Australian Government
The Treasury

Free Range Egg Labelling

Consultation paper

October 2015

Consumer Affairs Australia and New Zealand (CAANZ)

Australian Government

The Treasury

Consultation Regulation Impact Statement

Free Range Egg Labelling

Consumer Affairs Australia New Zealand

October 2015

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Providing your feedback

We want to hear your views on options to increase consumer certainty about egg labelling. This consultation process will run for four weeks. The earlier that you provide a submission, the more time we have to consider your views at the time when the policy options are being developed. So if you would like to make a written submission, please provide it before **Monday 2 November 2015**.

On 12 June 2015 Consumer Affairs Ministers from the Commonwealth, states and territories requested the preparation of a draft national standard on free range egg labelling. As required by COAG regulation impact guidelines, a consultation Regulation Impact Statement (RIS) and decision RIS will be prepared ahead of Ministers formally considering in February 2016 whether an information standard is required.

The Commonwealth is undertaking the consultation process on behalf of Consumer Affairs Australia and New Zealand (CAANZ).[1] Stakeholders can access details of the consultation process via the consultations page of the Australian Treasury website — **www.treasury.gov.au/ConsultationsandReviews/Consultations**.

CAANZ values your feedback and will facilitate this through a number of channels, as outlined below.

Submissions to this consultation paper

Throughout this paper there are questions for you to consider in your submission. There is no obligation to answer any or all of the questions. There is no limit to the length of submissions.

Submissions should be uploaded using the consultations page of the Australian Treasury website.

Closing date for submissions: Monday 2 November 2015.

For accessibility reasons, please upload responses in a Word or RTF format. An additional PDF version may also be submitted.

Please upload submissions via the Australian Treasury website

Website:	**www.treasury.gov.au/ConsultationsandReviews/Consultations**
Enquiries:	Can be directed to Manager, Consumer Policy Unit, on 02 6263 2111, **AustralianConsumerLaw@treasury.gov.au**, or using the 'Make a comment' facility on the Treasury website.
Mail:	Free Range Egg Labelling Consultation Paper Small Business, Competition and Consumer Policy Division The Treasury Langton Crescent PARKES ACT 2600

1 Consumer Affairs Australia and New Zealand (CAANZ) consists of senior officers of the Commonwealth, state and territory and New Zealand Government agencies responsible for consumer affairs or fair trading. The primary role of CAANZ is to support Consumer Affairs Ministers.

Key focus questions

Throughout this consultation paper there are a number of detailed questions for stakeholders to consider, to assist in better defining the problem and to analyse the costs and benefits of the different options. Stakeholders lodging formal submissions are encouraged to refer to those detailed questions in their submissions. For quick reference, some of the key questions are listed below.

The problem

1. Do production system claims for eggs such as 'free range' sometimes mislead consumers? Is this the case for other claims, including 'barn' or 'cage' laid?
2. If so, how much detriment have consumers suffered due to misleading production system claims for eggs?
3. What detriment have producers and retailers suffered due to misleading production system claims for eggs made by competitors?
4. Do producers face significant uncertainty about how to ensure they do not make misleading production system claims for eggs?

The policy response

5. An information standard for eggs labelled 'free range' could mandate that the eggs come from flocks in which *most hens go outside on most ordinary days*. Would this reduce the problem?
6. Do 'free range' egg producers want detailed guidance on production factors that reliably lead to compliance with the requirement that *most hens go outside on most ordinary days*?
7. Any detailed guidance on 'free range' egg production factors would need to be developed in consultation with industry. If this guidance is desired, should it be:
    a) included as a 'defence' as part of an information standard?
    b) published by the Australian Competition and Consumer Commission (ACCC) as clear guidance about the current law?
    c) delayed until after the review of the 'Model Code of Practice for the Welfare of Animals — Domestic Poultry' has been completed?
8. Should an information standard require prominent disclosure on 'free range' egg cartons of the indoor or outdoor stocking density of hens, or any other practices?
9. Should an information standard require prominent disclosure of production methods for all hen eggs:
    a) as either 'free range', 'barn' or 'cage' eggs?
    b) including optional categories such as 'access to range' and 'premium free range'?
10. What are the benefits and what are the compliance costs of introducing an information standard? Do the benefits outweigh the costs?

1. The problem

Eggs are labelled in a lot of different ways. The words used to label eggs influence consumer choices. Some labels represent eggs as produced by hens that are 'free range,' 'barn' or 'caged'. Other variations such as 'happy hens', 'free to roam' 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 — owing to ethical, animal welfare and health preferences — than 'barn' and 'cage' laid eggs. In response, the proportion of eggs labelled as free range has increased substantially (see Appendix A). Over the last decade egg producers have made significant investments in infrastructure in response to new voluntary animal welfare standards and consumer preferences.

A free range egg is not observably different from a cage or barn laid egg, so consumers must rely on the label. Eggs labelled as free range sell at a higher price both because such production systems are more expensive to run and consumers place an additional value on non-observable factors, such as the perceived improvement in the welfare of the hens.

The problem is that, in some cases, producers represent eggs as free range that are not farmed under conditions that consumers typically expect when they buy them. In particular, some eggs labelled free range have been found to come from hens that either cannot or do not go outside on most ordinary days (see Appendix B). It is relatively easy to mislead consumers and there is a financial incentive for producers to do so.

Consumers lose out when producers sell eggs labelled free range at a higher price when they are not genuinely free range according to consumer expectations. The producers of genuine free range eggs also lose.

