

MORE SPACE FOR CHICKENS

Guidance for Australia from developments in the European Union

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Approximately 11 million egg-laying hens live in conventional cages in Australia, a country with a landmass of nearly 7.7 million square kilometres. By contrast, the European Union has a total landmass of 3.9 million square kilometres and is home to between 225 and 300 million layer hens. On the most conservative calculations, there are about 1.4 layer hens per square kilometre in Australia, and nearly 78 per square kilometre in the EU. However, by 2012, each EU layer hen will be entitled to a minimum of 750 cm² of space, along with additional cage features. Their Australian counterparts are generally entitled to a minimum of 550 cm² per hen. This article traces the development of the Directive which is due to abolish conventional cages in the space-poor EU, and makes an argument for the adoption of (at least) equivalent standards in Australia.

Different housing systems

Layer hens are kept in one of three different systems: cage systems, alternative systems, and non-cage systems.¹ Cage systems may be conventional systems, or 'enriched' or 'furnished' systems, which incorporate features designed to address more of the hens' basic welfare and behavioural needs. In an alternative system, hens are kept in cages but may also roam in sheds for some portion of each day. These may be referred to as barn systems. Non-cage systems allow hens to roam outdoors during the day, while at night they are kept in sheds that do not include cages. Although the relevant Australian code of practice addresses the conditions of hens living in alternative and non-cage systems, the principal focus of this article is on conventional systems, since the majority of Australian layer hens live in these systems.

Assessing hen welfare

Studies that focus on the welfare of hens tend to consider two main sets of criteria: welfare indicators and behavioural priorities. Welfare indicators can include the number of hens per cage or shed, their size, the overall size of the flock, parasite density, access to water and food, the practice of beak trimming, incidence of injurious pecking and cannibalism. Behavioural priorities include the ability to engage in behaviours such as flapping, flying, roosting, stretching and nesting.² Evidently, the way in which variables are measured and weighted will affect the outcome of any study. Most studies acknowledge the complexity of any assessment, given the number of variables involved and the lack of any widely accepted methodology for integration of

indicators.³ This must be borne in mind for the purposes of any discussion of appropriate standards.

The Australian standard

There is no federal law that sets minimum welfare standards for poultry in Australia. This is a consequence of the fact that the Australian *Constitution* contains no head of power addressing animal welfare. Rather, animal welfare is largely the subject of state and territory legislation.

Although this legislation prohibits certain types of cruelty to animals, it offers limited protection to intensively farmed animals. The legislation will not apply to acts or practices with respect to the farming, transport, sale or killing of a farm animal which is carried out in accordance with a code of practice.⁴ In most states and territories, non-compliance will not necessarily constitute a breach of the legislation. In South Australia certain codes of practice have been adopted under the local legislation and compliance is mandatory.⁵ However, these do not yet include the principal code that addresses the welfare of layer hens. The codes are set by the Primary Industries Ministerial Council ('PIMC'), in conjunction with the Primary Industries Standing Committee.

The minimum conditions in which layer hens may be kept in order to guarantee compliance with the law are addressed in the *Model Code of Practice for the Welfare of Animals - Domestic Poultry* ('Poultry Code').⁶ Central provisions of the Poultry Code relating to layer hen housing have been adopted in regulations in most Australian jurisdictions.⁷ The Poultry Code stipulates that for cages bought after 2001, each hen should have at least 550 cm² of space. Layer hens should have access to 10 cm of feed trough and 10 cm of water trough, and be able to stand normally.⁸ The Code also contains guidelines in relation to other aspects of hen welfare including lighting, equipment, ventilation and temperature.

No significant review of welfare standards for poultry in Australia has been conducted at government level since the Commonwealth Department of Agriculture, Fisheries and Forestry ('DAFF') reviewed layer hen housing in 2000. Moves to introduce legislation have been made, although no consistent national attempt to ban conventional cages has taken place.⁹ The *Australian Animal Welfare Strategy* ('AAWS') is an initiative developed by DAFF and endorsed by PIMC, which seeks, among other things, to promote national welfare standards and encourage consistency in legislation.¹⁰

