



12 December 2016

Consumer Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600

via email: australianconsumerlaw@treasury.gov.au

Dear Sir/Madam

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

1. I refer to your email of 14 November 2016 inviting submissions in relation to the proposed Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017 (“the Information Standard”).
2. The proposed Information Standard has been considered by the Law Society’s Animal Law Committee which has informed the views as expressed in this submission.
3. The Information Standard sets out the requirements which must be met by producers to enable them to label their eggs as “free range”. The purpose of the Information Standard is to provide greater clarity to consumers of eggs and to ensure that labelling is not misleading or likely to mislead consumers.
4. The potential for consumers to be misled by producers is evident through the use of ambiguous and confusing labels such as “free range”, “grass fed” and “grain fed”. Often these labels mean nothing except a higher price and provision of some sense of comfort to the consumer who believes that they are making a healthier choice for their family and assisting in the goals of animal welfare by supporting the humane treatment of farm animals.

Definition of ‘Free Range’ in the Information Standard

5. Section 7(1) of the Information Standard states that “free range eggs” are eggs laid by hens that:-
 - (a) had meaningful and regular access to an outdoor range during daylight hours across the laying cycle; and
 - (b) were subject to a stocking density of 10,000 hens or less

6. The Society acknowledges that the Information Standard is based upon the decision which was made by the Consumer Affairs Ministers on 31 March 2016. However, the Society submits that these two requirements alone are insufficient to properly constitute “free range” eggs.
7. We highlight below three additional requirements which ought to be satisfied by producers in order for them to use the term “free range” on their labelling.

Meaningful and regular access

8. The definition of “meaningful and regular access” in the Information Standard is somewhat unclear and ambiguous. The Information Standard does not specify how producers will facilitate this “meaningful and regular access” to the outdoors.
9. The European Union has clearly defined the term “free range” and has set enforceable standards by way of the European Union Council Directive 1999/74/EC (‘the EU Directive’).
10. The Society recommends that the features and standards of the EU Directive be applied in the Information Standard to ensure consistency, enforceability and consumer protection.
11. The EU Directive provides that, if laying hens have access to open runs:-

“there must be several pop-holes giving direct access to the outer area, at least 35 cm high and 40 cm wide and extending along the entire length of the building; in any case, a total opening of 2 m must be available per group of 1,000 hens”.¹
12. In the United Kingdom, the Welfare of Farmed Animals (England) Regulations 2007² (‘UK Regulations’) provide that if laying hens have access to open runs there must be several pop-holes giving direct access to the outdoor area which are at least 35cm high and at least 40cm wide and which extend along the entire length of the building. The UK Regulations further provide that a total opening of 2 metres must be available per group of 1,000 hens.³
13. The Society considers it appropriate that the Information Standard be more prescriptive in relation to how the laying hens will have access to the outdoors.
14. In accordance with the EU Directive and the UK Regulations, the Information Standard should require a minimum of 2 metres of pop-hole openings for every 1,000 hens, and that each opening should be at least 35cm high and at least 40cm wide.

¹ Article 4, section 3(b)(i) of the *European Union Directive 1999/74/EC*.

² <http://www.legislation.gov.uk/uksi/2007/2078/contents/made>

³ Section 7 of Schedule 2 of the *Welfare of Farmed Animals (England) Regulations 2007*.

Stocking density of 10,000 hens

15. The Information Standard allows “free range” producers to allow a stocking density of up to 10,000 hens per hectare.
16. The EU Directive and New Zealand’s Animal Welfare (Layer Hens) Code of Welfare 2012⁴ (‘New Zealand Code of Welfare’) allow a maximum stocking density of 2,500 layer hens per hectare.
17. The UK Regulations and the British Lion Quality Code of Practice⁵ allow a maximum stocking density of 2,000 layer hens per hectare.
18. Within Australia, the Eggs (Labelling and Sale) Act 2001 (ACT) states a person must not keep more than 1,500 laying fowl in a hectare⁶ and the Animal Care and Protection Regulations 2012 (Qld) state that a person must not keep more than 1,500 laying fowl in a hectare unless certain requirements are met.⁷
19. The free range maximum stocking density of 10,000 layer hens per hectare set out in the Information Standard is inconsistent with existing legislation in the European Union, United Kingdom, Queensland, the ACT and the Code of Welfare in New Zealand.
20. Therefore, the Society considers that the Information Standard’s maximum stocking density of 10,000 layer hens per hectare is too high to be considered as truly “free range”.

