introducing detailed rules for implementing Council Regulation (EEC) No 1907/90 on certain marketing standards for eggs as amended by Commission Regulation (EC) No 1515/2004, Annex 3.

220 Commission of the European Communities, *Commission Working Document on a Community Action Plan on the Protection and Welfare of Animals 2006-2010*, 3.2 <http://ec.europa.eu/food/animal/welfare/work_doc_strategic_basis230106_en.pdf>.

221 Markos Kyprianou, 'Prospects for an EU Animal Welfare Labelling Scheme', Concluding speech at the Conference 'Animal Welfare: Improving by Labelling', co-hosted by the German Presidency of the Council, the European Commission and the European Economic and Social Committee, Brussels, 28 March 2007.

222 Ibid.

223 Animals Australia: The Voice of the Animals, Fact Sheet: Battery Hens <<http://www.animalsaustralia.org/default2.asp?idL1=1273&idL2=1286>>.

224 Farm Animal Welfare Council, *Report on Welfare Labelling*, June 2006, 10 <<http://www.fawc.org.uk/reports/welfarelabel-0606.pdf>>.



iii) New Zealand

1. In 2006 The Greens Party of New Zealand introduced a Bill designed to ensure that consumers were provided with sufficient information to make informed choices about the food that they purchase.²²⁵ The Bill included a proposal that mandatory labelling of eggs (designating production systems) be introduced.

2. Although the Bill was not passed, the largest stakeholders in the New Zealand egg industry have agreed to introduce a voluntary labelling scheme which provides for the identification of eggs produced in factory farms.²²⁶ This scheme appears to have been prompted by strong community support for the mandatory labelling of eggs.²²⁷

b) While a number of jurisdictions have introduced or foreshadowed the mandatory labelling of animal-derived food products, some Governments may be reluctant to implement such schemes due to concerns that to do so would constitute a Technical Barrier to Trade in breach of the World Trade Organisation ('WTO') rules.²²⁸ There appear to be two primary reasons why labelling is the non-tariff measure most often cited as a potential barrier to trade:²²⁹

i) If animal-derived food products are required to be marked with an animal welfare label, this places food imported from countries with lower animal welfare standards at a competitive disadvantage;²³⁰ and

ii) Labelling requirements add to compliance costs, especially if imported products are expected to meet the requirements of 'local' labelling regimes.²³¹ This places imported food products at a competitive disadvantage. Conversely, if such standards are not imposed on imports, local producers are placed at a competitive disadvantage.²³²

c) To date, the mandatory labelling regime for the production system of eggs in the European Union, which is the most readily identifiable mandatory labelling scheme with international implications, has not been challenged as a trade restriction in the WTO's dispute settlement procedure. However, such a challenge is conceivable as animal welfare itself is not currently recognised as a legitimate cause for restricting trade.²³³ If a challenge to mandatory labelling were to occur, it may be defended under:

i) Article XX of the General Agreement on Tariffs and Trade (GATT) which allows for deviation from the WTO rules for the purposes of protecting public morals²³⁴ or animal health;²³⁵ or

ii) The WTO's Agreement on Technical Barriers to Trade, which provides that discrimination between imported products may be allowed, where they fulfil a country's legitimate environmental or animal health and safety objectives;²³⁶ or

iii) The Agreement on the Application of Sanitary and Phytosanitary Measures, if the

225 *Consumer Right to Know (Food Information) Bill 2006* (NZ) <<http://www.parliament.nz/mi-NZ/PB/Legislation/Bills/9/b/1/9b1e9bd85810440e9df88c56fdb734e.htm>>.

226 'Two Companies to Label Battery Eggs', *One News National* (New Zealand), 13 June 2006 <<http://tvnz.co.nz/view/page/423466/748673>>.

227 This was evidenced by the presentation of a 51,438 signature petition calling for such measures, presented to the Minister of Consumer Affairs, Judith Tizard, indicating that eight out of ten New Zealanders oppose battery hen farming. The petition argued that mandatory labelling of eggs would allow the consumer choice in voting with their dollar for the production process which they prefer: 'Battery Hen Opponents Lay Claim to Second Win', *Scoop International News*, 14 June 2006 <<http://www.scoop.co.nz/stories/PO0606/S00133.htm>>.

228 Labelling is one of the Technical Barriers to Trade most commonly cited by agricultural food producers. It accounted for two thirds of concerns raised by agro producers at the WTO's Technical Barriers to Trade Committee between 1995 and 2001. See: Joint Working Party on Technical Barriers to Trade, *Agricultural Food Products: A Survey of Issues and Concerns Raised in the WTO's TBT Committee*, 4, 8 <<http://129.3.20.41/eps/it/papers/0401/0401006.pdf>>.

229 David Harris, Australian Government Rural Industries & Research Corporation, *Technical Issues Affecting Trade in Agricultural Products*, 2 February 2007, 26 <<http://www.rirc.gov.au/reports/GLC/07-032.pdf>>.

230 Any national rules that, while on their face appear to be origin-neutral, actually impose an overall disadvantage on imported products, will contravene Article III of the World Trade Organisation's *General Agreement on Tariffs and Trade 1994*. See D.J.F. Eaton, J. Bourgeois and T.J. Achterbosch, *Product Differentiation under the WTO: An Analysis of Labelling and Tariff Tax Measures Concerning Farm Animal Welfare* (2006, Landbouw-Economisch Instituut (LEI)), 40.

231 David Harris, above n 229, x.

232 *Ibid.*, 3.

