

Submission
No 439

**INQUIRY INTO USE OF BATTERY CAGES FOR HENS IN
THE EGG PRODUCTION INDUSTRY**

Organisation: Animal Defenders Office

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Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

The Director
Select Committee on the use of battery cages for hens in the egg production industry
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By email: egg.industry@parliament.nsw.gov.au

Dear Committee Members

Submission to the NSW Legislative Council Select Committee on the Use of Battery Cages for Hens in the Egg Production Industry

Thank you for the opportunity to provide a submission to the Inquiry into the Use of Battery Cages by the NSW Legislative Council Select Committee on the Use of Battery Cages for Hens in the Egg Production Industry.

About the Animal Defenders Office

The Animal Defenders Office (“ADO”) is a nationally accredited non-profit community legal centre that specialises in animal law. The ADO offers information and representation for individuals and groups wishing to take legal action to protect animals. The ADO also produces information to raise community awareness about animal protection issues, and works to advance animal interests through law reform.

The ADO is a member of Community Legal Centres NSW Inc, the peak body representing community legal centres that operate in New South Wales.

Our submissions—overview

The ADO does not support the keeping of hens for commercial purposes, including for egg production. However, while it remains legal to do so in Australia, the ADO submits that the use of battery cages for layer hens in the egg production industry is unconscionable from an animal welfare perspective, and should be phased out through state legislative reform.

Pursuant to 1(a) of the Committee’s Terms of Reference (“ToR”), the ADO submits that permanently confining layer hens in battery cages is associated with extremely poor animal welfare outcomes, and would legally constitute animal cruelty if it were not for various exemptions in animal welfare legislation. The ADO submits that commercial or economic justifications for poor animal welfare outcomes do not amount to moral justifications, and that an animal’s capacity for suffering is the same regardless of whether the animal is labelled as wildlife, livestock, or a companion.

Pursuant to 1(b) of the ToR, the ADO submits that further legislative reform is required to prevent poor animal welfare outcomes to hens in the egg production industry generally, including banning other practices routinely carried out on layer hens such as beak trimming and forced moulting.

Pursuant to 1(e) of the ToR, the ADO notes that with greater community awareness of practices in the egg production industry such as confining hens in battery cages, there has been a continuing increase in consumer demand for eggs produced with fewer negative animal welfare outcomes. The ADO submits that the community's desire for fewer negative animal welfare outcomes should be respected with greater consumer protection measures put in place to inform consumer choices regarding eggs in the retail, hospitality and commercial food industries. This is particularly important in light of a number of successful high profile civil penalty orders initiated by the Australian Competition and Consumer Commission ("ACCC") against egg production companies that engaged in misleading and deceptive conduct in selling purportedly 'free range' eggs. Given the possibility that such conduct is systemic, the ADO submits that NSW must supplement federal consumer protection laws with its own consumer guarantees, such as through an independent egg certification framework.

Finally, pursuant to 1(f) of the ToR, the ADO submits that the ACT's experience of implementing a complete ban on battery cages demonstrates that banning battery cages, as well as guaranteeing other animal welfare measures for layer hens through legislation, is both legally viable in NSW.

The ADO's detailed submissions on the ToR are set out below.

1(a) whether or not the use of battery cages to contain or accommodate hens in the egg production industry is:

(i) associated with poor animal welfare outcomes or is accompanied by poor animal welfare practices

The ADO submits that the use of battery cages for layer hens would meet the statutory test for animal cruelty, were it not for various exceptions and exemptions for stock animals in general, and layer hens in particular. Given the existence of scientific evidence supporting the view that animal welfare outcomes associated with battery cages are poor, the ADO submits that legislative action should be taken to phase out the use of battery cages in NSW.

Principles of Animal Welfare

The Five Freedoms are a widely adopted set of principles that form a basic qualitative framework on which animal welfare schemes and assessment tools are based. They were first outlined in the United Kingdom in 1965, and since then have been endorsed by leading animal welfare organisations such as the RSPCA.¹

¹ <https://kb.rspca.org.au/knowledge-base/five-freedoms-for-animals/>.