The issue of free range egg labelling is already addressed to some extent via the Australian Consumer Law (ACL), a voluntary code of animal welfare, state and territory laws and industry-led initiatives. (These are discussed in more detail in the description of the status quo, Option 1). In recent years, the ACCC has succeeded in court action against some egg producers for misleading and deceptive conduct under the ACL.

While an understanding of free range in relation to the labelling of eggs is emerging from case law, no single national definition exists. Egg producers choose whether to make a free range claim and consider whether the claim is not false or misleading.

Estimates of consumer detriment

The misleading labelling of free range eggs — whether deliberate or not — distorts the Australian retail grocery egg market and inhibits competition. Misleading labels mean that consumers are unable to distinguish between products that do and do not meet their expectations. A 2012 market survey reported that 2 out of 3 egg consumers found egg labels misleading and that they were uncertain if they got what they expected when they bought eggs with free range claims (Appendix F).

Consumers may suffer because certain egg production methods that they value, and for which they have paid a premium, were not used. Research indicates that consumers who purchase free range eggs do so for a number of reasons, including ethical and animal welfare considerations.[2] The indoor and outdoor stocking densities of hens are sometimes used as indicators of the freedom of movement available to layer hens in free range egg production. However, research by consumer advocacy group CHOICE[3] found that there is not a strong correlation between the stocking density of hens and the price of eggs labelled as free range (Box 1) whereas higher egg prices may be — rightly or wrongly — taken as an indicator of 'quality' by some consumers.[4]

However the value of a free range claim can be difficult to quantify and the price premium is likely to be set by the consumer market. It is important, therefore, that free range claims are justified and verifiable. As the CHOICE research indicates, there may not always be a direct link between the conditions under which the eggs were produced and price. Of course, the retail price of eggs reflects other factors such as seasonality and supply, as well as the cost of production. However in the absence of specific labelling requirements, where there are inadequate price signals it may result in a poor match between consumer preferences and their purchases, and a level of consumer detriment.

One estimate of consumer detriment was calculated by CHOICE in June 2015[5] based on an assumption that eggs were only free range where the production involved an outdoor stocking density of less than 1,500 hens per hectare.[6] CHOICE reported that the grocery volume of eggs sold in Australia last year claiming to be free range was approximately 696 million eggs.[7] Of this, CHOICE estimates that 213 million of these eggs claiming to be free range had a stocking density in excess of 1,500 hens per hectare. If we accept CHOICE's premise of 1,500 hens per hectare as a proxy for free range, consumers could be paying a premium of between $21 million and $43 million per year for free range eggs that are not actually free range according to that definition.[8]

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2 Julie Dang & Associates Pty Ltd, *Production methods understanding & QA evaluation: A market research report*, Prepared for Australian Egg Corporation Ltd, May 2012, **www.aecl.org/dmsdocument/465**.

3 CHOICE, *Free Range Eggs: Making The Claim Meaningful*, June 2015, **www.choice.com.au/~/media/619b60e5a1f04b2191d09fd9dab4c72e.ashx**

4 This paper does not assert that 'quality' or better animal welfare outcomes necessarily equate to 'free range', but notes the common consumer assumption that this is so.

5 CHOICE, *Free Range Eggs: Making The Claim Meaningful*, June 2015, **www.choice.com.au/~/media/619b60e5a1f04b2191d09fd9dab4c72e.ashx**

6 Note, this assumption regarding stocking density does not necessarily match with the developing case law.

7 Retail World, 2014 Annual Report, as cited in, ibid page 6.

8 This assumes as per CHOICE's research that 213 million eggs sold as free range are not truly free range and that the premium on a free range is between $0.10 and $0.20 for barn and caged eggs (of about medium size) as per research conducted by NSW Fair Trading in Sydney on 8 August 2013.

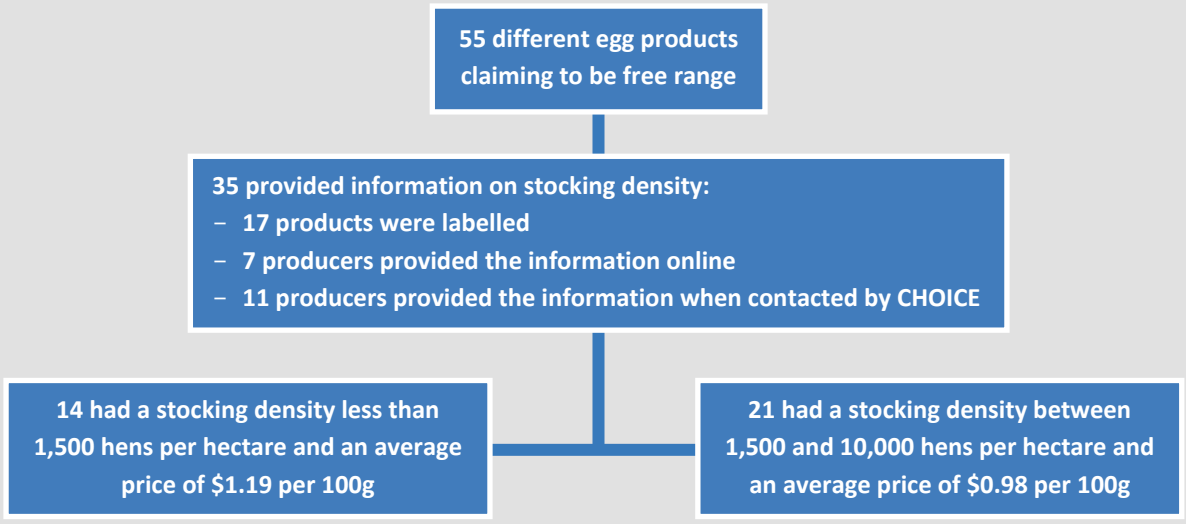
This estimate may be higher or lower than an accurate estimate of detriment. CHOICE's research is based on the assumption that eggs should only be labelled as free range if the outdoor stocking density was less than 1,500 hens per hectare (together with use of an outdoor range). Some consumers, animal experts and egg producers agree the maximum stocking density should be 1,500 hens per hectare, however many are of the view that a stocking density of, for instance, up to 5,000 or 10,000 hens per hectare, is acceptable for free range egg production as long as a number of other conditions are also met. Other factors that influence whether hens can and do go outside include flock size, internal architecture and barn openings.