233 Farm Animal Welfare Council, above n 224, 7.

234 *General Agreement on Tariffs and Trade 1994* Art XX(a). Mandatory labelling could be defended under the public morals provision of the GATT by adducing survey statistics to indicate that consumers are increasingly concerned about animal welfare as a matter of moral concern.

235 *Ibid.*, Art XX(b). See also: D.J.F. Eaton, J. Bourgeois and T.J. Achterbosch, above n 230, 44. This provision of the GATT could be relied upon if it were shown that certain of the production methods, which the labelling regime sought to address, were sufficiently connected with animal health issues.

236 World Trade Organisation, *Agreement on Technical Barriers to Trade*. In 'The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts', 138-162, WTO, Geneva 1994, Art 2(2). Environmental or animal health concerns would need to be supported by sufficient scientific evidence and any introduced measures would need to be deemed to be an appropriate response to the concerns raised by the evidence provided.

measure can be shown to be based on international standards, not disproportionately discriminatory to international trade, based on scientific justification and necessary for the protection of animal or human health.²³⁷

ANIMAL WELFARE LABELLING- AN INTERNATIONAL OVERVIEW - KEY POINTS

- The European Union (EU) is demonstrating world leadership in mandatory labelling of animal-derived food products, having introduced mandatory labelling of egg production systems in 2004. The EU is also contemplating introducing an 'EU Animal Welfare Label' in the next five years.
- Switzerland has banned the domestic production of battery eggs. Battery eggs are only permitted to be imported when they are marked with the words 'Produced in battery cages, which are not permitted in Switzerland'.
- Mandatory labelling may face a challenge as a breach of World Trade Organisation (WTO) rules. This has not yet occurred in respect of EU mandatory egg labelling; however if it were to occur, there appear to be a number of justifications available under international trade instruments which would exempt mandatory labelling from being classified as discriminatory treatment.

5. SAVVY MARKETING VS CONSUMERS' RIGHT TO KNOW

1. Labelling scams and scandals

a) The absence of a mandatory labelling regime for animal-derived food products has, in recent times, prompted concerns about the presence of specious standards and the widespread deception of consumers. Some of the more recent labelling 'scandals' in Australia and overseas are discussed below.

b) Australia: 'The egg scam'

i) In July 2006, concerns were raised in the media about a consumer 'egg scam', after an analysis of data provided by the Australian Bureau of Statistics, the Australian Egg Corporation and the Australian Free Range Egg and Poultry Association suggested that farmers were incapable of producing the 364.8 million 'free-range' eggs Australians purchase each year.²³⁸ The statistics led to claims that as many as 200,000 factory farmed eggs are being passed off as free-range each day, in a widespread egg substitution racket, misleading consumers and swindling them of about \$13 million annually.²³⁹

ii) In late July 2006, the Federal Minister for Agriculture, Peter McGauran, announced that the egg substitution allegations would be investigated to enhance consumer confidence in agricultural food products.²⁴⁰ However at the time of writing, there have been no legal challenges in response to the 'egg scam' claims.

iii) Action has also been taken at a state level in NSW in response to the 'egg scam', with the

237 World Trade Organisation, *Agreement on the Application of Sanitary and Phytosanitary Measures*. In 'The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts', 69-84, WTO, Geneva 1994, Art 3 and Art 5(4). This Agreement could be used to justify mandatory labelling if it could be shown that the labelling regime had been developed in response to international scientific concerns about the ability of certain animal production systems to provide acceptable levels of animal welfare.

238 Kelly Burke, 'Action on Egg Scam', *Sydney Morning Herald*, 31 July 2006 <<http://www.smh.com.au/news/national/action-on-egg-scam/2006/07/30/1154198012646.html>>.

239 Kelly Burke, 'Layers of intrigue as the Barnyard becomes the Battlefield', *Sydney Morning Herald*, July 29 2006 <<http://www.smh.com.au/news/national/layers-of-intrigue-barnyard-becomes-battlefield/2006/07/28/1153816381490.html>>; Jason Dowling, 'Fears over Egg Fakes', *The Age (Melbourne)*, 30 July 2006 <<http://www.theage.com.au/news/national/fears-over-egg-fakes/2006/07/29/1153816426908.html>>. The United Kingdom also faced an egg-scam originating in continental Europe with as many as 500 million battery eggs allegedly passed off as free-range: Gwyneth Rees, 'Free-range Fraud Could Now Involve 500 Million Eggs', *Daily Mail (United Kingdom)*, 19 March 2007 <http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=443165&in_page_id=1770&in_a_source=>>.

240 ABC News Online, 'McGauran announces egg labelling probe', 29 July 2006 <<http://www.abc.net.au/news/newsitems/200607/s1700376.htm>>.



NSW Minister for Primary Industries, Ian Macdonald, requesting that the NSW Food Authority take steps to address the claims of misleading labelling.²⁴¹ The Authority subsequently began surveying businesses to ensure that eggs were being labelled correctly. It also proposed to conduct inspections of larger cage-based operations and educate companies about the consequences of deliberately misleading consumers.²⁴²

iv) Despite action being taken at both Federal and State levels, the allegations remain unresolved. This has provoked scepticism about the capacity of the current laws to prevent similar occurrences arising in the future.

