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Dr Steve Tate
Director, Bureau of Animal Welfare
Department of Primary Industries
475 Mickleham Road
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Via email: animal.welfare@dpi.vic.gov.au

Dear Dr Tate

Submission concerning the draft Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2006

Lawyers for Animals ('LFA') is a Melbourne-based organization comprised of legal professionals and others with an interest in reducing and eliminating animal suffering. LFA's objectives include challenging weak animal protection laws and policies and working with industry, government and the community to bring about positive change and law reform for animals.

The Regulatory Impact Statement ('RIS') relating to the draft Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2006 ('Proposed Regulations') seeks public comments. Accordingly, we hereby tender our submission. Our submission can be summarized as follows:

- The Proposed Regulations do nothing to meaningfully improve the welfare of hens kept for egg production - they merely enshrine the existing minimum conditions found in the manifestly

inadequate *Victorian Code of Accepted Farming Practice for the Welfare of Poultry (Revision 2)* ('the Victorian Code'). The Victorian Code has repeatedly been heavily criticized for falling woefully short of ensuring the welfare of hens kept for egg production. Accordingly, it is evident that the Proposed Regulations will also fail to achieve the stated goal of "ensur[ing] that the conditions under which domestic fowl are housed are consistent with reasonable animal welfare standards." ¹

- Hens cannot be humanely kept in cages, particularly cages such as those permitted under the Victorian Code and the Proposed Regulations. This has been recognized in many other jurisdictions where such cages have been banned, or are being phased out.
- The basic needs of all sentient beings should be provided for, irrespective of the purposes for which they are kept by people. That it is inhumane to keep hens (or any bird) in the manner contemplated by the Victorian Code (and Proposed Regulations) is evidenced by the fact that the Victorian *Code of Practice for the Housing of Caged Birds* prescribes greater floor space for birds smaller than hens. There can be no legal or ethical justification for such a distinction. However, if the Government believes there is justification, it should advance it in a transparent manner such that it is open for proper scrutiny and public debate.

1 "Reasonable animal welfare standards"

The RIS states that there is a "need to protect the welfare of domestic fowl in various housing systems"² and that the policy objective is "to ensure that the conditions under which domestic fowl are housed are consistent with reasonable animal welfare standards."³ This being the express purpose of the Proposed Regulations, it is critical to determine exactly what constitutes "reasonable animal welfare standards".

The RIS makes little attempt to determine the minimum conditions required by hens for an adequate level of welfare. While it refers to the Brambell Report and the "five freedoms" for farm

¹ Regulatory Impact Statement relating to draft Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2006 ("RIS") p v

² Ibid

³ Ibid

animals, which are set out at page 5 of the RIS ('Five Freedoms'), it does not consider what conditions are required to ensure that the Five Freedoms are available to layer hens. The RIS also cites the Victorian Code's list of the basic needs of layer hens⁴ without noting the obvious fact that the standards provided for in the Code itself fail to ensure "freedom to move, stand, turn around, stretch, sit and lie down" and "accommodation which...neither harms nor causes distress", both of which are listed in the code as "needs" of layer hens. Indeed, the RIS reiterates the Victorian Code's acknowledgement that layer hens housed in battery cage systems are unable to "fully stretch" – nor to perch or to nest.⁵

Thus, where even the Victorian Code concedes that there are certain fundamental needs of hens (some of which it fails to ensure are met), it seems beyond argument that "reasonable animal welfare" requires that those needs – which are not addressed in the Victorian Code or Proposed Regulations – be provided for.

The Victorian Code permits the keeping of hens in cages which are not large enough for them to turn around or spread their wings. It permits egg producers to deprive hens of fresh air and sunlight, nests in which to lay their eggs⁶, perches, the opportunity to dust-bathe and the opportunity to forage – all of which are instinctive and necessary behaviours of hens. Essentially, "[t]he cage inhibits the performance of virtually all aspects of hen behavior [*sic*] (Rollin, 1995, p20) due to the severe confinement and barrenness of the environment."⁷

In particular, egg producers are required under the Victorian Code (and would be required under the Proposed Regulations) to provide each caged hen with a minimum floor space of a mere 550cm². This is manifestly inadequate in circumstances where a brown hen reportedly occupies at least 475cm² just when standing still⁸. Researchers have noted that an average hen uses

⁴ RIS, page 6.