The CHOICE estimate also does not include other forms of detriment as a result of the uncertainty surrounding free range egg labelling, including the negative impact on investment in the sector and detriment to existing producers that results from any loss of consumer faith in the free range label.

Uncertainty among producers about what is required to label an egg as free range may also cause consumer detriment if it discourages new investment in barns and equipment. This may result in a shortage of free range eggs and higher prices over time. Egg producers that have already invested in barns and equipment may experience financial losses if consumers lose faith in the accuracy of free range labels and are no longer willing to pay a premium for free range eggs.

Box 1: CHOICE research on the price of free range eggs and stocking densities

CHOICE undertook research into 55 free range egg products, finding the following with regards to stocking density:[9]



In its analysis, CHOICE found no absolute correlation between price and stocking density of eggs labelled as free range.[10]

Despite this difference in availability of information on packaging of free range eggs (for instance, on the stocking density of hens), all these egg products were labelled as free range, meaning that price alone does not provide a reliable indicator of the difference between the production methods of eggs labelled free range.

9 CHOICE, *Free Range Eggs: Making The Claim Meaningful*, June 2015, **www.choice.com.au/~/media/619b60e5a1f04b2191d09fd9dab4c72e.ashx** page 5.

10 Ibid, page 5-6.

Given the potential scale of consumer detriment, this paper seeks feedback on options to improve the labelling of shell eggs sold in the grocery retail market, for instance at a supermarket or farmers' market. The options presented aim to provide greater certainty for consumers, producers and retailers. The paper seeks to focus on consumer information needs, and considers that animal husbandry and welfare issues, as well as food safety matters, are best addressed through separate legislation and schemes. The paper also presents an initial analysis of compliance costs for the options and seeks feedback to refine these estimates.

Focus questions

1. Why do some consumers prefer free range eggs?
2. Would consumers and egg producers benefit from a clarification of the meaning of free range in relation to egg labelling?
3. Does the problem extend beyond the sale of shell eggs within the grocery retail market? To what extent does the problem apply to eggs purchased from supermarkets versus farmers markets?
4. Does consumer and producer uncertainty extend beyond free range eggs to other classifications such as cage and barn laid eggs?
5. Are consumers interested in additional information about production methods used to produce free range eggs such as stocking density, number of hours hens range freely in daylight hours and hen mortality rates? If so, is this information currently available? If not, how would consumers like access to this information (e.g. displayed on packaging or online)?
6. Where labelling is inaccurate, are egg producers purposely misleading and deceiving consumers, or do they have a different understanding as to what constitutes free range egg production?
7. Are free range egg producers disadvantaged when other producers mislabel their eggs as free range? Are there any quantitative estimates of the cost to free range egg producers from the distortion of the market?
8. Are consumers who do not purchase free range eggs also interested in receiving information on production methods? Why?

2. Objective of reform

The policy objective is to enhance consumer confidence and certainty regarding egg labelling, including to better ensure that consumers are not misled by egg labels. This should support producer investment in the industry.

Confident and empowered consumers secure better outcomes for themselves and society as a whole. Markets cannot operate efficiently where consumers do not have reliable information with which to make meaningful choices that reflect their preferences. This can lead to a distortion in demand, incorrect price signals and a misallocation of resources.

As a result, in some markets there can be a role for governments in ensuring the right information is disclosed to consumers to support their decision making. Governments can also play a role in ensuring that producers do not mislead consumers by misrepresenting information about the characteristics and quality of their goods/services.

Consumer detriment arises from a lack of certainty regarding free range egg labelling. Industry and producers have also expressed the need for clarity as to the conditions they must meet to label their eggs as free range, to restore a level playing field within the egg market and to ensure eggs are labelled appropriately and without false or misleading representations. Recent court actions have provided some clarity (see Option 1 and Appendix B), but further government action may be necessary to provide more detailed guidance about when it is appropriate to label an egg as 'free range'.

The objective is to increase consumer certainty, not to prescribe a particular set of production practices or regulate animal welfare.

3. Policy options

The policy options are alternative ways to provide guidance to consumers and producers on egg labelling requirements. This will make it easier for consumers to discern different categories of eggs; and improve producer understanding of what is required for eggs to be legitimately promoted to consumers as free range.

Option 1: Status quo, with upcoming ACCC guidance

Under the existing regime, the problem of free range egg labelling is already addressed to some extent by the interaction of the Australian Consumer Law (ACL), a voluntary model code for poultry welfare, state and territory laws and industry-led accreditation initiatives.