REFERENCES

1. This is the terminology adopted by Council Directive (EC) No 74/1999 of 19 July 1999 Laying Down Minimum Standards for the protection of Laying Hens [1999] OJ L 203/53 ('Laying Hens Directive'). In Australia the terms 'cage system', 'barn system' and 'free-range system' are used: PIMC, *Model Code of Practice for the Welfare of Animals - Domestic Poultry* (4th ed, 2002) ('Poultry Code').
2. European Food Safety Authority, 'The Welfare Aspects of Various Systems of Keeping Laying Hens' (2005) 197 *The EFSA Journal* 1, 14.
3. LayWel, *Welfare Implications of Changes in Production Systems for Laying Hens* (2006) 3 <laywel.eu/web/pdf/deliverable%2071%20welfare%20assessment.pdf> at 28 October 2009.
4. See, eg, *Prevention of Cruelty to Animals Act 1986* (Vic) s 6(c). Exceptions include the New South Wales and Tasmanian legislation: see *Prevention of Cruelty to Animals Act 1979* (NSW) s 5; *Animal Welfare Act 1993* (Tas) s 8.
5. See *Animal Welfare Regulations 2000* (SA) reg 10, which provides that a person described in an entry in Schedule 2 of the Regulations must, in carrying out an activity described in that entry, ensure compliance with the code of practice specified in that entry. A maximum penalty of \$2500 may be imposed for non-compliance.
6. PIMC, above n 1.
7. See *Prevention of Cruelty to Animals (General) Regulation 2006* (NSW) Pt 2A; *Animal Care and Protection Regulation 2002* (Qld) Pt 2 Div 2; *Animal Welfare Regulations 2000* (SA) Pt 3B; *Animal Welfare Regulations 2008* (Tas) rr 9-10; *Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2006* (Vic); *Animal Welfare (Commercial Poultry) Regulations 2008* (WA). These regulations generally address the requirements for cage size, stocking density and access to food and water, but do not incorporate many of the provisions of the Poultry Code which cover matters such as air flow, light, temperature and noise.
8. Poultry Code, above n 1, section 2.3.

The Poultry Code is due for review in 2010, with Animal Health Australia to participate in accordance with a model approved by PIMC under the AAWs.¹¹ Animal Health Australia has been commissioned to facilitate the development of nationally consistent welfare standards and guidelines based on the revision of the existing codes of practice. The development process will involve representatives from livestock industry sectors, animal welfare and research organisations, state and territory government agencies, DAFF and other stakeholders. Since the AAWs envisages that overseas changes will be important to the national strategy, this will provide an excellent opportunity to bring Australian standards into line with legislative developments in the EU.

The European Union

Structurally, the decision-making process of the EU is much more involved than that of the Australian system. The European Commission is elected by member states, and its role includes drafting legislation and reporting to the legislative bodies. The power to legislate is shared by the European Parliament and the Council of Ministers, although the Council is the main decision-making body. The presidency of the Council changes every six months and is held by each country in turn, often resulting in significant shifts in policy direction.

Background to the ban

The EU committed itself to certain domestic animal welfare standards by signing the *European Convention for the Protection of Animals Kept for Farming Purposes* in 1978. That marked the beginning of legislative standards for the minimum conditions in which animals could be kept in the EU. Standard setting also needs to be seen against the backdrop of the economic reasons for the existence of the EU as an institution. This is because the adoption of minimum standards is seen to reduce competition: '[d]ifferences distorting conditions of competition interfere with the smooth running of the market and pricing.'¹²

The first EU Directive addressing the welfare of laying hens, passed in 1986, was annulled by a judgment of the Court of Justice (for reasons other than the content of the minimum standards it contained),¹³ and replaced by Directive 88/166/EEC. Directives of the European Council require certain results to be achieved but give member states a measure of freedom in choosing the legislative means by which the requirements are implemented in their domestic law.¹⁴ Member states can legally impose higher national standards but cannot derogate from the requirements of the Directive. It should be acknowledged that the Council did not take the most direct route available in the circumstances. By passing a Regulation, rather than a Directive, the ban would have become binding in all member states without the need for domestic legislation.¹⁵ The use of a Directive therefore increases the risk of member states delaying enforcement of the ban.

The 1988 Directive imposed minimum standards that are no different from those that apply in Australia under the Poultry Code. However, it held the potential

for review and improvement. Article 9 of that Directive required the Commission to submit, before 1 January 1993, a report on scientific developments regarding the welfare of hens under various systems of rearing, accompanied by any appropriate adjustment proposals. This feature of the EU legislative process sets it apart from the Australian equivalent.¹⁶ While PIMC may consult with scientists and animal welfare activists as well as industry representatives, it has no equivalent integral independent reporting mechanism.