c) New Zealand: Tegel Foods Ltd advertisement

i) In 2002, New Zealand's Green Party Animal Welfare Spokesperson, Sue Kedgley, lodged a formal complaint with the Advertising Standards Complaints Board and the Commerce Commission under the *Fair Trading Act 1986 (NZ)*.²⁴³ The complaint, which concerned a 'pure, natural, healthy chicken' advertising campaign run by Tegel Foods Ltd, claimed that the advertisements were misleading and deceptive.²⁴⁴

ii) While the complaint contained a number of allegations, one aspect concerned a Tegel Foods brochure which promoted Tegel chickens as being 'barn-raised' and 'pure, natural and healthy'. The complainant argued that the description of the chickens as 'barn-raised' was deliberately misleading since this implies a relatively open indoor environment where animals are free to move around.²⁴⁵ The reality was that the barn-raised chickens were housed at stocking ratios of around 19 chickens per square meter.²⁴⁶

iii) The Board dismissed the complaint after finding that the brochure did not convey pastoral images of an 'Old McDonald's Farm' type barn.²⁴⁷ To the contrary, it held that:

1. It was acceptable to use the term 'barn-raised', since this was an industry term with which the company had complied;²⁴⁸ and
2. The brochure was not misleading as the word healthy referred to the end product (chicken meat) as opposed to the quality of life the chickens themselves.²⁴⁹

d) United States: Animal Care Certified

i) In 2002, in response to criticism of its notoriously poor record on animal welfare, the United Egg Producers (UEP) in the United States announced that it had created a new marketing program to improve public perception of its industry and avert potential government regulation. The program involved updating the UEP's voluntary animal welfare guidelines and allowing egg producers that followed the guidelines to label their cartons with an 'Animal Care Certified' logo.²⁵⁰

ii) While the new guidelines allocated additional cage space to hens, they were heavily criticised because they did not go far enough. Essentially, they allocated each hen less space than a sheet of A4 paper. This meant that each bird had barely enough room to move, let alone engage in her natural behaviours.²⁵¹

iii) In 2003, the animal advocacy organisation Compassion over Killing (COK), filed petitions with the Better Business Bureau²⁵² and the US Federal Trade Commission (FTC), the agency tasked with

241 Ministers for Natural Resources, Primary Industries and Mineral Resources, *NSW Food Authority to Survey Egg Labelling*, 2 August 2006 <<http://www.foodauthority.nsw.gov.au/mr-03-Aug-06-NSWFA-to-survey-egg-labelling.htm>>.

242 Unannounced inspections were carried out on large producers of eggs following the Ministerial statement: Kelly Burke, 'Farms Are Raided to Crack Egg Scam', *Sydney Morning Herald*, 12 August 2006 <<http://www.smh.com.au/news/national/farms-are-raided-to-crack-egg-scam/2006/08/11/1154803102218.html>>; NSW Food Authority, 'Food Authority Examines Egg Substitution Claims', *The Food Chain*, Issue 9, August 2006, 1 <[http://www.foodauthority.nsw.gov.au/pdf/the%20food%20chain%20-%20August%20\(print\).pdf](http://www.foodauthority.nsw.gov.au/pdf/the%20food%20chain%20-%20August%20(print).pdf)>.

243 Complaint 02/32: *Sue Kedgley MP v Tegel Foods Limited*: Decision of Meeting 9 April 2002, <<http://203.152.114.11/decisions/02/02032.rtf>>.

244 'Website Exposing Tegel's Chicken Cruelty Launched', *Scoop Independent News* (New Zealand), 30 December 2005 <<http://www.scoop.co.nz/stories/PO0512/S00194.htm>>.

245 *Sue Kedgley MP v Tegel Foods Limited*, above n 243, 4.

246 Green Party of Aotearoa New Zealand Website, Kedgley Lodges Complaint over Tegel's 'Pure Natural' Ads, 3 February 2002 <<http://www.greens.org.nz/searchdocs/PR5034.html>>.

247 *Sue Kedgley MP v Tegel Foods Limited*, above n 243, 34-35.

248 *Ibid*.

249 *Ibid*, 35.

250 United Egg Producers Certified Program, *United Egg Producers Certified* <<http://www.uepcertified.com/abouttheprogram.html>>.

251 The Humane Society of the United States, *A Giant Step Away from Misleading Labeling*, 19 September 2005 <http://www.hsus.org/farm/news/ournews/giant_labeling.html>.

252 The purpose of the Better Business Bureau is to act as a mutually trusted intermediary between consumers and businesses to resolve disputes, facilitate communication and provide information on ethical business practices: *Better Business Bureau* <<http://www.bbb.org/>>.

enforcing federal consumer protection laws. COK alleged that the 'Animal Care Certified' logo constituted misleading advertising and should be removed from egg cartons.²⁵³

iv) In 2003, and on appeal in 2004, the Better Business Bureau deemed the logo misleading because it implied a greater level of humane care than was actually the case.²⁵⁴ The Bureau subsequently referred the matter to the FTC for potential legal action.²⁵⁵

v) In February 2005, COK filed a false advertising lawsuit in the District of Columbia against several companies using the 'Animal Care Certified' logo, including Giant Food. It argued that 'grocery chains should not be misleading their customers by using the deceptive 'Animal Care Certified' logo'.²⁵⁶ The matter was subsequently settled, with Giant Food agreeing to remove the 'Animal Care Certified' logo from cartons of Giant Food store brand eggs.²⁵⁷

vi) On 30 September 2005, the FTC announced that it had reached an agreement with UEP, which required UEP to cease using the logo by 31 March 2006. However, more than a year after that deadline, COK discovered several instances of continued use of the 'Animal Care Certified' logo on cartons, websites, and elsewhere.²⁵⁸

vii) In September 2006, COK filed a federal rule-making petition with the United States Food and Drug Administration calling for mandatory production-method labelling of egg cartons.²⁵⁹ The petition alleged that egg label misbranding is so endemic to the egg industry that mandatory production-method labelling is necessary to

prevent egg producers from misleading consumers.²⁶⁰ The petition calls for an end to the egg industry's self regulation of labelling, described as similar to 'asking a fox to guard the henhouse'.²⁶¹ At the time of writing this Report, the petition has yet to be determined.