The Australian Consumer Law

The ACL is a national law applied in all states and territories since 1 January 2011 which aims to protect consumers and ensure fair trading in Australia.[11]

Under the ACL, a person must not engage in misleading or deceptive conduct, or make false or misleading representations with respect to goods or services.[12] The ACCC or state and territory fair trading regulators may choose to take a case to court to prove an alleged misleading conduct. Successful court action can require producers to stop making false claims and impose penalties. It may also increase consumer awareness of non-compliant producers and encourage other egg producers to accurately label their products.

The ACCC has successfully taken court action against four egg producers under the ACL in response to allegations that producers were making false or misleading claims that eggs were free range and that certain production methods were being used. In these cases the courts considered the fundamental feature that sets free range egg production apart from cage and barn laid egg production, according to consumers' understanding. ACCC court actions instigated against egg producers are summarised at Appendix B.

- On 23 September 2014, the Federal Court found that Pirovic Enterprises Pty Ltd (*Pirovic*) had engaged in misleading conduct and made misleading representations in its labelling and promotion of eggs as free range. The Court stated that eggs should only be labelled as free range where the hens that laid the eggs were able to, and did, move around freely on an open range on most ordinary days, where an 'ordinary day' is every day other than a day when on the open ranges weather conditions endangered the safety or health of the laying hens or predators were present or the laying hens were being medicated.
- On 11 August 2015, the Federal Court found that R L Adams Pty Ltd (trading as Darling Downs Fresh Eggs) had also engaged in misleading conduct and made misleading representations in its labelling and promotion of eggs as free range. This finding was because the hens were not able to move around freely on an open range on an ordinary day and did not do so on most days.

11 The ACL is Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
12 Sections 18, 33 and 34 of the ACL.

This case law has established guidance on what constitutes free range. Consumer law regulators can (to the extent that resources allow) continue to pursue legal action against non-compliant egg producers so that the courts can continue to refine this proposition. Details about the complaints received by ACL regulators regarding free range egg labelling are at Appendix E.

The ACCC has increased awareness of the false and misleading conduct provisions in the ACL and the recent ACCC initiated court actions, by drawing the court rulings to the attention of producers. Following the *Pirovic* decision, the ACCC alerted peak industry bodies that there are a number of farming conditions that can impact on whether hens are able to, and do, move freely on an open range each day. While the Court pointed out that this decision should not be seen as a resolution of what constitutes free range eggs, it provides guidance on factors to consider in determining whether an egg producer has made a misleading claim that their eggs are free range.

Following the Pirovic case, there has been significant producer interest in compliance with the ACL, and anecdotal changes to egg labelling practices.

However, the effectiveness of case law in clarifying the meaning of free range eggs is reliant upon producers and consumers staying up to date with case law, which can be expensive and difficult for the average person to understand. It may also take some time for a clear definition of free range to be established.

The Model Code

The *Model Code of Practice for the Welfare of Animals — Domestic Poultry 4th Edition* (Model Code) is a national code endorsed in 2002 by the Australian Commonwealth, state and territory, and New Zealand ministers for primary industries. The objective of the Model Code is to detail minimum standards for the welfare and husbandry of layer hens in cage, barn and free range systems. The focus is on production systems and the needs of poultry rather than consumer expectations. Any new consumer protection regulation should try to limit confusion for producers and consumers by avoiding inconsistency and overlap with the Model Code where possible.

The Model Code is being reviewed and this is expected to be completed by the end of 2017. The Model Code will transition into an Australian animal welfare standards and guidelines document.

State and territory laws

States and territories have responsibility for animal husbandry and welfare. Compliance with the Model Code is voluntary, although some state and territory governments have chosen to incorporate it into their own regulatory frameworks for animal welfare (summarised at Appendix C). For example, Queensland has legislated a maximum outdoor stocking density for free range, which was initially set at 1,500 birds per hectare and increased to 10,000 birds per hectare (where additional animal welfare parameters are met) in 2013.[13] This legislation is specifically for animal welfare purposes, rather than consumer protection or information purposes.

Such state and territory laws and regulations relating to animal husbandry and welfare provide the certainty of required minimum standards; the issue is the extent to which marketing claims directed to consumers are valid.

13 Animal Care and Protection Amendment Regulation (No. 2) 2013 (QLD). See also **www.choice.com.au/food-and-drink/meat-fish-and-eggs/eggs/articles/free range-eggs.**

As such, some states and territories have gone further in regulating egg labelling. In the Australian Capital Territory (ACT) eggs are required to be labelled as cage, barn, aviary or free range and these terms are defined in legislation.[14] In February 2015, South Australia released a draft voluntary code, regulation and trademark for the labelling of free range eggs under which South Australian egg producers that meet certain conditions would be able to use a trademarked tick of approval.[15] No other jurisdiction has laws or regulations related to free range egg labelling. The majority of regimes outlined in Appendix C relate to minimum standards for animal welfare rather than informing consumers.

Industry initiatives

Several industry organisations have created voluntary industry accreditation and certification trademark schemes[16] on how free range eggs should be produced, based on their own objectives. These schemes generally relate to factors such as stocking density, shelter requirements, outdoor area requirements, beak treatment and method of egg collection. These are summarised at Appendix D.[17] The wide range of industry initiatives has some potential to confuse consumers who may not be aware of differences between production method standards without undertaking intensive research.