The Five Freedoms are:²

1. Freedom from hunger and thirst
2. Freedom from discomfort
3. Freedom from pain, injury or disease
4. Freedom from fear and distress
5. Freedom to express normal behaviour

The ADO submits, however, that none of these basic principles can be met for hens housed in battery cage systems, and indeed many of these principles are not met for commercial layer hens in general.

Animal Welfare in NSW—Legislative Background

Animal welfare in NSW is primarily governed by the *Prevention of Cruelty to Animals Act 1979* (NSW) (“POCTA Act”). It sets out what is considered to be cruel treatment of animals. In our view, many of these provisions apply to hens kept in battery cages.

Sections 5 and 6 of the POCTA Act state that a person, including a person in charge of an animal, must not commit an act of cruelty or aggravated cruelty upon an animal. These provisions also make it an animal cruelty offence for a person in charge not to take reasonable steps to alleviate pain inflicted upon an animal, and not to provide veterinary treatment to an animal if required.

Subsection 4(2) of the POCTA Act defines ‘animal cruelty’ as including an act or omission as a consequence of which the animal is unreasonably, unnecessarily, or unjustifiably wounded, mutilated, maimed, abused, tormented, terrified, infuriated, over-used, or inflicted with pain.

Subsection 4(3) of the POCTA Act defines aggravated cruelty upon an animal as including an act of cruelty upon an animal in a way which results in:

- (a) the death, deformity or serious disablement of the animal, or
- (b) the animal being so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive.

The POCTA Act also imposes obligations on persons in charge of animals, including the obligation to provide an animal with adequate exercise (s9).

Exceptions and Exemptions

A number of provisions in POCTA legislation operate so as to exempt the application of animal cruelty provisions to the confinement of layer hens in cages.

For example, stock animals are specifically excluded from the obligation to provide an animal with adequate exercise (s9(1A)(a) POCTA Act). The definition of ‘stock animal’ includes poultry.³

² Ibid.

³ *Prevention of Cruelty to Animals Act 1979* (NSW) section 4, definition of **stock animal**.

Moreover, the *Prevention of Cruelty to Animals Regulation 2012* (NSW) (“POCTA Reg”) sets out detailed rules for keeping ‘laying fowl’ in cages.⁴ The requirements include minimum floor areas for cages and minimum cage height (only as high as the tallest hen).⁵

Model Codes of Practice

Section 34A(1) of the POCTA Act provides that the regulations may prescribe guidelines or adopt a code of practice as guidelines, relating to the welfare of species of farm or companion animals. Codes of practice usually allow husbandry practices that would otherwise amount to animal cruelty under the POCTA Act.

Paragraph 33(1)(a) of the POCTA Reg prescribes the *Model Code of Practice for the Welfare of Animals: Domestic Poultry* (“Model Code of Practice”).⁶

The Model Code of Practice states that poultry including hens have the following basic needs:⁷

- readily accessible food and water to maintain health and vigour;
 - **freedom to move, stand, turn around, stretch, sit and lie down;**
 - visual contact with other members of the species;
 - accommodation which provides protection from the weather and which neither harms nor causes distress;
 - **prevention of disease, injury and vice, and their rapid treatment should they occur.**
- (bolded for emphasis)

The Model Code of Practice concedes that ‘there are particular behaviours such as perching, the ability to fully stretch and to lay eggs in a nest that are not currently possible in certain (caged) poultry housing systems.’⁸ This is striking in that the Model Code of Practice is an industry document. In our view it is perplexing and self-contradictory for the Model Code of Practice, which is the accepted legal standard in NSW for hen animal welfare, to acknowledge that it is impossible for cages to meet hens’ basic physiological and welfare needs, and then to set out permissible features of such cages.