⁵ RIS, page 6.

⁶ The Victorian Code provides for one nest per 7 hens.

⁷ See Factory Farming, "Factory Egg Production" at www.factoryfarming.com/bc_evidence.htm

⁸ Appleby, "The EU Ban on Battery Cages: History and Prospects", in *The State of the Animals II:2003* at p166 – cf Factory Farming, *op cit*, footnote 7, which cites the research of Appleby & Hughes, indicating that a hen "at rest" occupies 600cm².

approximately 1,272 cm² merely to turn around⁹ and 2,000 cm² to perform wing flapping¹⁰ – clearly, in our submission, the requisite cage dimension under the Victorian Code is inadequate to provide even the bare minimum of space required for a hen’s reasonable comfort (or, indeed, *any* degree of comfort).

The Victorian Code provides that birds must be able to stand at normal height, that the cages must be at least higher than the maximum height of the birds standing normally and that the height of all cages must be at least 40cm over 65% of the cage floor area and not less than 35cm at any point. We doubt whether such height allowance is sufficient – unconstrained hens have been documented as making many head movements above 40 cm.¹¹ However, astonishingly, the Proposed Regulations *do not even contain the minimum height requirements* set out in the Victorian Code. These minimum requirements were left out of the Proposed Regulations on the basis that there is said to be no “conclusive evidence of the impact of cage height on layer hen welfare.”¹² The RIS states that “[w]hile the proposed regulations are consistent with the principle that caged birds must be able to stand at normal height, the quantitative requirement [being the minimum height set out in the Victorian Code] has not been included in the proposed regulations on cost-benefit grounds.”¹³ In our view, it is outrageous that the RIS does not concede that the welfare of hens requires that they are kept only in cages which are at least as high as the hen is when standing – this proposition seems to us a matter of common sense.

The RIS states that “[p]roviding more overall space for layer hens will lead [*sic*] address one of the key criticisms of cage egg production i.e. freedom for [*sic*] to express normal behaviour.” In our submission, an increase in floor space of a mere 100cm² (without a mandatory minimum height allowance or provision for nests) will have a negligible effect on the ability of hens to express normal behaviour – as outlined above, 550cm² is a space only slightly larger than the average hen and confinement in such a limited amount of space prevents a hen from performing most of her natural behaviours. According to the organization Compassion in World Farming, “[t]he welfare of

⁹ Op cit Appleby footnote 8, see also Anne Scheving, “Intensive housing of laying hens: a welfare issue”, <http://wein.library.usyd.edu.au/links/Essays/2005/scheving.html>

¹⁰ op cite, Factory Farming footnote 7

¹¹ Dawkins (Appleby & Hughes, 1991) cited by Factory Farming, *ibid*.

¹² RIS, page 40.

¹³ *Ibid*, p26.

the egg-laying hen is directly linked to her ability to act out natural behaviours. A happy hen is a bird free to forage, take exercise, preen, dust-bathe, take refuge on a perch whenever she feels vulnerable and build a nest in which to lay her eggs.”¹⁴ Additionally, caged hens suffer a multitude of debilitating physical conditions as a result of their confinement, such as weakened bones¹⁵ and foot injuries.¹⁶

It seems to us hardly worth the time and expense taken by the Department in researching and drafting the RIS and drafting Proposed Regulations for such a paltry increase in floor space. The cynical observer might well conclude that the true purpose of the RIS, and the Proposed Regulations, is not to improve animal welfare but to be seen to be responsive to concerns about animal welfare while continuing to indulge the concerns of industry stakeholders only.