More recently other definitions have been proposed, but not implemented, including a definition of free range suggested by Egg Farmers of Australia[18] and a possible information standard recommended by consumer advocacy group CHOICE.[19]

Details of Option 1

By maintaining the status quo under Option 1, ACL regulators would continue to enforce the ACL requirement for traders' statements on free range to not mislead consumers. Approved certified trademarks, the Model Code and some states' and territories' industry-specific legislation would continue to operate. This option would not involve any additional regulation.

14 *Eggs (Labelling and Sales) Act 2001* (ACT)

15 More information on the draft framework can be found at: **www.agd.sa.gov.au/voluntary-industry-code-free-range-eggs-south-australia-0.**

16 Industry-accreditation schemes are determined by industry associations and bodies whereas certified trademarks are approved for use in the market via application to the ACCC.

17 These certified trademarks all comply with, or set lower, maximum stocking density boundaries as outlined in the Model Code of Practice. Producers must also comply with standards (other than stocking density) to qualify for certification.

18 Egg Farmers of Australia is a group of egg farmer representative organisations, including the Victorian Farmers' Federation Egg Group, the NSW Farmers' Association Egg Committee, the Commercial Egg Producers Association of Western Australia, the Tasmanian Commercial Egg Producers Association, Queensland United Egg Producers and the South Australian Local Egg Section. A copy of the Egg Farmers of Australia definition can be found at: **http://eggfarmersaustralia.org/media/20150610-EggDefinition.pdf.**

19 See CHOICE, Free Range Eggs: Making The Claim Meaningful, June 2015, **www.choice.com.au/~/media/619b60e5a1f04b2191d09fd9dab4c72e.ashx**.

In addition, this option would see the development and publication of additional ACCC enforcement guidance to industry. The ACCC has received around half a dozen producer requests for clarification regarding the labelling of eggs as free range in the last four years. The ACCC guidance will seek to address any confusion regarding the appropriate use of the term in the labelling context and, together with appropriate enforcement by ACL regulators, should improve consumer confidence that free range egg labels truthfully reflect the conditions under which the eggs were produced. This additional ACCC guidance will be issued irrespective of the outcome of this consultation process.

Certified trademarks and existing industry certification regimes will continue to have an important role. Industry could be encouraged to improve the marketing and promotion of free range eggs within the framework established by the case law and forthcoming ACCC industry guidance. Market incentives will continue to encourage producers to identify these 'premium' factors without government intervention. A number of eggs producers are voluntarily providing information about stocking densities to better market their products to consumers who prefer eggs produced in environments with lower stocking densities. CHOICE found that of 55 free range egg products, 17 already listed stocking densities on the pack, despite there being no legislated requirement to do so (see Box 1).[20] Importantly, these industry-led initiatives can respond flexibly to meet consumer demands today and as they evolve into the future.

An education campaign directed at consumers could also inform them about egg labelling matters, to allow consumers to be more assertive and help drive competition. This guidance could raise awareness of:

- the case law and ACCC industry guidance establishing the appropriate use of the term 'free range' in relation to eggs;
- the different types of production methods leading eggs to be labelled as free range;
- consumer protections available under the ACL, including those cases that have been successfully prosecuted; and
- accreditation and certified trademark schemes.

For information campaigns to be effective they need to be appropriately targeted and adequately resourced to ensure a wide range of producers and consumers are reached.[21] In particular, it would be necessary to ensure that any awareness and guidance were extended to difficult to reach regional areas, where many egg producers are likely to operate. Providing additional information to consumers may also not be effective given that they are time poor when purchasing grocery items and often do not have time to digest detailed information. Funding for an education campaign would depend upon consideration of budgets of ACL regulators and their assessment of the importance of this work.

Ultimately a consumer education campaign is likely to be necessary whichever option is adopted, in order to ensure it effectively meets the objective.

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20 CHOICE, Free Range Eggs: Making The Claim Meaningful, June 2015, **www.choice.com.au/~/media/619b60e5a1f04b2191d09fd9dab4c72e.ashx**.

21 For example a Parliamentary Committee, when commenting on ACCC guidance on country of origin claims, noted that the success of such a campaign is dependent upon more than publishing good guidance to raise business and consumer awareness, but also on conducting an associated campaign to raise awareness of the guidance. Available at: **www.accc.gov.au/publications/country-of-origin-claims-the-australian-consumer-law**.

Preliminary impact analysis for Option 1

Industry guidance issued by the ACCC may reduce producer uncertainty about enforcement of the existing ACL requirements regarding misleading labelling, leading to greater compliance and subsequently increased consumer certainty.

Industry guidance on the appropriate use of the free range label may improve consumer certainty that eggs purchased in the grocery retail market and labelled as free range are produced by hens that go outside on most ordinary days. If this improves compliance with existing obligations then any current distortions in the supply and demand for eggs will be corrected, to the extent that the label free range is used more accurately. This may have the effect of increasing some producers' costs and increasing the price of free range eggs, in line with increased compliance and any incidental improvement in their claim.

This approach is consistent with the approach taken to other marketing claims, like 'organic', 'kosher' or 'halal'. It provides a high level of flexibility to allow innovative development of new products and marketing approaches to communicate to consumers the value of these new products and how they meet consumers' needs. A benefit of this approach is that there would be no interference with industry innovations or accreditation and certified trademark schemes, which could still continue to be used by egg producers to distinguish their products.

Reliance on generic consumer law provisions avoids additional compliance costs for both businesses and consumers in trying to understand product specific regulations. A generic approach is likely to be more flexible to adapt to changing market conditions, industry best practice and consumer expectations.