Poor Animal Welfare Outcomes for Battery Caged Hens under NSW Guidelines

The ADO notes that the Model Code of Practice also allows the following practices for all layer hens, including battery-caged hens:

1. Depriving hens of any natural light.⁹
2. Subjecting young hens to continuous unnatural light for up to 20 hours per day.¹⁰
3. Depriving newly hatched chicks of food and water for up to 60 hours after hatching.¹¹

⁴ *Prevention of Cruelty to Animals Regulation 2012* (NSW) Part 2, Division 2.

⁵ Regulations 7 and 10.

⁶ *Primary Industries Standing Committee - Model Code of Practice for the Welfare of Animals: Domestic Poultry 4th Edition*, SCARM Report Number 83, CSIRO Publishing (2002).

⁷ *Ibid*, page 1.

⁸ *Primary Industries Standing Committee - Model Code of Practice for the Welfare of Animals: Domestic Poultry 4th Edition*, SCARM Report Number 83, CSIRO Publishing (2002), page 1.

⁹ *Ibid* paragraph 5.5.

¹⁰ *Ibid* paragraph 5.4.

¹¹ *Ibid* paragraphs 9.1 and 10.1.

4. Depriving hens from all food and water for up to 24 hours to increase egg-laying productivity, referred to as 'moulting', and 'managing' any resulting ill-health or distress.¹²
5. Managing or destroying hens who have escaped into the manure area under cages.¹³
6. Neck dislocation as a method of destroying a hen.¹⁴
7. Beak trimming.¹⁵
8. Slaughter of hens via neck dislocation, electrical shock and bleeding out, and decapitation.¹⁶

The ADO submits that these guidelines do not provide for positive welfare outcomes for hens in battery cages. This submission is supported by evidence provided by the RSPCA.

The ADO notes that the RSPCA is a recognised authority in animal welfare and the enforcement of animal protection laws in Australia. In 2016 the RSPCA published a report titled *The Welfare of Layer Hens in Cage and Cage-free Housing Systems* ("the report").¹⁷ The ADO notes that the report cites extensive academic research in its findings. The ADO's purpose in referencing the report is to point out that many of the optimal health outcomes for layer hens discussed in the report are not required under NSW legislation or the Model Code of Practice for caged hens.

The report outlines a range of key factors that affect hen welfare, which are summarised below.

Bone health

The report states that commercial layer hens are highly susceptible to osteoporosis and poor bone strength due to very high rates of egg laying. Of all the types of layer hens, the report states that battery-caged hens are at the highest risk of poor musculoskeletal health.¹⁸

Disease

The report states that while hens in cages experience a lower risk of infectious diseases, hens in battery cages experience the highest rate of some non-infectious diseases including fatty liver and disuse osteoporosis, due partly to the lack of movement.¹⁹

Movement

The report states that hens in battery cages experience extreme behavioural restriction, as they cannot flap their wings, walk or run, and do not adjust to this behavioural restriction.²⁰

Perching

The report states that hens have a strong motivation to use perches, and the provision of perches is linked with good physiological and behavioural health outcomes.²¹ The report states that it is relatively straightforward for all housing systems to include perches for hens. Yet the

¹² Ibid paragraphs 9.5 and 12.1.

¹³ Ibid paragraph 12.6.

¹⁴ Ibid paragraph 12.10.

¹⁵ Ibid paragraph 13.2.

¹⁶ Ibid paragraphs 17.1 and 17.3.

¹⁷ <https://www.rspca.org.au/campaigns/layer-hen-welfare>.

¹⁸ *The Welfare of Hens in Cage and Cage-Free Housing Systems*, RSPCA report, August 2016, pages 16-17.

¹⁹ Ibid page 19.

²⁰ Ibid.

²¹ Ibid pages 19-20.

