

# **EXPLANATORY STATEMENT**

## **Issued by authority of the Minister for Small Business**

*Competition and Consumer Act 2010*

*Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017*

### **Authority**

Section 134 of Schedule 2 to the *Competition and Consumer Act 2010* (the *Australian Consumer Law*) provides that the Commonwealth Minister may, by written notice published on the internet, make an information standard for goods of a particular kind.

### **Background**

Eggs are labelled in a variety of ways, and the words used to label them influence the choices that consumers make. Some labels represent eggs as produced by hens that are ‘free range,’ ‘barn’ or ‘caged’. Other variations such as ‘happy hens’, ‘free to roam’, ‘pastured’ and ‘farm fresh’ are used to suggest that hens are less confined than barn or caged hens without explicitly making a free range claim. Some packaging also shows pictures of hens in open pastures instead of, or as well as, a free range claim.

Many consumers favour eggs labelled as ‘free range’. An increasing number of consumers are prepared to pay more for eggs that have been laid by freely ranging hens – due to personal and ethical preferences – than for ‘barn’ and ‘cage’ laid eggs. In response, the proportion of eggs labelled as free range has increased substantially in recent years.

Over the last decade egg producers have made significant investments in infrastructure to improve productivity, adapt to consumer preferences, and ensure compliance with animal welfare regulations. As a free range egg is not observably different from a cage or barn laid egg, consumers must rely on the label. Eggs labelled as free range sell at a higher price because these production systems can be more expensive to manage and operate and consumers can place an additional value on non-observable factors, such as perceived improvement in the well-being of laying hens.

Eggs may be represented as free range when they are not from hens farmed under conditions that consumers might associate with this production system. In particular, some eggs labelled as free range have been found to come from hens that have not had meaningful and regular access to the outdoors. It is relatively easy to mislead consumers and there may be a financial incentive for producers to do so.

Consumers lose out when eggs labelled as free range are sold at a higher price but the conditions under which they are produced do not meet their expectations. Producers of free range eggs who provide hens with appropriate access to the outdoors also lose.

Recognising the need to provide certainty for consumers, on 12 June 2015, Consumer Affairs Ministers from the Commonwealth, states and territories requested a national standard for free range egg labelling be prepared.

## **Consultation paper**

On 5 October 2015, the then Minister for Small Business and Assistant Treasurer, released a consultation paper to consider options to enhance consumer confidence and certainty around egg labelling. The consultation process sought to identify what further action may be required to offer consumers assurance that their free range eggs are labelled correctly.

In particular, the Minister noted that the Government's aim was to balance consumers' need for clear and accurate information with any potential red-tape burden for producers and retailers.

The consultation process concluded in February 2016. In total, 149 formal submissions were received in response to this consultation, including 35 confidential submissions.

## **Decision**

On 31 March 2016, Consumer Affairs Ministers agreed to the introduction of an information standard for the labelling of free range eggs. The reforms will give more information to consumers when they buy eggs, providing greater clarity about free range claims. At the same time, the changes will reduce the regulatory uncertainty faced by egg producers and retailers and encourage investment in the egg industry.

## **Consultation on the draft information standard**

A draft information standard was released on 14 November 2016 for four weeks public consultation. In response to feedback received from stakeholders, a number of issues have been clarified by amending the wording of the information standard and this explanatory statement.

## **Purpose and operation**

The purpose of this information standard is to provide for the labelling and sale of eggs represented as free range that are produced and sold in Australia, and for other purposes.

This information standard requires that eggs sold in Australia must have been laid by hens that were kept in certain conditions, if those eggs are to be represented as free range.

The information standard commences 12 months after the standard is published by written notice on the internet, to allow producers and sellers to adjust their practices, labels and displays if required.

A detailed explanation of the provisions is included as an Attachment to this explanatory statement.

## ATTACHMENT

### **Detailed explanation – Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017**

#### **Part 1 – Preliminary**

##### Section 1 – Name of the Instrument

This section provides that the title of the information standard is the *Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017* (Information Standard).

All provision references are to the Information Standard unless otherwise stated.

##### Section 2 – Commencement

This section provides that the Information Standard commences the day after the end of the period of 12 months beginning on the day this information standard is published by written notice on the internet.