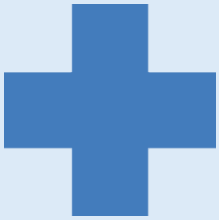
Potential drawbacks with this option stem from residual uncertainty about whether ACCC guidance would provide a sufficient basis for producers to reliably understand their legal obligations.

Another potential drawback of this option is that state and territory regulations could develop in different and potentially conflicting ways, which may act as economic barriers to trade between states and result in confusion for both producers and consumers. This would not become a problem if states and territories harmonise their regulations.

Like all businesses that supply to consumers, egg producers need to keep up to date with their ACL obligations. This means egg producers intermittently spending time keeping aware of relevant law and guidance from ACL regulators such as the ACCC, as this is updated over time.

Producers also need to spend time monitoring their production to ensure their eggs conform to their credence claims and that they comply with the ACL requirement to not mislead consumers. For free range egg producers this means monitoring to ensure that most hens move about freely on the open range on most ordinary days. Depending on the scale of production, this monitoring may involve visual inspection of the proportion of hens on the range or perhaps other methods such as monitoring the levels of water consumption in the barn.[22]

22 Based on preliminary discussion with an Egg Farmers of Australia representative.

 **Benefits of Option 1 include:** • no additional costs passed onto consumers due to additional industry regulation; • continued enforcement action under the ACL will build on existing court decisions that provide guidance on the meaning of free range; • capacity to enhance consumer and industry confidence, and discourage practices which are potentially misleading, through education; • flexibility to adapt to changing market conditions is retained; • the continued unaffected use of accreditation and certified trademark schemes by egg producers to distinguish their products.	 **Costs associated with Option 1 include:** • confusion for consumers and egg producers regarding the current national regulatory framework could continue in the absence of a dedicated education campaign; • some consumers may not receive all the information they would prefer regarding egg production; • egg producers have business compliance costs that include 'awareness' and 'monitoring' activities about their egg credence claims; • risk of inconsistent regulation across jurisdictions.

Focus questions

9. What is the cost for free range egg producers to stay up-to-date with case law decisions?
10. How do free range egg producers monitor compliance with the requirement that most hens move about freely on the open range on most ordinary days?
11. Do current judicial decisions and ACL regulator actions address the problem? What communication mechanisms exist and what is the cost of keeping up to date with judicial decisions? How could this be improved?
12. What is the cost on ACL regulators such as the ACCC to continue enforcing compliance under the ACL that producers not make false or misleading representations related to eggs to consumers?
13. What is the cost of producers having to contest legal action taken by the ACCC?
14. Are producers disadvantaged by the uncertainty regarding free range egg labelling and associated production methods? If so, to what extent have judicial decisions under the ACL alleviated this detriment? To what extent could future court actions do this (that is, would more case law make it clearer)?
15. Would guidance material provide producers with more certainty? Would it result in more egg producers complying with free range egg production requirements?
16. Have industry's attempts (through accreditation and certified trademark schemes) to clarify the definition of free range eggs impacted on consumer uncertainty? Why/why not?
17. Has industry's attempt to clarify the definition of free range impacted on method of production for free range eggs? Why/why not?
18. Would guidance material provide consumers with more certainty that free range egg products are produced in a manner consistent with their labelling?
19. Is there a burden on egg producers if independent jurisdictions continue to manage the problem themselves, through state and territory specific voluntary codes and standards? Would a national approach alleviate any burden?

Option 2: 'Basic' information standard for free range egg labelling

Option 2 would involve making an information standard under the ACL that would largely seek to codify the case law in an accessible format for consumers and the industry.

The proposed information standard would establish clear requirements that must be met if eggs are to be labelled as free range. However it would not mandate particular conditions of production nor restrict what additional marketing or advertising information may be disclosed. Option 2 would only affect eggs labelled as free range.

Information standards prescribed under the ACL are enforced by the ACCC and state and territory consumer agencies. While Option 2 is expected to largely codify the case law that has developed under the ACL's general prohibitions of misleading or deceptive conduct and false or misleading representations, it is expected that it could simplify compliance with the ACL by providing greater clarity to business and consumers by explicitly stipulating the conditions under which eggs may be labelled as free range.

Box 2: Information standards under the ACL

Information standards regulate the type and amount of information provided to consumers about goods and services. An information standard under the ACL is a written notice made by the Commonwealth Minister and published on the internet.

Under section 134 of the ACL, an information standard can be made to:

- require the provision of specified information about particular kinds of goods;
- make provision in relation to the content of the information provided;
- provide for the manner or form in which the information is to be given;
- provide that the information cannot be given in a specified manner or form;
- provide that information of a specified kind cannot be given; and/or
- assign meaning to specified information.

An information standard can be prescriptive about the information messages and the requirements for its use. For example, information messages could be required to be in a particular point size, type face, case, bolded or un-bolded, be clear and legible or a particular colour on a nominated background colour. These requirements would ensure that the information message would be readily visible and communicated to consumers at the point of sale. Alternatively, an information standard can be basic and simply prescribe one or two requirements.

A number of mandatory information standards are already in force under the ACL, including prescribing requirements for care labelling for clothing and textile products, and ingredients labelling on cosmetics and toiletries.

Once an information standard is imposed, businesses must:

- ensure goods and services they supply comply with relevant information standards, if sold within Australia; and
- be familiar with information standards relevant to those goods and services.