ADO notes that the Model Code of Practice merely encourages, rather than requires, the use of perches for non-cage systems, and neither requires nor encourages perches in cage systems.²²

Nesting

The report states that nesting is a high behavioural priority for hens, and when denied a nest hens can become frustrated, pace, and retain their eggs beyond the expected time of lay. The report states that depriving hens of a nest can increase the risk of cannibalism.²³

The ADO notes that nests are only required under the Model Code of Practice for non-caged hens.²⁴

Dustbathing

The report states that hens typically perform dustbathing every other day to clean their feathers. The report further notes that hens are unable to dustbathe in battery cages, and can perform sham-dustbathing, which does not satisfy birds and can indicate a reduced state of welfare.²⁵

Foraging and exploration

The report states that hens in battery cages are unable to forage and explore, which is a significant part of the normal behaviour of hens.²⁶

Beak trimming

The ADO notes as outlined above that the use of beak trimming is permitted under the Model Code of Practice. The report states that beak trimming can cause both acute and chronic pain, can lead to difficulty feeding, and is an invasive procedure which affects hens' sensory capabilities and normal behaviour.²⁷

Foot health

The report states that battery cages can cause excessive claw length due to the lack of solid flooring and the inability for birds to scratch the ground, which can lead to trapping of the claw and damage to the foot.²⁸

²² *Primary Industries Standing Committee - Model Code of Practice for the Welfare of Animals: Domestic Poultry 4th Edition*, SCARM Report Number 83, CSIRO Publishing (2002), paragraph 2.4.3.

²³ *The Welfare of Hens in Cage and Cage-Free Housing Systems*, RSPCA report, August 2016, pages 20-21.

²⁴ *Primary Industries Standing Committee - Model Code of Practice for the Welfare of Animals: Domestic Poultry 4th Edition*, SCARM Report Number 83, CSIRO Publishing (2002), paragraph 2.4.4.

²⁵ *The Welfare of Hens in Cage and Cage-Free Housing Systems*, RSPCA report, August 2016, page 22.

²⁶ *Ibid* page 23.

²⁷ *Ibid* page 24.

²⁸ *Ibid* page 26.

Group size and space allowance

The report states that in battery cages, where group sizes are small, there is very limited opportunity for subordinate hens to escape aggressive hens, which can lead to chronic fear, injuries, and sometimes death due to cannibalism.²⁹

Access to feed and water

The report states that hunger in hens can cause frustration and also trigger injurious pecking.³⁰ Yet as previously noted, depriving hens of food and water for up to 24-hours is permissible under the Model Code of Practice.

The report focuses on the welfare outcomes of battery cage hens, noting that hens in battery cages suffer extreme behavioural inhibition, and due to their inability to walk, flap their wings, or perch, they suffer the poorest bone strength of all housing systems and the highest number of fractures at depopulation.³¹

Finally, the report states that many other reports, international legislation, and scientific studies have concluded that good welfare cannot be achieved in battery cages.³²

The ADO agrees with this position.

1(a)(ii) justified by any other consideration

The ADO submits that as sentient beings, hens should not have unnecessary pain or suffering inflicted upon them. The ADO notes that the egg industry considers battery cages to have commercial or economic value. However, we also note that the objects of the POCTA Act include:

- (a) to prevent cruelty to animals, and
- (b) to promote the welfare of animals by requiring a person in charge of an animal:
 - (i) to provide care for the animal, and
 - (ii) to treat the animal in a humane manner, and
 - (iii) to ensure the welfare of the animal...

We therefore submit that the suffering of any animal cannot be absolved, justified, or no longer deemed to be cruel, on the grounds that it is inflicted upon the animal as part of a commercial enterprise or for profit.

1(a)(iii) consistent with community standards and supported by the public,

The ADO submits that the increased availability of retail alternatives to battery cage eggs, such as free range eggs, indicates an increased consumer demand for alternatives to cage eggs with fewer negative animal welfare outcomes.

²⁹ Ibid page 27.

³⁰ Ibid page 28.

³¹ Ibid page 31.