As a final point, we note that although the RIS indicates that the Department consulted with animal welfare organizations (namely Animals Australia and the RSPCA), it appears to have failed to consider the views of either organization, which are set out at clause 1.5 of the RIS. An indication that animal welfare considerations have been dealt with in a token fashion (if at all) is underlined by the fact that the VFF Chicken Meat Group and Egg Group appear to be broadly content with the Proposed Regulations. As an example, the RIS notes that the VFF Egg Group “expressed some concerns about any proposed regulations” in the area of (inter alia) minimum height limits. Accordingly, the RIS (purportedly) considers and then dismisses the value of an increased cage height for hen welfare. This is particularly interesting when one considers the minimum height requirements for the housing of pet birds (see point 2.1 below), while it further underscores our point above, regarding the cynical observer.

That the Victorian Code provides such limited protection to the rights of hens and the Five Freedoms is hardly surprising given that the egg industry must have had considerable input into

¹⁴ www.civf.org.uk/campaigns/primary_campaigns/egg_laying.html

¹⁵ See RSPCA Infosheet “Battery Hen Farming”. It is estimated that up to 56% of battery hens have suffered fractures by the time they are slaughtered – Animal Liberation fact sheet, “Battery Hens: They Never Get Out”.

¹⁶ Compassion in World Farming, op cit, footnote 15.

developing the Code.¹⁷ Further close consultation with the egg industry in developing the Proposed Regulations is no doubt a legitimate course of action for Government to pursue, given the egg industry's obvious vested interest in these Regulations. However, responsiveness to the concerns of the egg industry should not come over and above, or to the exclusion of, the competing interests of other key stakeholders who are advocating for hens, such as Animals Australia. If regard is had to the Government's manifest failure to incorporate *any* reasonable welfare standards in the Proposed Code, it is fairly plain to see that this has, however, been the case.

We therefore now urge the Government to redress this imbalance by amending the Proposed Regulations, so that they genuinely reflect the welfare interests of hens and do not defeat the key purposes of the *Prevention of Cruelty to Animals Act 1986* (Vic) ('the POCTA') to prevent cruelty to animals; and to encourage the considerate treatment of animals. As is, the Proposed Regulations do nothing to ensure the 'reasonable welfare' of hens – they simply enshrine animal cruelty.

2 A comparative approach

2.1 The Code of Practice for the Housing of Caged Birds

The Victorian *Code of Practice for the Housing of Caged Birds* ('Caged Bird Code') purports to define "the minimum standards of accommodation, maintenance and care that are appropriate to the various species of caged birds"¹⁸. Poultry kept for the purposes of the commercial production of meat or eggs are among the species excluded from the application of the Caged Bird Code.

The Caged Bird Code recognizes that caged birds have "certain basic requirements", including "accommodation to suit their physical characteristics and behaviour"¹⁹ and "space enough to fly,

¹⁷ The RIS states "...animal welfare concerns arising in particular industries are often addressed in codes of practice developed jointly by government and the industry" (page 6) – we note that the RIS does not indicate that animal welfare groups have any input into the content of codes.

¹⁸ Caged Bird Code, Introduction.

¹⁹ Ibid

roost and elude other cage birds”²⁰. It further provides that accommodation should include a means of escape from or avoidance of other cage birds”²¹; “a variety of different diameter perches with sufficient space for all birds”²² and “a choice of nesting and roosting sites and/or provision of suitable nesting [...] all birds in the cage.”²³

The difference in approach to caged birds used for purposes other than food production is made clear when the minimum cage dimensions are compared – the minimum floor area for one 10cm bird (for example, a finch) is 1000cm² with a minimum height of 34cm²⁴. For a budgie, the minimum floor area is 1,600cm²²⁵. Hens are considerably larger than either of those species, yet under the Proposed Regulations would only be entitled to a cage providing floor space of 550cm² and no minimum height. The basis for the different treatment of the pet budgie and the battery hen is inexplicable, other than by reference to the fact that the latter is used for food production. This is both legally and ethically an unacceptable basis upon which to deny the hen an adequate amount of floor space (not to mention the other deprivations to which battery hens are subject).

The fact that the Caged Bird Code mandates minimum standards so greatly in excess of those stipulated in the current Victorian Code (and national model code) makes it clear that the conditions to which hens kept for egg production are subjected are a violation of their most fundamental requirements. Such an anomaly is without any apparent legal or ethical basis. If there is one, we would urge the Minister to post a fulsome explanation of it on the Department of Primary Industries’ website (for example, on the page dealing with the Proposed Regulations).