A first report, which was highly critical of conventional cages, was completed by the Scientific Veterinary Committee in 1992 but was never released. A second report was written by the Committee and published in 1996. It concluded that 'because of its small size and its barrenness, the battery cage as used at present has inherent severe disadvantages for the welfare of hens.'¹⁷

This alone was not enough to persuade the Council of Ministers to implement a total ban on conventional cages. Among the factors leading the Council to adopt a Directive phasing out conventional cages were the level of consumer support for increased welfare standards, the strength of the scientific conclusions (in particular the use of the word 'inherent'), high levels of protest from activists, and a degree of complacency on the part of the egg industry.¹⁸ Early drafts of a Directive to ban conventional cages differed greatly from the current version, one even advocating 800 cm² per hen.¹⁹

Draft Directives were debated by the Commission and passed on to the Council for consideration, with the decision to be made by qualified majority. The composition of the Council of Ministers varies depending on the subject matter of the debate. On this occasion it was composed of Agriculture Ministers of 15 states, a membership very similar to Australia's PIMC. Details of the deliberations within the Council are not publicly available, so a certain degree of speculation is needed when assessing which factors were the most important in the Council's ultimate decision.

The ban on the use of conventional cages was formalised with Directive 1999/74/EC ('Laying Hens Directive'). As will be shown, it attempted to take some account of protest groups' and scientists' concerns about the welfare of hens used in egg production, and required the involvement of multiple EU bodies over a long period of time.

Laying Hens Directive

In the Laying Hens Directive, the European Council recognised the need to achieve a balance 'between the various aspects to be taken into consideration, as regards both welfare and health, economic and social considerations, and also environmental impact'.²⁰ The objective of the PIMC, by contrast, is 'to develop and promote sustainable, innovative and profitable agriculture'.²¹ It is not specifically obliged to consider the welfare of animals.

Like the Poultry Code, the Laying Hens Directive establishes minimum conditions for hens in the three main types of housing system discussed above. It has prevented the building and bringing into operation of

9. See, eg, Animal Welfare (Ban Battery Hens) Bill 2008 (Tas); *Animal Welfare Act 1992* (ACT) s 9A, which has never been commenced.

10. DAFF, *The Australian Animal Welfare Strategy* (rev ed, 2008) <daff.gov.au/_data/assets/pdf_file/0008/749204/aaws-strategy-jun08.pdf> at 28 October 2009.

11. See AHA, 'Australian Animal Welfare Standards and Guidelines' <animalwelfarestandards.net.au> at 28 October 2009.

12. Laying Hens Directive, above n 1, 54.

13. Council Directive (EEC) No 113/1986 of 25 March 1986 Laying Down Minimum Standards for the Protection of Hens Kept in Battery Cages [1986] OJ L 74 / 35 was annulled by *United Kingdom of Great Britain and Northern Ireland v Council of the European Communities* (C-131/86) [1986] ECR 905.

14. Consolidated Version of the Treaty Establishing the European Community 29 December 2006 [2006] OJ C 321 / 1, 153 (art 249).

15. *Ibid.*

16. See Council Directive (EEC) No 166/1988 of 7 March 1988 Complying with the Judgment of the Court of Justice in Case 131/86 (Annulment of Council Directive 86/113/EEC of 25 March 1986 Laying Down Minimum Standards for the Protection of Laying Hens Kept in Battery Cages) [1988] OJ L 74 / 83, 86 (art 9). Although the Poultry Code does specify a year in which it is to be reviewed, an in-built independent reporting process is lacking. An earlier review date can be set if 'technologies offering significant welfare benefits are available'. There is no process established to monitor any potential developments, and no criteria which, when satisfied, will prompt a revision of the date.

17. Scientific Veterinary Commission Animal Welfare Section, *Report on the Welfare of Laying Hens* (1996) 109 <http://ec.europa.eu/food/fs/sc/oldcomm4/out33_en.pdf> at 28 October 2009.