Labelling requirements

21. The Information Standard requires that producers clearly label the packaging of their products so as to ensure consumers can easily identify which eggs are “free range”.
22. The Society supports the requirement that the stocking density be prominently displayed on packaging, given that the proposed Information Standard allows a stocking density of up to 10,000 hens per hectare to be considered “free range”.
23. As noted above, as is consistent with international requirements, many consumers would expect that free range eggs would have a maximum stocking density of 1,500 hens per hectare. Therefore there is the potential for consumers to be confused with the labelling proposed under the Information Standard.
24. Accordingly, in addition to prominent display of the stocking density on packaging of free range eggs, the Society suggests that a different term be adopted for eggs which

⁴ <http://www.biosecurity.govt.nz/files/regs/animal-welfare/2012-layer-hens-code-web.pdf>

⁵ <http://www.lioneggs.co.uk/british-lion-eggs>

⁶ Schedule 1, Item 4 of the *Eggs (Labelling and Sale) Act 2001 (ACT)*.

⁷ Section 14(2) of the *Animal Care and Protection Regulations 2012(Qld)*.

comply with international standards and have a maximum stocking density of 1,500 hens per hectare.

Conditions for “free range” hens kept indoors

25. The Information Standard should include requirements for the conditions in which “free range” hens are kept indoors. It is reasonable that consumers would expect hens to have minimum specific conditions while kept indoors during night-time hours as well as their living conditions outdoors during daylight hours.

26. The EU Directive provides that in an indoor system for laying hens there must be:

“1(c) At least one nest for every seven hens. If group nests are used, there must be at least 1 m² of nest space for a maximum of 120 hens;

(d) adequate perches, without sharp edges and providing at least 15 cm per hen. Perches must not be mounted above the litter and the horizontal distance between perches must be at least 30 cm and the horizontal distance between the perch and the wall must be at least 20 cm;

(e) at least 250 cm² of littered area per hen, the litter occupying at least one third of the ground surface.

2. The floors of installations must be constructed so as to support adequately each of the forward-facing claws of each foot.

3. In addition to the provisions laid down in points 1 and 2,

(a) if systems of rearing are used where the laying hens can move freely between different levels,

(i) there shall be no more than four levels;

(ii) the headroom between the levels must be at least 45 cm;

(iii) the drinking and feeding facilities must be distributed in such a way as to provide equal access for all hens;

(iv) the levels must be so arranged as to prevent droppings falling on the levels below.”⁸

27. Section 2 of Schedule 2 of the UK Regulations provide for the same requirements of the EU Directive as set out above.

28. Therefore, the Society considers that the Information Standard should also include provisions which outline requirements for indoor laying hens as well as outdoor requirements. Consumers need to have confidence that laying hens are being kept in proper and humane conditions, both indoors and outdoors, thereby living up to the term “free range”.

Summary

29. In summary, the Society recommends the following amendments to the Information Standard.

⁸ Article 4, sections 1, 2, 3 of the *European Union Directive 1999/74/EC*.

30. That the definition of “meaningful and regular access” to the outdoors be amended to include a minimum number of pop-holes (2 metres of openings for every 1,000 hens) and at a minimum size of 35cm high by 40cm wide.
31. Ideally, the maximum stocking density for “free range” eggs be reduced to 1,500 hens per hectare. However the Society acknowledges that the decision has been made by the Consumer Affairs Ministers to define “free range” as 10,000 hens per hectare.
32. In those circumstances, the Society recommends that an additional definition be adopted for producers who abide by a stocking density of 1,500 hens per hectare or less. This will ensure consumers are able to make a clearer, better informed choice of the product they are purchasing.
33. That additional requirements regarding indoor conditions be included in the Information Standard, in alignment with international legislation. It is reasonable that consumers would expect “free range” eggs to come from chickens which have lived in certain humane conditions both indoors and outdoors.

I trust these comments are of assistance. We would be pleased to provide further comment or assistance.

Yours sincerely



David R A Caruso

PRESIDENT

Ph: (08)8229 0222

Email: president@lawsocietysa.asn.au