2.2 The European Union

If the Government chooses to proceed with the Proposed Regulations, it is important to note that Victoria will then lag behind all 25 European Union countries, where the further establishment of

²⁰ Ibid

²¹ Ibid, Clause 3, Accommodation

²² Ibid

²³ Ibid

²⁴ Ibid, table 3 “Indoor Cage Dimensions”

²⁵ Ibid

battery hen systems such as those permitted under the Victorian Code and Proposed Regulations has been banned since 2003.

Indeed, the EU Council of Agriculture Ministers agreed as long ago as 1999 that all conventional battery hen cages (such as those permitted under the Proposed Regulations) would be completely banned by 2012. Plainly, these countries did not allow economic considerations (such as an increase in egg prices or employment in the egg industry), nor the fact that alternative egg production systems also involve a compromise of hen welfare²⁶ to prevent them instituting measures for welfare enhancement. Surely the moral community in Victoria is no less compassionate than that which exists in Europe – so why doesn't our representative government acknowledge this through *meaningful* reform?

At the very least, Victoria should adopt the equivalent of the 1999 European Union "Directive Laying Down Minimum Standards for the Protection of Laying Hens" ('EU Directive') which provides for the following:

- The prohibition of the use of conventional cages from 2012 (note that conventional cages must provide at least 550cm² of floor space per bird and a claw shortener – the latter of which is not included in the Proposed Regulations);
- The use of "enriched cages" (which must provide 750cm² per bird [of which at least 600cm² must be at least 45cm high], a minimum total cage area of 2000cm², a nest, a litter, a 15 cm perch, 12cm of food trough per bird and a claw shortener; and
- Requirements for non-cage systems.

The EU Directive constitutes a clear recognition of the deficiencies of conventional cages such as those permitted under the Victorian Code and the Proposed Regulations. And yet, despite ample evidence provided to it, as to the detriment caused by conventional cages to hens, the Victorian Government fails to accept that this is the case. Again, it is fairly transparent that in so doing, the Government ignores the facts and answers to one stakeholder only – the egg industry. This is

²⁶ All of which were relied upon in the RIS as bases for not abolishing caged egg production – see, for example, RIS, pages 40-41.

hardly democratic, nor is it ethical if regard is had to the practical effect – or, rather, lack thereof – that the Proposed Regulations will have on hen welfare. In other words, a Government that purports to represent a community that objects to animal cruelty should not be so complicit in causing animal cruelty.

Australia should, at a minimum, enact laws to ensure that hens in Australia have *at least* the same level of protection afforded to hens in other leading economies such as in the European Union.

3 The economics of reform of egg production

The RIS indicates that the retail cost of barn-laid eggs is 35% higher than cage eggs, while free-range eggs are 72% dearer than cage eggs.²⁷ Accordingly, were the cage egg production system to be abolished in favour of a barn egg production system, the cost of a dozen eggs would increase by a mere 45 cents.²⁸ As acknowledged in the RIS, the shell egg market (which, it states, constitutes approximately 87% of the egg market as a whole²⁹) is not particularly price sensitive and, were all eggs to increase by the same amount, there is no reason to believe that the existing market shares of egg producers currently in the market would not be preserved. Further, as the RIS also acknowledges, households are now spending a smaller proportion of their income on food than has previously been the case – in fact, it states that “most people could readily pay more for food.”³⁰ Accordingly, there seems little justification for continuing to permit a production system which involves such a degree of cruelty to hens.

Finally, there may be advantages to egg producers in switching to a non-cage system of egg production including a perception that non-cage systems produce a tastier and healthier product,³¹ which may increase egg consumption.

²⁷ RIS, page 83.

²⁸ See Animals Australia Fact Sheet “Battery Hens” citing Productivity Commission report of November 1998.