18. D Wilkins, 'The Politics of Hen Welfare', in Graham C Perry (ed), *Welfare of the Laying Hen* (2004) 32, 34.

Surveys on consumer attitudes referred to by the [European] Commission indicate that animal welfare is important for consumers, with poultry welfare a priority action area.

conventional, or 'unenriched' cages — which are very similar to cages allowed under the Australian Poultry Code — since January 2003. As of 1 January 2012, all cages must be 'enriched cages', in which hens will have 750 cm² of total space, 600 cm² of which must be usable, as well as a nest, litter, and perches with 15 cm of space per hen.²²

The Laying Hens Directive provided for further related Directives to cover the marketing of eggs and the registration of egg producers.²³ The husbandry system must be indicated on packets of eggs in easily visible and clearly legible type and in defined terms. Enforcement of the Laying Hens Directive is handled by member states, which must arrange for inspections of registered egg producers and report to the Commission on the findings of those inspections.²⁴ Veterinary experts from the Commission also have powers of unannounced inspection.

The Commission Report

Perhaps most interestingly from a comparative perspective, the Laying Hens Directive required the Commission to submit a report to the Council, based on scientific opinion concerning the 'pathological, zootechnical, physiological and ethological aspects as well as environmental and health impacts'²⁵ of various systems for raising laying hens. This report also considered a socio-economic study on the effect of converting to an enriched cage system, and market research into the attitudes of consumers towards purchasing eggs from different production systems. The reporting requirement in the Laying Hens Directive gave rise to concern among some animal welfare activists due to its potential to recommend retrograde steps or amendments to the Directive before its central provisions came into effect.

Scientific opinion

The Commission requested a scientific report from the European Food Safety Authority, which drew conclusions in relation to hen health, welfare and safety, and behavioural priorities, much like those commissioned in the mid 1990s. The report found that lower stocking density in enriched cages reduced problems caused by conventional cages including cannibalism, injurious pecking, bone breakage and foot disorders.²⁶ The report also stated that high priority behaviours of hens, such as nesting, dust bathing, foraging and roosting at night on an elevated perch cannot be met in unenriched cages. Enriched cages do restrict the behavioural repertoire of

hens more than alternative systems, but the transition to enriched cages is beneficial for hens in many respects.²⁷

The Commission also referred to a study conducted by LayWel, co-financed by the Commission and community sources, which states that 'it could be argued that more is known about potential welfare indicators and motivational priorities in laying hens than in any other domesticated species.'²⁸ That study concluded that the main disadvantages of a conventional cage are the discomfort and abnormal behaviour that are inherent in the system. The design of the system does not allow sufficient space for exercising, thus restricting or preventing behaviours such as flapping and flying, and leading to disuse osteoporosis, causing fractures on removal. LayWel found that unlike conventional cages, furnished cages did not have inherent disadvantages. However, the disadvantages for hen welfare were dependent on specific design, features, genotype and group size.²⁹

The main advantage of a cage system is the relatively low risk of disease and parasitism associated with better housing, when compared with many other housing systems. According to LayWel, furnished cages retain many of the advantages of conventional cages without the drawback of severe behavioural restriction. While there are many variables, when well designed and managed, the furnished cage systems meet the needs of hens for a discrete, enclosed area for laying. On the other hand, the disadvantages of conventional cage systems outweighed the advantages.³⁰

This kind of finding was arguably very important to the EU's ultimate decision to ban conventional cages. Many activists have advocated a complete ban on cages. However, enriched cages appear to offer significant benefits when compared with conventional cages, and their implementation did not require the Council to grapple with difficult and sometimes contradictory research on, for example, the relationship between injurious pecking and large flock sizes in alternative systems.³¹

The study concluded that '*with the exception of conventional cages ... all systems have the potential to provide satisfactory welfare for laying hens.*'³² However, this potential is not always realised in practice, a finding which highlights the need for appropriate enforcement mechanisms and education.

Socio-economic study

The Commission also funded an independent study to analyse the socio-economic implications of using different housing systems. This has a particular

19. Michael C Appleby, 'The EU Ban on Battery Cages: History and Prospects' in *The State of the Animals* (2003) 159, 166.

20. Laying Hens Directive, above n 1, 53.

21. Poultry Code, above n 1, 1.

22. Laying Hens Directive, above n 1, 55 (art 5(2)).

23. *Commission Directive (EC) No 4/2002 of 30 January On the Registration of Establishments Keeping Laying Hens, covered by Council Directive 1999/74/EC* [2002] OJ L 030/44.

24. Laying Hens Directive, above n 1, 55 (art 8).

25. Laying Hens Directive, above n 1, 56 (art 10).

26. European Food Safety Authority, above n 2, 9.

27. *Ibid* 14.

28. LayWel, above n 3, 3.

29. *Ibid* 8.