e) US: Happy Cows

i) In December, 2002, the animal rights group People for the Ethical Treatment of Animals (PETA) filed a suit in the San Francisco County Court in response to the alleged misleading labelling of animal products. The case, which became known as the 'Happy Cows case'²⁶², was filed against the California Milk Producers Advisory Board (MPAB) in response to a series of television commercials and print ads which carried the slogan 'Great cheese comes from happy cows. Happy cows come from California'. The ads featured images of animated talking cows cavorting in sunny pastures.

ii) In the Happy Cows case, PETA alleged that the ads were misleading and deceptive because most Californian dairy cows were not happy living in filthy dry dirt lots, while being repeatedly impregnated and genetically and chemically manipulated to produce abnormally high quantities of milk before being eventually slaughtered.²⁶³

iii) The case was never tried on its merits because the MPAB was deemed at first instance, and on appeal, not to be a legal person for the purpose of the relevant legislation.²⁶⁴ Despite a petition for review being filed by PETA, the California Supreme Court stated that it would not review the lower court's ruling.²⁶⁵

253 Compassion Over Killing, *Animal Care Certified Campaign Timeline* <<http://www.cok.net/camp/acc/>>.

254 Compassion Over Killing, *Victory: COK Wins 'Animal Care Certified' Campaign! Background* <<http://www.cok.net/feat/accwin.php>>.

255 Patrick Condon, 'Investigation into Egg Labelling Sought', *Associated Press* (United States), 25 August 2004 <<http://www.cok.net/feat/apinv.php>>.

256 Ibid.

257 Nelson Hernandez, 'Advocates Challenge Humane-Care Label on Md. Eggs', *Washington Post* (United States), 19 September 2005, B02, <<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/18/AR2005091801449.html>>; Compassion Over Killing, *COK and Giant Settle False Advertising Claims out of Court* <<http://www.cok.net/feat/giant.php>>.

258 Cheryl Leahy, General Counsel, Compassion Over Killing, *pers comm*, 19 April 2007.

259 'Egg Industry Comes Under Fire Again', *Joplin Independent*, 21 March 2007 <http://www.joplinindependent.com/display_article.php/mariwinn1174533476>; Compassion Over Killing, *Compassion Over Killing petition requesting regulation of egg carton labelling: Docket # 2006P - 0394: Change Labelling Requirements for Eggs Sold in U.S.*, September 2006.

260 According to COK, examples of such misbranding include claims such as 'Certified Animal Care', 'Animal Friendly', 'Nature's Promise', 'Born Free', as well as misleading imagery on cartons: Compassion Over Killing, above n 259.

261 See also: David Wolfson and Mariann Sullivan, 'Foxes in the Hen House: Animals, Agribusiness and the Law' in Cass Sunstein and Martha Nussbaum (eds.), *Animal Rights: Current Debates and New Directions* (Oxford University Press, 2004).

262 *People for the Ethical Treatment of Animals Inc. v. California Milk Producers Advisory Board*, A103481.

263 PETA, 'Submissions for case of PETA v California Milk Board', *PETA Unhappy Cows.Com* <<http://www.unhappycows.com/newsuit.asp>>.

264 *People for the Ethical Treatment of Animals v. California Milk Producers Advisory Board* S131823.

265 *People for the Ethical Treatment of Animals Inc. v. California Milk Producers Advisory Board*, 22 Cal. Rptr 3d 900 (Cal Ct App 2005). See also, 'California High Court Won't Review 'Happy Cows Case'', Find Law: Legal News and Commentary <news.findlaw.com/andrews/pl/fod/20050510/20050510peta.html>.



LABELLING SCAMS AND SCANDALS – KEY POINTS

- The absence of a mandatory labelling regime for animal-derived food products has prompted concerns about the presence of specious standards and the widespread deception of consumers both in Australia and overseas.
- Recent allegations concerning the mislabelling of free-range eggs in Australia highlight the limitations of current reactionary laws.
- Imprecise definitions of production methods facilitated the avoidance of penalty by a New Zealand producer in relation to its use of the term 'barn raised'.
- An American organisation, Compassion Over Killing, was successful in its proceedings to remove use of the label 'Animal Care Certified' on eggs produced in battery cages.
- People for the Ethical Treatment of Animals was denied its claim for misleading advertising of dairy products as the respondent in the matter was not a legal person for the purpose of the relevant legislation.