³² Ibid.

Recommendation 1

The ADO recommends that battery cages for layer hens be banned in all circumstances, without exception, through legislative reform. This should include the repeal of Division 2, Part 2 of the POCTA Reg. The legislative amendment would take precedence over any policy document, guideline or similar industry code of practice.

1(b) What legislative measures should be taken to:

(i) prevent poor animal welfare outcomes to hens in the egg production industry of New South Wales

As noted above, there are many lawful practices in the NSW egg production industry that have extremely poor animal welfare outcomes. These include not only methods of slaughter, but also the age at which layer hens are slaughtered. It is reported that layer hens are routinely slaughtered when deemed to be 'spent' at 72 weeks of age, despite having a 12-year lifespan.³³

Moreover, the practices of depriving hens of food and water, beak trimming (which has been noted to cause acute pain), and slaughtering hens who are not suffering, also have extremely poor animal welfare outcomes.

Banning the Battery Cage – An Australian Precedent

In 2014 animal welfare laws in the ACT were amended to ban the use of battery cages in egg production.³⁴ Confining hens in battery cages is now a strict liability animal cruelty offence, meaning that intention is not required to commit the offence. There are no exemptions.

The practice of beak trimming is also banned.³⁵

The ADO submits that these prohibitions should be replicated in NSW animal welfare legislation.

Proposed Poultry Welfare Standards and Guidelines

The ADO notes that draft Australian Animal Welfare Standards and Guidelines for Poultry were released for public consultation in November 2017. The Public Consultation Report noted that there were tension points between animal welfare groups and other sectors regarding the following practices:³⁶

1. The use of cages for layer hens;
2. Beak trimming and other painful procedures;
3. The use of limited feeding strategies such as induced moulting and alternate-day feeding;
4. Stocking densities;

³³ *Unscrambled: The hidden truth of hen welfare in the Australian egg industry*, Voiceless report, 2017, page 40.

³⁴ *Animal Welfare Act 1992* (ACT), section 9A.

³⁵ *Ibid* section 9C.

³⁶ *Australian Animal Welfare Standards and Guidelines - Poultry - Public Consultation Report*, page 2.

5. Lighting for housed poultry;
6. Killing and slaughtering procedures.

The ADO is strongly opposed to any practice that inflicts pain or suffering on hens in the egg production industry, including but not limited to forced moulting and the slaughter of hens who are no longer considered to be of commercial value. While many of these practices are considered necessary by the egg industry from a commercial and economic point of view, the ADO submits that these practices cannot lead to positive animal welfare outcomes under any circumstances, and therefore should be phased out via legislative amendment.

Recommendation 2

The ADO recommends that NSW follows the ACT's precedent and phases out battery cages and beak trimming by banning the practices in animal welfare legislation, as the first stage of a broader program to prohibit the infliction of pain and suffering on layer hens regardless of how they are housed.

1(e) the protection of consumer interests, including the rights of consumers to be fully informed of the sources of eggs in egg-containing products

The ADO submits that consumers who wish to consume eggs or products containing eggs should be able to make informed purchasing choices about the eggs they consume, including retail eggs, eggs consumed in hospitality, and foods containing egg products.

The ADO notes that there have been several instances where the ACCC took action that led to civil penalty orders against egg manufacturers for misleading 'free range egg' claims. The companies that were found liable included:

1. Snowdale Holdings Pty Ltd - ordered to pay \$750,000³⁷
2. Derodi Pty Ltd and Holland Farms Pty Ltd - ordered to pay \$300,000³⁸
3. Pirovic Enterprises Pty Ltd - ordered to pay \$300,000³⁹
4. RL Adams Pty Ltd, trading as Darling Downs Fresh Eggs - ordered to pay \$250,000⁴⁰

³⁷ ACCC media release - 'Egg producer penalised \$750,000 for misleading 'free range' claims', 25 July 2017: <https://www.accc.gov.au/media-release/egg-producer-penalised-750000-for-misleading-free-range-claims>.