Breach of an information standard can result in civil penalties or a criminal conviction.

- A person who fails to comply with a relevant information standard may be liable for pecuniary penalties of up to $220,000 if they are an individual or $1.1 million if they are a body corporate. Criminal penalties for the same amount may apply.
- A range of other enforcement provisions and remedies also apply with respect to a breach of an information standard, including injunctions, disqualification orders, declarations, compensation orders, redress for non-parties, public warning notices, non-punitive orders and adverse publicity orders and court enforceable undertakings.
- For a person who has suffered loss or damage as a result of non-compliance with an information standard (for example, a competitor) the court also has the ability to make an order for damages, compensatory orders or injunctions.

An information standard made under the ACL is a legislative instrument that applies nationally in all jurisdictions in Australia and would be enforced by all ACL regulators.

Details of Option 2

A basic information standard would prescribe that eggs can only be labelled free range if most birds move about freely on an open range on most ordinary days, consistent with the existing case law.[23] This core principle seeks to reflect most consumers' basic understanding of the term free range as it relates to eggs. Box 3 below provides an example of general text to achieve this objective.

The proposed scope of the information standard extends to shell eggs sold to consumers in retail grocery and farmers markets. Information standards under the ACL apply to all suppliers so egg producers, wholesalers and retailers would need to comply, but egg producers would have the primary obligations and retailers could specify compliance in their supply contracts. It is not proposed to extend the information standard to the sale of products containing eggs (for example, cakes) nor eggs sold in restaurants (for example, scrambled eggs in a café).

An education campaign for consumers and guidance material for producers will be necessary to ensure awareness and understanding of the information standard.

Box 3: Option 2 — Basic information standard for free range egg labelling

A person, in trade or commerce, must not provide eggs for sale that are represented to be free range unless the eggs were produced by hens that can, and do, move about freely on an open range on most ordinary days.

An 'ordinary day' is every day other than a day when on the open ranges weather conditions endanger the safety or health of the laying hens, or predators are present, or the laying hens are being medicated.

Variation — Option 2a — A 'defence' to address industry concerns about uncertainty

Option 2 would establish a single, nationally-consistent definition with which producers would need to comply if they wish to label their eggs free range.

However, concerns have been raised by some industry groups that the definition, based on existing case law, provides insufficient guidance for producers to label eggs as free range with certainty of compliance.

Simply providing access to an open range, for example, may not be sufficient for a producer to be confident that the hens will actually go outside. Similarly, some egg producers have expressed uncertainty about whether eggs from hens that have access to an outdoor range but choose not to go outside could be labelled as free range.[24]

23 This would include adopting the meaning of 'ordinary' cited in the Pirovic and RL Adams cases.

24 For example, this is the basis of the defence submitted by Snowdale Holdings Pty Ltd in the proceedings brought against it by the ACCC. The case has been reserved for judgment by the Federal Court of Australia in Perth.

One way to offer greater certainty for producers would be to provide a defence against allegations that eggs are not free range. If desired, a set of conditions could be included in the information standard that, if met, would mean that eggs produced under those conditions could be represented as free range without the risk of regulator enforcement action.

The list of conditions would not define the meaning of free range, **would not be mandatory** and producers **would not need to comply with the list** of conditions if they comply with the primary obligation using other production practices.

In order to operate as an effective and appropriate defence, the conditions established would need to be sufficiently prescriptive to provide a high level of confidence to regulators and consumers that most hens go outside on most ordinary days. Any defence could not be a 'weaker' test than the primary obligation.

Stakeholders are asked to consider whether a defence is a necessary component of an information standard and, if so, what conditions would be necessary to ensure that hens range freely.

For the purpose of consultation, a detailed example list of conditions (see Box 4) was developed by the ACCC following consultation with an expert to give stakeholders an idea of what the set of conditions could look like.[25]

Box 4: Option 2a — Example set of conditions for a 'defence' provision

(Additional to Option 2 and not mandatory)

1. Internal architecture/openings

1.1 The barn contains open sides, or popholes and either the open sides or popholes must be no less than an effective 45 cm high. There must be at least 1 metre of pophole width for every 300 hens.

1.2 The maximum distance a hen should have to walk to access a pophole, or the open side of a barn, is 20 metres.

1.3 The height of popholes from the flooring inside the barns must be no more than 50 cm unless ramps are provided.

1.4 The height of popholes from the ground outside the barns must be no more than 50 cm unless ramps are provided.

1.5 Ramps must not be placed at an angle of more than 45 degrees and should be no less than 50 cm in width.

1.6 Nest boxes must have gaps of 0.5 metres located at intervals of not more than 2 metres or other suitable crossovers (e.g. ramps of minimum width of 50 cm and angle no greater than 45 degrees) which allow the hens ease of movement from one side of the barn to the other.

25 The ACCC engaged Professor Christine Nicol, School of Veterinary Science, University of Bristol in July 2015 to advise on issues relating to the design of hen housing used in free range egg production.

Box 4: Option 2a — Example set of conditions for a 'defence' provision (continued)

(Additional to Option 2 and not mandatory)

2. Outdoor conditions and access

2.1 Within 3 weeks of moving to the barn or by 21 weeks of age, whatever occurs first, hens:

- aged 16-23 weeks of age must have continuous and unrestricted access to the range for a minimum of 4 daylight hours;
- 24 weeks and older must have continuous and unrestricted access to the range for a minimum of 8 daylight hours.