II. What consumers want

a) Words

i) In order to effectively inform consumers about the production system in which an animal was raised, animal-derived food product labels should be limited to a few commonly understood words to prevent confusion.²⁶⁶ This approach to labelling has been employed by many producers who label their products with words such as 'caged', 'bred free-range' or 'free-range'. Unfortunately, as explained in Chapter 3, these terms are currently of limited value since they are neither defined in legislation nor linked to uniform animal protection standards.

b) Symbols

- i) Some producers use both words and symbols to inform consumers when animal welfare has been taken into consideration during the preparation of their products. For example, products sold by RSPCA accredited producers generally depict the RSPCA logo and are also marked with the words 'to RSPCA Standards'. This communicates a message to the consumer that the product adheres to a certain standard of animal welfare, although most consumers will only have a basic understanding of those standards and therefore need to place their trust in the reputation of the accreditation body.
- ii) The 'traffic light labelling system,' which was developed by the UK's Food Standards Agency,²⁶⁷ represents a further labelling approach that has been used to help consumers differentiate between food products. If traffic light labelling was applied to animal-derived food products, red, green and amber labels could be used to connote low, high and medium levels of animal welfare.
- iii) Although traffic light labelling appears applicable to animal-derived food products, in order for it to be truly effective:
1. It must be linked to strictly defined, uniform animal welfare standards; and
 2. The meaning of each colour must be clearly understood by consumers to ensure that the system is not abused by savvy marketers and to ensure effective enforcement is possible.

iv) As previously discussed in this Chapter, where strict standards are not in place, manufacturers can be quick to exploit consumer uncertainty in the name of good animal welfare.²⁶⁸

c) Pictures

i) A further method of labelling which does not appear to have been widely used on animal-derived food products, is the application of 'negative' images or photos to communicate standards of animal welfare afforded by different animal production systems. While it is common to see images of free-range chickens in fields on products marked 'free-

266 For a discussion of the proliferation of animal welfare labels in the United States see: Andrew Martin, 'Meat Labels Hope to Lure the Sensitive Carnivore', *New York Times* (United States), 24 October 2006 <<http://www.nytimes.com/2006/10/24/business/24humane.html?ei=5088&en=d40400549b62870d&ex=1319342400&adxnnl=1>>.

267 'Traffic Light Labelling', *Food Standards Agency* <<http://www.eatwell.gov.uk/foodlabels/trafficlights/>>.

268 The Humane Society of the United States, above n 251.

range', caged eggs rarely feature images of hens suffering in small wire cages.²⁶⁹ Similarly, consumers who purchase factory farmed pigmeat are unlikely to find images of depressed sows in metal stalls on their ham and pork products. This method of 'emotive' communication,²⁷⁰ which has been used on tobacco labelling, is likely to meet some resistance despite the fact that it clearly, concisely and immediately conveys the truth about the product to the average supermarket consumer.

WHAT CONSUMERS WANT – KEY POINTS

- Animal-derived food product labels should be limited to a few words defined in legislation and linked to uniform animal protection standards.
- Terms such as 'caged', 'bred free-range' or 'free-range' are currently of limited value as they are neither defined in legislation nor linked to enforceable standards.
- A 'traffic light' labelling system could be implemented to differentiate between low, medium and high levels of animal welfare. However in order to be effective it would need to be linked to clearly understood, enforceable standards.
- Manufacturers can be quick to exploit consumer uncertainty in the name of good animal welfare where strict standards are not in place.
- The placement of photos or images of animals in battery cages and sow stalls on products such as caged eggs or factory farmed ham and pork products would help eradicate confusion brought about by misleading labelling or insufficiently clear terms.

6. VEGETARIANISM, VEGANISM AND HIDDEN ANIMAL PRODUCTS

a) While vegetarianism and veganism are growing markets in Australia, at present there are no mandatory labelling requirements to assist consumers who choose not to buy animal products and by-products. Consequently many people with these dietary requirements inadvertently purchase food products derived from animals. Some commonly listed food ingredients are set out below:

- i) Emulsifiers 481, 472 and 471 which are frequently found in bread, may contain animal fats, particularly 472 which is derived from glycerine and may be an animal product.²⁷¹
- ii) Natural flavours which are found in some brands of baked beans, soups, chips and other foods, can be derived from either plant or animal sources. In the absence of further information, it is ambiguous whether or not foods containing these ingredients are appropriate for vegetarians or vegans.²⁷²
- iii) Certain food additives such as flavour enhancer 627, disodium guanylate, may be derived from dried fish. Disodium guanylate is often found in instant noodles, potato chips and snacks, savoury rice, tinned vegetables and instant soup.²⁷³
- iv) 'Gum base' is often innocuously listed as an ingredient in chewing gum. Glycerine and glycerol, among the possible components of gum base, can be animal-derived.²⁷⁴
- v) Isinglass, which is a form of gelatine made from fish bladders, is used extensively in beer production and may also form part of the wine making process.²⁷⁵

269 Such a measure would be comparable to consumer information pictures currently featured on tobacco products.

270 L Biener and T Taylor, 'The Continuing Importance of Emotion in Tobacco Control Media Campaigns: A Response to Hastings and MacFadyen' <<http://tc.bmj.com/cgi/content/full/11/1/75>>.

271 VeggieGlobal, *VeggieGlobal Nutrition Guide: Non-Vegetarian Food Additives* <<http://www.veggieglobal.com/nutrition/non-vegetarian-food-additives.htm>>.