The delay in the commencement of the Information Standard is intended to provide a period of time for producers and sellers to adjust their practices, labels and displays if required.

##### Section 3 – Authority

This section states that the Information Standard is made under section 134 of Schedule 2 to the *Competition and Consumer Act 2010* (the *Australian Consumer Law*).

##### Section 4 – Definitions

The below definitions apply to terms within the Information Standard:

**Egg** means an egg laid by a hen.

**Free range egg** has the meaning given by section 7, which sets out the criteria for the management of hens if their eggs are to be labelled as free range.

**Hen** means a female domestic chicken (*Gallus gallus domesticus*). This includes both young birds (pullets) and adult birds.

**Laying cycle** for a group of hens means the period during which the hens are kept together, managed in the same way and are able to lay eggs. This concept is used to apply a time period across which the conditions in which the hens are kept are to be assessed. This period mirrors existing industry practice, as generally a group of hens are raised and kept together as a flock for the purpose of producing eggs, so consumers would expect that the hens that laid the eggs would be subject to those conditions for this period.

**Packaging** for eggs means anything that completely or partly encloses, contains or packs the eggs. This may include a carton or box in which eggs are packed.

**Stocking density** for hens means the maximum number of hens per hectare that have access to an outdoor range on any day during the laying cycle. The stocking density is framed as a ‘maximum’ stocking density because the number of hens that are raised as part of a flock may vary over time and the area of the ranges on which a flock is run may vary, for example where flocks are rotationally grazed across ranges to improve environmental management. Therefore, to be compliant with the labelling and display requirements, producers will not need to state their precise stocking density as at a point in time.

Non-accessible portions of the outdoor range are not intended to be included in calculating the number of hens per hectare based on the minimum size of an outdoor range and the maximum size of a flock.

#### Section 5 – Application

This section provides that the Information Standard applies to:

- packaging labels for eggs for wholesale or retail sale (see labelling requirements – section 8); and
- display of eggs for retail sale without packaging (see display requirements – section 9).

The application provision makes it clear that the Information Standard only applies to the sale of eggs and the information that is provided in connection with the sale of eggs. The Information Standard requires eggs labelled or otherwise represented as free range to meet the conditions set out in section 7 if they are to be represented as free range at the point of sale.

#### Section 6 – Inconsistency of State and Territory laws

This section provides that the Information Standard does not operate to exclude or limit the operation of a law of a state or territory that is capable of operating concurrently with the provisions of Part 2, which relate to labelling and display requirements.

### **Part 2 – Free range egg labelling and display requirements**

#### Section 7 – Meaning of the term free range

Subsection 7(1) provides that eggs are free range eggs for the purposes of this Information Standard if they meet a three limb test:

- the first limb requires that the eggs are laid by hens that had meaningful and regular access to an outdoor range during daylight hours during the laying cycle; and
- the second limb requires that the hens were able to roam and forage on the outdoor range; and
- the third limb requires that the hens that laid the eggs were subject to a stocking density of 10,000 hens or less per hectare.

### *Meaningful and regular access*

The Information Standard is access based so that producers are not required to ensure that hens go outside during daylight hours every day across the laying cycle, but are required to provide conditions which provide access to, and encourage use of, the outdoor range on a regular basis.

Where access from the indoor environment in which the laying hens are kept impedes, prevents or discourages the hens from accessing the outdoor range, then the hens may not have meaningful and regular access to the outdoor range. For example, if the outdoor range was maintained in a way that adversely affected the hens' ability to roam and forage on the outdoor range, or the openings through which the hens were able to access the outdoor range were not sufficient, then access may not be considered to be meaningful and regular.

The requirement that access must be meaningful and regular suggests that access is not intended to be absolute. However, the intention is that hens must be able to regularly or routinely access an outdoor range during daylight hours across the laying cycle.

Subsection 7(2) provides that in determining whether the hens that laid the eggs had meaningful and regular access to an outdoor range during daylight hours during the laying cycle, disregard occasions when hens were prevented from accessing the outdoor range because:

- the hens were undergoing nest box training; or
- weather conditions endangered the safety or health of the hens; or
- the hens would have been exposed to predators; or
- the hens were being medicated or otherwise cared for; or
- there were exceptional circumstances that posed a significant risk to the safety or health of the hens.