³⁸ ACCC media release - 'Free Range Egg Farms ordered to pay \$300,000 penalty for false or misleading "free range egg" claims', 15 April 2016: <https://www.accc.gov.au/media-release/free-range-egg-farms-ordered-to-pay-300000-penalty-for-false-or-misleading-%E2%80%9Cfree-range-egg%E2%80%9D-claims>.

³⁹ ACCC media release - 'Federal Court orders \$300,000 penalty after finding 'free range' egg claims to be misleading', 23 September 2014: <https://www.accc.gov.au/media-release/federal-court-orders-300000-penalty-after-finding-free-range-egg-claims-to-be-misleading>.

⁴⁰ ACCC media release - 'Federal Court orders \$250,000 penalty against Darling Downs Fresh Eggs for misleading 'free range' claims', 14 September 2015: <https://www.accc.gov.au/media-release/federal-court-orders-250000-penalty-against-darling-downs-fresh-eggs-for-misleading-%E2%80%98free-range%E2%80%99-claims>.

These high-profile cases demonstrate how egg companies either failed to disclose to consumers the animal welfare practices involved in the production of their eggs or made misleading claims to consumers about their animal welfare practices.

In the wake of these cases, the ACCC released guidance for egg producers on how to comply with the National Information Standard on free range eggs.⁴¹ The Standard came into effect on 26 April 2018.

The ADO accepts that it may be too early to determine if the release of the National Information Standard and the associated guidance will reduce misleading claims by egg producers. We note, however, that while retail egg companies are being compelled to engage in more transparent labelling practices, there are no requirements for hospitality industries (restaurants and cafes), or food companies which use egg products in their ingredients, to disclose the production methods of their eggs.

Recommendation 3

The ADO recommends that NSW increases consumer awareness and protection standards by legislating an independent food or egg certification authority which independently assesses, monitors, and certifies the welfare standards (cage, barn, or free-range) of all food products or services that use eggs or egg products. This would require educating industry and consumers about egg production methods, animal welfare requirements, labelling, and enforcement measures.

1(f) the economic and social effects on New South Wales of:

- (i) banning, or not banning, the use of battery cages to contain or accommodate hens in the egg production industry; and**
- (ii) legislating, or not legislating, to prevent poor animal welfare outcomes to hens in the egg production industry of New South Wales and/or to set appropriate minimum standards of accommodation for the accommodation and treatment of hens in the egg production industry**

As mentioned above, in 2014 the ACT introduced legislation banning battery cages and beak-trimming of hens.⁴² As part of the implementation of the ban the ACT Government entered into an agreement with a local battery cage facility to convert to a barn-laid facility within a certain period.⁴³ This included financial support provided by the ACT Government to assist in the transition from one production method to the other.

The ADO submits that this indicates not only that it is possible for Australian jurisdictions to ban battery cages and other practices with poor animal welfare outcomes for layer hens, but also that it can be economically viable for existing egg producers using battery cages and other

⁴¹ <https://www.accc.gov.au/publications/a-guide-for-egg-producers>.

⁴² *Animal Welfare Act 1992* (ACT), sections 9A and 9C.

⁴³ ACT Government Media Release - 'Government helps Parkwood Farm convert to cage-free eggs', 4 July 2012: https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/barr/2012/government_helps_parkwood_farm_convert_to_cage-free_eggs.

practices with poor animal welfare outcomes to transition successfully to business models with less negative animal welfare outcomes.

1(j) any other related matter

Conclusion

In our view it is imperative that NSW takes any and all necessary measures to improve the welfare of layer hens, and that this would include, as a minimum, banning battery cages in legislation. We hope that this forms part of a broader approach to animal welfare according to which no animal or sentient being would be inflicted with pain, suffering, neglect, or cruelty due to human action or omission.

We thank the Committee for taking our submission into consideration.

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