272 Food Standards Australia New Zealand, *Flavourings and Flavour Enhancers User Guide*, August 2002, 2.

273 Mutual Benefit Marketing, *Flavour Enhancers* <<http://www.mbm.net.au/health/620-640.htm>>.

274 Indian Vegan, *Frequently Asked Questions* <<http://www.indianvegan.com/iv/faq.php>>.

275 Vegetarian Society, *Stumbling Blocks* <<http://www.vegsoc.org/info/stumbling.html>>; Caroline Pyvich, 'Why is Wine so Fined?' *Vegetarian Journal*, Volume XVI, No 1, January/February 1997 <<http://www.vrg.org/journal/vj97jan/971wine.htm>>



vi) Many commonly eaten confectionery products such as marshmallows, liquorice and some mints contain gelatine which is made from the bones, tissue, hoofs and skin of animals such as cows, pigs and fish.²⁷⁶

vii) Food products such as ice-cream, baked goods, baking mixes and desserts, often contain egg ingredients (liquid, frozen or dried) which are sourced from factory farmed hens. Some ice-cream also contains gelatine.²⁷⁷

b) A prominent example of vegetarian consumers mistakenly purchasing animal products took place in 2001 when vegetarian and Hindu groups commenced a class action against McDonald's Corp. for miscommunicating ingredients in its french fries and hash browns. Consumers who had purchased the products in the belief that they were free from animal derivatives, sued after they discovered the vegetable oil that the French fries and hash browns were cooked in also contained essence of beef for flavouring.²⁷⁸ The matter was ultimately settled with a US\$10 million donation to prominent vegetarian and Hindu organisations and a public apology.²⁷⁹

c) In the absence of a mandatory labelling system for vegetarianism and vegan products, some producers have sought to attract the vegetarian and vegan market by labelling their product as 'suitable for vegetarians or vegans'. Given the wide-ranging definition of 'vegetarian', in 2006, the United Kingdom Food Standards Agency issued guidance notes on the labelling of foods as suitable for vegetarians following consultation with stakeholders including The UK Vegetarian Society and The UK Vegan Society.²⁸⁰ The guidance notes include the following definition:

The term 'vegetarian' should not be applied to foods that are, or are made from, or with the aid of, products derived from animals that have died, have been slaughtered, or animals that die as a result of being eaten. Animals means farmed, wild or domestic animals including for example, livestock poultry, game, fish, shellfish, crustacean, amphibians, tunicates, echinoderms, molluscs and insects.²⁸¹

d) At the time of writing, no comparable guidance notes appear to have been prepared for food producers in Australia; however a number of organisations have developed their own labels to assist consumers. These schemes include:

i) Vegetarian Society Approved; The Australian Vegetarian Society grants use of its symbol to manufacturers of food and other products which meet its standards. This symbol cannot be used on products containing animals or animal-by products.²⁸² Manufacturers whose products meet the standards are entitled to use the symbol on labelling, advertising and promotional material.²⁸³ The symbol serves as a guarantee by the Australian Vegetarian Society to vegetarians that the food is certifiably vegetarian.

ii) Vegan Action Label; The Certified Vegan Logo is administered by The Vegan Awareness Foundation in the USA (Vegan Action) and is a symbol applied to products that do not contain animal products and have not been tested on animals.²⁸⁴ Vegan Action is a non-profit organisation whose aims are to enhance public awareness about veganism and provide help and assistance to vegan-friendly businesses. The logo is a registered trademark and is easily recognisable and visible to consumers interested in purchasing vegan products without constantly having to consult ingredient lists.²⁸⁵

276 The Vegetarian Resource Group, *Frequently Asked Questions* <<http://www.vrg.org/nutshell/faqingredients.htm#gelatin>>; Vegetarian Network Victoria, Animal Products List <<http://www.vnv.org.au/AnimalProducts.htm>>.

277 Unilever: Streets, *Frequently Asked Questions*, <<http://www.unilever.com.au/ourbrands/brandfaqs/streetsfaq.asp>>.

278 CNN, 'McDonald's refutes class action suit alleging deceptive use of beef flavouring', 3 May 2001 <<http://money.cnn.com/2001/05/03/news/mcdonalds/>>.

279 CBS, 'McDonald's settles beef over fries', 5 June 2002 <<http://www.cbsnews.com/stories/2002/06/05/national/main511109.shtml>>.

280 Yorkshire Forward, *FSA issues Vegetarian Label Guidance* <http://www.foodyorkshire.com/foodyorkshire/view.asp?content_id=649&parent_id=124>.

281 Vegetarian Guidance Notes, *Food Standards Agency* <<http://www.food.gov.uk/multimedia/pdfs/vegitermsgn.pdf>>.

282 Australian Vegetarian Society, *The Vegetarian Society Product Acceptance Program* <<http://www.veg-soc.org/html/accredit.html>>.

283 Ibid.

284 Vegan Action, 'Our Campaigns' <<http://www.vegan.org/campaigns/certification/index.html>>.

285 Ibid.

e) Vegetarian and Vegan Food Certification schemes appear to have been prepared along similar lines in New Zealand, Europe and a range of other countries. In the absence of mandatory labelling legislation, these appear to provide a degree of comfort for vegetarian and vegan consumers. Nevertheless, as the vegetarian and vegan market continues to expand, it would seem appropriate to give further thought to the implementation of a regulatory regime that clearly identifies food products suitable for vegetarian and vegans.

VEGETARIANISM, VEGANISM AND HIDDEN ANIMAL PRODUCTS – KEY POINTS

- There are no enforceable standards in Australia which require the labelling of vegetarian or vegan products.
- Certain producers attempt to attract vegetarian and vegan consumers with labelling reading ‘suitable for vegetarians and vegans’.
- Many people with vegetarian and vegan dietary requirements inadvertently purchase animal-derived food products.
- The failure to include information stating that a product contains animal by-products undermines a consumer’s moral or health choice to be vegetarian or vegan.
- Third party vegetarian and vegan certification schemes have arisen to offer comfort to consumers that they are making an informed choice; however these are no substitute for a regulatory regime that clearly identifies vegetarian and vegan food products.