What constitutes exceptional circumstances is a question of fact, but may include other circumstances in which the hens were endangered or where it would be adverse to the welfare of the hens if they accessed the outdoor range.

The use of the term 'occasions' is intended to imply that access may not be permanently or routinely denied for any of the reasons listed in that subsection. The occasions to be disregarded are intended to take account of irregular circumstances that may be present from time to time. Subsection 7(3) also specifically provides that the total period of time for which access to the outdoor range is prevented must not be unreasonably lengthy.

### *Able to roam and forage on the outdoor range*

The second limb requires that free range eggs are eggs laid by hens that were able to roam and forage on the outdoor range. This requirement is in conjunction with the first limb that requires access to the outdoor range to be meaningful and regular (discussed above).

### *Stocking density of 10,000 hens or less per hectare*

Free range eggs must also be laid by hens that were subject to a stocking density of 10,000 hens or less per hectare. The area is based on the outdoor range to which the hens have access across the laying cycle. This is not intended to include any other area in which the hens may be kept.

### Section 8 – Labelling requirements

This section sets out the requirements for labelling packaging containing eggs for sale. The labelling requirements apply to the wholesale or retail sale of packaged eggs.

The labelling requirements prohibit a person from labelling packaging with the words ‘free range’ unless the conditions of the section are met.

To be labelled as free range, the packaging must:

- contain ‘free range eggs’, within the meaning of section 7; and
- use the words ‘free range’ in relation to the eggs that are packaged; and
- display the stocking density prominently on the packaging.

The requirement that words are used in relation to the eggs does not prescribe how the term is to be used. The intention is that a person reading the label would be able to discern that the term free range is used in relation to the eggs contained in the packaging.

To be compliant with the labelling requirements, the stocking density must be prominently displayed on the packaging, so that a person reading the label can easily read it when inspecting the packaging.

### Section 9 – Display requirements

This section sets out the display requirements for eggs that are sold without packaging in a retail sale. This is intended to cover sales such as market sales, where the eggs may not be displayed in traditionally labelled packaging. Unlike the labelling requirements in section 8, this is restricted to the retail sale of eggs, and does not include the wholesale.

The display requirements prohibit a person from displaying eggs without packaging and representing that they are ‘free range’ unless the conditions of the section are met. The conditions are that:

- the eggs must be free range eggs within the meaning of section 7; and
- the display must have a sign containing the words ‘free range’; and
- the sign must be prominently displayed; and
- the sign must prominently display the stocking density; and

- if eggs other than free range eggs are being displayed at or near the display of free range eggs, the display of free range eggs must be separate from the display of other eggs, so that a person at or near the displays can reasonably distinguish between eggs to which the free range sign relates, and other eggs.

Sections 8 and 9 – Requirement to display the stocking density

The intention for requiring the display of the stocking density is to indicate to consumers one of the conditions in which the hens were kept. **Stocking density** for hens is defined to mean the maximum number of ‘hens per hectare’ that have access to an outdoor range on any day during the laying cycle. The requirement that the stocking density be displayed in ‘hens per hectare’ on packaging or on a sign is intended to enable consumers to easily compare products without having to do a calculation to determine equivalency. In addition to prominently displaying the stocking density in hens per hectare, the stocking density may also be displayed in a variant, for example ‘hens per m<sup>2</sup>’, ‘hens per square metre’ or ‘square metres per hen’.

Because the stocking density is defined by reference to a maximum number of hens, compliance does not require producers to constantly monitor and state the precise number of hens per hectare on a label or on a sign in a display. Producers will only be in breach where they have understated the total number of hens per hectare.

**Example 1**

XYZ Co’s eggs are labelled with a stocking density of 8,000 hens per hectare, but the maximum number of hens that had access to the outdoor range on a day during the laying cycle was in fact 9,000 hens per hectare. The label will be in breach of the labelling requirements. This is a breach regardless of the fact that the eggs may otherwise comply with the meaning of free range eggs in section 7.