²⁹ RIS, page 3

³⁰ RIS, page 18 citing Appleby 2005, pE9

³¹ See, eg, Sean Roach, “Free Range eggs drive UK industry growth” at www.foodproductiondaily.com/news/ng.asp?n=69742-egg-free-range-battery

We reiterate our point above – that if the countries of the European Union can manage to legislate *bona fide* welfare reforms for hens, then surely so too could Victoria. In this regard we would urge the Government to consider any initiatives undertaken in EU countries to ameliorate any possible adverse economic impacts of their reforms on egg producers, or to relieve any hardship caused to them as a result of implementing new cage systems.

4 Welfare versus dollars

The RIS notes that it is not possible to accurately quantify the benefit in terms of animal welfare as against other factors relevant to the Proposed Regulations – namely, the interests of egg producers and the cost of eggs to the consumer. Notwithstanding this, the RIS purports to arrive at a critical weighted analysis which clearly cannot be reached, given that, as stated, animal welfare considerations cannot be quantitatively measured. Surely then it is misguided to suggest, as the RIS does, that the Proposed Regulations represent a genuine compromise between the fundamental needs of hens and those of egg producers?

Clearly the best way of maximising productivity and minimizing costs for egg producers, is to remove any obligation on them to meet the vital needs of the animals which provide them with their livelihood. It is *this* position, not a ‘compromise’, that is reflected so perceptibly in the Proposed Regulations.

Determining “reasonable animal welfare standards” (which is the purpose of the Proposed Regulations) necessitates an *objective* appraisal of the conditions necessary to hens to meet their fundamental physical and psychological needs. The *cost* of providing such conditions is irrelevant to this assessment. We would therefore urge the Government to make this assessment again, and in doing so, to have genuine regard to the welfare needs of hens.

Any ‘critical weighted analysis’ that results from such an assessment should also factor in the public interest in avoiding cruelty to animals. This is evident in several regards, including the democratic enactment of animal protection statutes, such as the POCTA. This Act states that we

must not allow a person to cause 'unreasonable pain and suffering' to an animal, by, for instance, causing it to be excessively confined (see s9(1)(a)). While caged hens have conveniently been denied the protective mantle of this law by virtue of s6 of that Act (no doubt after more consultation with the egg industry) the Government should nevertheless draw the line at causing hens unreasonable pain and suffering through excessive confinement – *notwithstanding* any costs that might then flow to consumers or egg producers. Failure to do so is not only unethical – but a manifest abrogation of the Government's responsibility to honour the public interest in *bona fide* animal protection.

We also note that any increased costs to the egg industry (of implementing non-cage systems of production) would ultimately simply be passed on to consumers. In this regard, we strongly urge the Government to consider that it is these same consumers who have dictated animal welfare legislation, such as the POCTA. This public interest in animal welfare indicates in itself that consumers would happily accept a role in bearing the cost of more humane systems of egg production. The fact that the more costly eggs labeled 'free range' enjoy such a large share of the egg market further underscores this point. Indeed, the only real obstacle to implementing such systems, as far as we can see, is the complacency of the egg industry and the failure of the Victorian Government to properly consider animal welfare and the interests of non-industry stakeholders.

5 Conclusion

It is LFA's submission that the Proposed Regulations manifestly fail to meet the welfare needs of caged layer hens. The Proposed Regulations are clearly no more than window dressing to enable the Government and the egg industry to reassure the unknowing consumer that they are "doing something" for battery hens. In this regard it is doubly deceptive that the *title* of the Proposed Regulations includes the words 'prevention of cruelty to animals' – when upon reading, it is clear that they do not prevent cruelty, they simply enshrine it.

We strongly urge the Minister to revise the Proposed Regulations so that they ban conventional cages in favour of non-cage systems of egg production. The European Union has banned such cages and there is no plausible reason why Victoria should not now follow suit. Failure to do so is not only patently unethical if regard is had to the documented suffering of hens in caged systems, but is also a clear failure on the part of the Government to honour the public interest in protecting animals from cruelty.

Should you wish to discuss any aspect of LFA's submission, or if we can be of any further assistance, please do not hesitate to contact Caroline Gianatti on (03) 9398 2791 or via Email: carolinegianatti@yahoo.com.au

Yours faithfully

LAWYERS FOR ANIMALS INC.