CONCLUSION

The majority of animal-derived food products available for purchase in Australia are sourced from animals raised in factory farms. Until now the physical and psychological suffering of these animals has remained largely hidden beneath a veil of secrecy. However, in recent times, the veil has been lifted by a number of events including the rise of the animal protection movement and an increased focus on ethical food. Increasing numbers of Australians are now saying ‘no to cruelty’ by purchasing humanely produced animal-derived food products or ceasing to purchase such products altogether. This is part of a global trend, which has been recognised by domestic and international producers and retailers alike.

To date, a major obstacle for consumers wishing to make ethical food choices has been improper labelling. While there are certain laws in place designed to prevent misleading or deceptive labelling, the absence of mandatory labelling laws linked to animal production systems continues to inhibit informed consumer choice. A number of voluntary/third party labelling schemes have emerged to fill the gap; however these are no substitute for clear, uniform, enforceable labelling laws. The good faith of consumers has been tested by a number of labelling scandals in Australia and overseas.

The European Community has recognised the importance that its citizens place on animal protection by introducing mandatory labelling of eggs and taking steps towards developing an ‘animal welfare label’. On the basis of this Report, it is clear that in order to give Australians citizens the opportunity to make ethical choices at the supermarket, our government must do the same.

Australians have a right to make informed choices and to take a personal stand against animal suffering with each dollar they spend at the supermarket.

This report has been produced by Voiceless
and endorsed by the following organisations:



Lifting the veil of secrecy on animal-derived food products

By Katrina Sharman



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Voiceless works to promote respect and compassion for animals, raise awareness of the conditions in which they live and take action to prevent them from suffering. This article is based on a Report produced by Voiceless in May 2007 entitled 'From Label to Liable; Lifting the veil on animal-derived food product labelling'.

Australians love food. From bacon and eggs at Bondi to Chiko Rolls and meat pies at the cricket. From traditional Sunday roasts to lazy TV dinners, food has been an important part of our cultural identity for generations. We sing about it, we write about it— it's the fabric around which we celebrate our trials and tribulations—in family, in business, in life.

Australia also claims to be a nation of animal lovers. Many people say that they care deeply about the treatment of animals. This appears somewhat paradoxical given that many of the animals they claim to love produce or comprise the core ingredients of the nation's most popular meals.

Are we all party to a form of wilful blindness or is the law simply making it too hard to see?

In the last 30 years, our society has experienced a food revolution ¹ which has transformed the lives of more than half a billion farm animals who constitute the meat, milk and egg producing machines annually called on to satisfy our national appetite. ² The nature of food production, especially the manufacturing of animal-derived food products, has changed dramatically as producers compete in domestic and international markets, on cost, scale and efficiency, to meet growing demand.

The interests of farm animals, who are classified in law as 'livestock' or property, have been largely disregarded in this relentless pursuit for profit. Many Australians still subscribe to the iconic image of a rustic farmhouse dotted with pigs wallowing in mud, happy chickens and a few cows watching on lazily in knee high yellow grass. However, in reality, Old

MacDonald's farm has long been consigned to the dustbin of history. The bulk of animals raised in Australia today are suffering behind closed doors in large industrial facilities known as factory farms.

Most animals in factory farms live a life of confinement. They spend their time crammed into cages, sheds or feedlots and they never see the sun. Take for example the breeding pigs (sows), numbering about 300,000. ³ These intelligent, emotionally complex beings spend the bulk of their reproductive lives in stalls so small they cannot turn around. ⁴ The sole purpose of their existence, as determined by us, is to produce the five million pigs slaughtered every year to fill the mouths of our pork, ham and bacon lovers. ⁵

In case you thought it was merely the pigs that Lady Justice forgot, spare a thought for our nation's 10 million caged layer hens, lawfully allocated a space so small they can barely preen or stretch their wings. ⁶ Or its 470 million broilers (meat chickens), crammed into sheds with tens of thousands of others—'hormone-free' but selectively bred to be fast-tracked from nest to nugget in a mere 35 days. ⁷ Australia's consumption of chicken meat has increased 600% over the past 40 years, with the average Australian now eating 36kg each year. ⁸

In 2007, our nation is pumping farm animals along the 'invisible' factory farm assembly line faster than ever. We are mutilating baby animals without pain relief—the tails and teeth of piglets, the beaks of chicks, the horns of calves and the tails of lambs, because it's practical, cheap and lawful to do so. Our regulatory environment is specifically designed to sanction and subsidise factory farming operations on the proviso that 'no unnecessary suffering' is caused. ⁹

Things, however, are beginning to change. In recent years, the veil of secrecy which has shielded many factory farming operations from the public eye has been lifted by a range of factors, including the work of animal protection groups and an increased focus on the environmental and human health effects of factory farming. 'Ethical Eating' has become the subject of media speculation, literature, public discussion and debate.¹⁰ Consumers everywhere are waking up to the plight of farm or 'production' animals. According to the European Union, increased awareness has caused a 'seismic shift' in public attitudes.¹¹

This change in consumer consciousness is prompting a global demand-led revolution. For example, Burger King, Wholefoods and Ben & Jerry's (in the United States) and Marks & Spencer, McDonald's and Starbucks Coffee (in the United Kingdom) are some of a growing list of retailers adapting their product lines to supply humanely produced animal products.¹² Large corporations such as America Online (AOL), Google and more than 150 educational institutions across the US are also introducing 'cage-free' dining facilities.¹³

The consumer wave has now reached Australia. For example, the free-range egg market has more than doubled in size in the last six years.¹⁴ It comprises 30.6% of the total retail/grocery egg market value.¹⁵ The free-range pork and chicken markets have also grown, with free-range production lines emerging in major supermarkets. The organic industry, which consumers associate with the humane treatment of animals, is one of the fastest developing sectors in the food industry both in Australia and overseas, with growth rates expected to continue at 10% to 30% per annum.¹⁶ Vegetarian and vegan food product markets are also rapidly expanding, reflecting a growth in the pool of consumers that wish to abstain from any food that had a mother or a face.