30. *Ibid* 34.

31. Activists have opposed the painful process of beak trimming as well as advocating the use of alternative systems. However, they have been challenged with the reality that birds living in large flocks in alternative systems may be found to behave abnormally and to injure one another at a greater rate when their beaks have not been trimmed.

32. LayWel, above n 3, 30.

relevance in the EU context, since a key consideration for the European Council is ensuring that local products remain competitive in the market, which contains eggs sourced from non-member states. Although an industry-commissioned study suggested that the transition to enriched cages could amount to an increase of 10 per cent in production costs, the Commission disagreed and stated in its final report that 'the change from unenriched to enriched cages might increase the costs of each egg by less than 1 cent.'³³

Consumer attitudes

Surveys on consumer attitudes referred to by the Commission indicate that animal welfare is important for consumers, with poultry welfare a priority action area. Fifty-eight per cent of those interviewed believed that the welfare of laying hens was 'bad'. A majority of EU residents stated that they were prepared to pay more for eggs sourced from an animal welfare friendly production system, with a 'non-negligible' number of respondents reporting that they were prepared to pay up to 25 per cent more for such eggs.³⁴ The importance of consumer support for changes in animal farming and housing practices cannot be underestimated.

The Commission's conclusions

Based on the scientific opinions in particular, the Commission did not recommend amending the current provisions of the Laying Hens Directive.³⁵ What was needed was support from the technical and economic sectors. Authorities should focus on providing technical support to farmers and encouraging them to shift to new husbandry methods. The Commission also recommended using high welfare standards as a marketing and competitive advantage.³⁶ Many of the recommendations apply equally in Australia, such as sensitizing the public and private sectors to the issue and promoting information campaigns on rearing systems. In particular, the Commission concluded that communication to consumers on animal welfare standards applied in the laying hen industry should include objective information on the production methods applied and the relationship between higher welfare standards, increased costs for producers and the effect on egg prices.

Progress since the Laying Hens Directive

Some EU member states have implemented higher standards than those prescribed by the Laying Hens Directive, including Germany, where all cages will be banned from 2012. However, according to the Commission, inspections have shown that several member states are encountering difficulties in the implementation of the Directive.³⁷ The Commission vowed to monitor compliance intensely with further investigative missions. Consumption trends in the EU indicated a regular increase of consumption of table eggs from non-cage systems. A number of states have acted to comply with the Laying Hens Directive by passing national legislation banning conventional cages.³⁸

Conclusion

The ban on conventional cages in the EU raises a number of important challenges for the standards in the Australian Poultry Code. First, the ban suggests Australian standards are outdated. It has not been legal to build or bring into operation cages which allow only 550 cm² per hen in the EU since 1 January 2003. Secondly, although this kind of change was certainly not easy to achieve in the EU, and is not a complete solution from an animal welfare perspective, it is possible in the Australian context. The support of consumers is crucial. Decision makers will be influenced by the propensity of shoppers to purchase eggs at a slightly higher price in exchange for the guarantee of enriched cages.

The EU experience indicates that the weighty scientific evidence against the use of conventional cages can be persuasive, especially in conjunction with economic studies that reveal the true cost of altering cages. However, timing is critical. Any significant measure to improve the welfare standards of intensively farmed animals requires lengthy adjustment periods to gain the support of decision-makers. In difficult economic times, these phasing in periods may need to be even longer.

A holistic approach is required, with access to education, and support from both state and federal governments. Long-term changes to the way in which we allow intensively farmed animals to be treated will require significant upheaval to the welfare codes of practice system. The EU ban demonstrates that meaningful change can be achieved in the short term, even though decisions are made by those with close links to the egg industry. When the Australian Poultry Code is revised in 2010, the EU example should be followed, so that the compassionate majority of Australians do not need to live in a country that continues to allow its layer hens to be kept in battery cages.³⁹

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33. Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council on the Various Systems of Rearing Laying Hens in Particular Those Covered by Directive 1999/74/EC* (2008) 6.

34. Eurobarometer, *Attitudes of Consumers towards the Welfare of Farmed Animals* (2005) 50.

35. Commission of the European Communities, above n 33, 10.

36. *Ibid.* 9.

37. *Ibid.* 8.

38. Examples are Switzerland, Sweden, Denmark and Germany.

39. Eighty per cent of respondents in surveys conducted in the Australian Capital Territory believed that battery cages are cruel.