

Consumer Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600

6 December 2016

Dear Sir/Madam

Submission to Free Range Egg Labelling Information Standard

Thank you for the opportunity to provide comment on the draft *Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017* and accompanying Explanatory Statement.

We note the objective of the proposed Information Standard is to increase consumer confidence and producer certainty around free range egg labelling.¹ While the draft Standard may provide further certainty to producers in terms of expected production requirements, the same cannot be said for the objective of improving consumer confidence. Defining free range eggs simply as eggs laid by hens that ‘had meaningful and regular access’ to an outdoor range leaves open the possibility that eggs may lawfully be labelled as free range despite having been laid by hens that never accessed an outdoor range. This is contrary to current Australian consumer law as enforced by the ACCC² and applied by the Australian judiciary.³

We understand the basic policy positions (including the abovementioned definition) agreed by most Australian consumer affairs ministers on 31 March 2016 are not open for change in this consultation. However, it is critical that the proposed Information Standard provide adequate guidance to consumers and regulators as to what is meant by the definition, particularly the phrase ‘meaningful and regular access’. As currently drafted, the Information Standard fails to provide this guidance. It also provides a list of broad exceptions that would allow access to the range to be denied on a routine basis. In our view, the Information Standard will therefore fail to achieve the core objective of improving consumer confidence in the free range egg label.

To ensure the Information Standard will provide consumers with greater confidence in the free range label, the following changes are required:

1. Tighten the exceptions to providing meaningful and regular access;
2. Expand the considerations of what meaningful and regular access means; and
3. Require stocking density to be presented in the form of a scale.

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¹ Free Range Egg Labelling, Decision Regulation Impact Statement 2016, Treasury, p 9.

² ACCC Enforcement Guidance - Free Range Hen Egg Claims, ACCC, December 2015.

³ See, *ACCC v Pirovic Enterprises Pty Ltd (No.2)* [2014] FCA 1028.



1. Tightening exceptions to providing meaningful and regular access

Section 7 of the proposed Information Standard cannot be described as a ‘firm definition’ as anticipated by the Regulation Impact Statement.⁴ Instead, s.7 makes the already obscure phrase of ‘meaningful and regular’ access even more elusive by listing five broad exceptions. As currently drafted, these exceptions will make the Information Standard almost impossible to enforce with any degree of certainty. The loopholes created by the exceptions will allow any producer who wishes to subvert the Information Standard with ample opportunity to do so.

Accordingly, the exceptions must be tightened. Despite the assurances provided in the Explanatory Statement,⁵ inclusion of the term ‘occasions’ in s.7(2)(a) will not be sufficient to prevent access to an outdoor range from being routinely denied. The exceptions must be tightened to ensure they are indeed exceptional and not routine. To this end, RSPCA Australia recommends the following amendments:

- Nest box training
(i) the hens were undergoing nest box training, [but not for a period exceeding 4 weeks following placement at the laying facility];
- Weather conditions
(ii) [extreme] weather conditions ~~would have endangered~~ [posed an immediate risk to] the safety or health of the hens;
- Predators
(iii) the hens would have been exposed to [an exceptional threat] of predators;
- Medication
(iv) the hens were being medicated or otherwise cared for [under direct instruction from an appropriately qualified veterinarian];
- Exceptional circumstances
(v) there were [other] exceptional circumstances that prevented the hens from accessing the range [due to an immediate risk to their welfare].

To further ensure access is not denied on a routine basis, s.7(2) should include an additional paragraph stating that the factors listed in paragraph (2)(a) cannot be relied upon on a routine basis.

2. Expanding considerations of what meaningful and regular access means

Currently, the draft Information Standard only provides one consideration that should be taken into account in determining what meaningful and regular access means. We do not believe this is sufficient for regulatory or consumer certainty. To give further guidance, the Information Standard must provide further considerations that should be taken into account. These considerations should be guided by those already employed by the ACCC in determining misleading and deceptive conduct complaints relating to free range egg claims.

⁴ Free Range Egg Labelling, Decision Regulation Impact Statement 2016, Treasury, p 25.

⁵ Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017, Explanatory Statement, p.5.

We propose the following drafting for s.7(2)(b):

(2) For the purpose of paragraph (1)(a):

...

(b) have regard to:

- (i) the flock size and stocking density inside the housing facility;*
- (ii) the size of the housing facility and distances to openings;*
- (iii) the placement of physical structures inside the housing facility including nest boxes, perches, feeders, drinkers, and other objects;*
- (iv) the number of hens per metre of opening to the outdoors;*
- (v) the extent to which hens can pass through the openings safely and without obstruction;*
- (vi) the conditions on the outdoor range including the provision of shelter, absence of wet or muddy areas, and prevalence of vegetation;*
- (vii) the extent to which hens are able to roam, forage and display natural behaviours on the outdoor range to which the hens have access; and*
- (viii) the extent to which hens access the range.*

3. Labelling requirements

Finally, in the interests of improving consumer understanding of stocking densities used in the free range egg industry, we recommend the Information Standard require stocking density labelling to be presented in the form of a scale from 0 to 10,000 hens per hectare. This would provide consumers with a degree of relativity, which is particularly important for those retail outlets that may only stock free range eggs from facilities with 10,000 hen stocking densities. By presenting the information on a scale, consumers are informed that 10,000 hens is the maximum density allowable and are alerted to the fact that eggs are available from facilities that stock at lower levels should this be an important consideration for their purchasing decision. As internal stocking densities are equally, if not more, important to both hen welfare and the ability of hens to access the range, we believe these indoor densities should be displayed on pack as well alongside the outdoor stocking densities.

As currently drafted, the Information Standard will fail to achieve the objective of improving consumer certainty in the free range egg label. We firmly believe the abovementioned amendments are necessary to change this outcome and secure long-term consumer confidence in the industry.

Yours sincerely

A handwritten signature in black ink that reads 'Heather Neil'. The signature is written in a cursive, flowing style.

Heather Neil
Chief Executive Officer
RSPCA Australia