The big question is this; now that consumers are beginning to think critically about where their food comes from, is the current regulatory framework empowering them to make informed choices? Sadly it seems it is not. There are a number of reasons for this.

Firstly, our current legislative regime does nothing to lift the veil of secrecy which shields consumers from the truth about how animals are raised in factory farms. In fact it facilitates it by permitting factory farmers to remain silent

about the production system used to create their end products. To make matters worse, it permits marketers to use positive imagery such as farmhouses, butterflies and happy cartoon figures on animal-derived food products. This encourages consumers to disassociate products from the horrendous reality of factory farming.

Secondly, ambiguously worded food labels such as 'farm fresh' or 'naturally perfect' appear frequently on animal-derived food products. Similarly, words such as 'corn-fed', 'barn-raised', 'bred free-range', 'select free-range' and 'grain-fed' appear all over our sanitised supermarket produce. These words are not subject to any legislative definition. Consumers do not know what they mean. Producers have their own ideas. The truth is, these words mean different things to different people and they mean substantively very little at all. In allowing consumers to be bombarded with an abundance of terminology that seeks to harness their good will, the law reinforces the likelihood of consumers being misled as to the true origin of a product.

Finally, while Australia has consumer protection laws and food safety laws which cover many aspects of food labelling, there is simply no federal legislation which requires production systems for animal-derived food products to be identified on product labels.¹⁷ State and territory legislation which requires compulsory labelling of animal-derived food products has been introduced in some jurisdictions, however it is limited to egg production labelling and, as such, does not sufficiently facilitate consumer choice.¹⁸

In order to make informed decisions, consumers need information about the production systems from which animal-derived food products are sourced. Codes of practice and third party accreditation schemes have emerged to address consumer concerns about the treatment of farm animals, for example the RSPCA's food accreditation scheme and the Egg Industry's 'Egg Corp Assured Industry Quality Assurance Scheme'. However, these schemes do not offer uniform animal protection standards and consumers may in some cases overstate the significance of their animal welfare claims. In any event, such systems are no substitute for proper law reform.

We might well ask ourselves how our nation of animal lovers measures up internationally when it comes to our legislative framework for the

△ our current legislative regime does nothing to lift the veil of secrecy which shields consumers from the truth about how animals are raised in factory farms.

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labelling of animal-derived food products. The answer is not so well at all. Labelling of egg production systems has been mandatory in all European Union (EU) member countries since 2004.¹⁹ The EU is now also giving serious consideration to the development of an Animal Welfare Label over the next 5 years.²⁰

Australia is already lagging embarrassingly behind the EU in terms of animal welfare. The sow stalls which we recently endorsed for the next 10 years will be prohibited in the EU by 2012 (except for the first 4 weeks of pregnancy) and are already banned in England and Switzerland.²¹ The battery cages that we have 'graciously' agreed to increase by 100cm (the average size of a beer coaster) will be banned in the EU from 2012.²² The installation of new battery cages has been prohibited in the United Kingdom, France, Germany, Austria, Spain, Belgium, Denmark, Sweden, Italy, Ireland, Germany, Luxemburg, The Netherlands, Portugal and Greece since January 2003.²³ The EU is phasing out both of these horrific aspects of the factory farming system in response to scientific evidence of animal suffering and consumer concerns.

Europeans are not the only people that care about the treatment of animals. Australians care too and for this reason they deserve laws that offer truth in product labelling. The Government has delivered on the labelling of Genetically Modified Organisms.²⁴ It has delivered on Country of Origin Labelling.²⁵ It is time to deliver truth in labelling of animal-derived food products. We need to move away from a system which confuses consumers and which enables producers to hide the horrible truth about how the majority of our animals are raised.

The law must bend to the will of Australians who want to take a stand against the institutionalised suffering of animals each time they eat. The law should empower us to take responsibility for the effect of our food choices on the lives of others. The time for wilful blindness has passed.

Endnotes

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- 21 Council Directive 91/630/EC of 19 November 1991 laying down minimum standards for the protection of pigs. Official Journal L316, 11.12.1991, amended by Commission Directive 2001/93/EC of 9 November 2001 amending Directive 91/630/EC laying down minimum standards for the protection of pigs. Official Journal L316, 1.12.2001; The Welfare of Livestock Regulations 1994, The Welfare of Farmed Animals (England) Regulations 2000 and The Welfare of Farmed Animals (England) Regulations 2003 (Statutory Instrument 2003/299; Swiss Animal Protection Ordinance 1981, Article 22.
- 22 Council Directive 1999/74/EC of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, Official Journal L203/53, article 5(2).
- 23 *ibid.*
- 24 Australia New Zealand Food Standards Code, Standard 1.5.2, (commenced December 2001).
- 25 Australia New Zealand Food Standards Code, Standard 1.2.11; Trade Practices Amendment (Country of Origin Representations) Act 1998 (Cth). Country of Origin standards have been incorporated in state and territory legislation through the adoption of the Food Standards Code. See below n158. See also Commerce (Trade Descriptions) Act 1905 (Cth) s 7; Commerce (Imports) Regulations 1940 (Cth) reg 8 for Country of Origin standards for imports