2.2 The perimeter of the range must be within 150 metres of the nearest pophole unless sufficient shelter is provided whereupon the perimeter must be within 350 metres of the nearest pophole.

2.3 Some shelters must be provided within 20 metres distance of the popholes to encourage birds out.

2.4 A minimum of 8 m^2 of shelter per 1,000 hens must be provided and distributed around the range with at least 4 m^2 of shelter per hectare.

2.5 A mix of bare earth, gravel or stones, grass and shrubbery or trees and appropriate forage must be included on the outdoor range.

2.6 Range shape must not include areas with a width of less than 30 metres.

2.7 Producers are required to rotate ranges where outdoor stocking densities exceed 0.15 birds per square metre (1500 per hectare).

3. Maximum discrete flock

3.1 Discrete colonies must be limited to a maximum number of 10,000 (management unit not per trader) with up to two colonies per barn. Note all above requirements apply equally to all discrete flocks.

4. Densities

4.1 Indoor — maximum seven hens per useable square metre in a designated flock.

4.2 Outdoor stocking density of up to a maximum of [2,500-10,000]* hens per hectare. *to be determined

4.3 If the outdoor range includes any veranda area linking the range to the barn, the verandah area is included in the space counted as part of the outdoor range.

Variation — Option 2b — Disclosure of stocking density

An additional possible requirement would be for producers to disclose stocking density on packaging **if** the eggs are labelled as free range.

Stocking density can contribute to the overall wellbeing of hens by impacting on their ability to stretch, flap their wings and move about freely. It is difficult to determine a precise stocking density that is most beneficial to hens and varying preferences of hens per hectare exist. There is also some focus by industry on the indoor stocking density of hens' laying facilities.[26]

Lower stocking densities are more expensive for producers as they require more land per hen and fewer hens per flock. For these reasons, many consumers perceive stocking density as a proxy for hen welfare and other animal husbandry practices. Different free range egg accreditation and certified trademark schemes, for example, each require producers to keep different outdoor stocking densities and can therefore assist consumers in distinguishing between free range egg products. In this way, it may be beneficial to compel egg producers to label their farm's stocking density on packaging where eggs have been labelled as free range, to assist consumers in choosing between free range eggs produced in different circumstances.

There is also research to suggest that no added benefit would be gained from packaging eggs with extra descriptors, such as beak treatment or stocking density descriptors.[27] This is because these extra animal husbandry practices are perceived by consumers as difficult to interpret without a high degree of knowledge and interest.[28] Similarly with regard to stocking density, consumers generally find it difficult to conceptualise what a certain amount of hens per hectare looks like,[29] finding quick and easy cues like the words 'free range', price, size and colour of eggs as more valuable information when deciding which eggs to purchase.[30]

One way to overcome this could be to require producers to disclose the number of hens per metre squared or per A4 size, as these are easier for the average consumer to conceptualise compared to hens per hectare. Another option is to use a graphic to show the number of hens that would fit into a designated area.

Box 5: Option 2b — Disclosure of stocking density

(additional to Option 2)

The [indoor/outdoor]* stocking density of hens per [size of area]* must be disclosed on the packaging alongside the words 'free range'.

*To be determined

26 For example see: **www.rspca.org.au/sites/default/files/website/what-we-do/working-with-farming-industry/RSPCALayerhensStandards.pdf.**
27 AECL 2012 focus group research **www.aecl.org/dmsdocument/463**, page45.
28 Ibid, pages 47-52.
29 Ibid, pages 30-32.
30 Ibid, pages 47-52.

Preliminary impact analysis for Option 2

The benefits of this option, in terms of greater certainty for consumers, will primarily accrue as free range egg producers develop a clearer awareness of and compliance with their labelling obligations.

For consumers, greater producer compliance with an information standard could provide greater certainty about minimum production standards. Additionally, if producers were required to disclose stocking density on egg packaging, this may provide consumers with the ability to make a more informed choice to purchase eggs that may align closer to their preferences.

An effective education campaign will be necessary to ensure that consumers fully understand the new information standard, and to limit the scope for other forms of potentially misleading labelling (for example the labelling of eggs with terms that imply production methods similar to free range but would not meet the standard established).

Industry compliance and enforcement

Given that the information standard under Option 2 would reinforce the case law, producers would not incur any extra compliance costs, other than the costs they already experience in complying with current laws and ensuring that packaging labels accurately reflect production methods employed so as to not mislead consumers.

As Option 2 is likely to improve producer understanding of their obligations in relation to free range egg labelling, compliance with the law may increase even in the absence of any increased enforcement activity. It would be expected to reduce the need from producers to keep up to date with case law and guidance from regulators. Over time, an information standard may reduce the need for, cost of and frequency of regulator enforcement of ACL provisions against false or misleading representations and misleading or deceptive conduct. Simpler enforcement, including the ability for the ACCC to issue penalty notices, could reduce legal costs for preparing and lodging a prosecution case for adjudication and defending the case in court.

On the other hand, there will be transitional costs. Like the status quo, the resulting improved compliance with existing obligations may correct any current distortions in the supply of, and demand for, eggs to the extent that the label free range is used more accurately. This may have the effect of increasing some producers' costs and increasing the price of free range eggs in step with any increased compliance. Compared with the status quo, this process is likely to occur more rapidly, delivering consumer benefits sooner, but disadvantaging producers that have already invested in equipment designed for production that does not comply with the information standard.

Trade between jurisdictions[31]

A single nationally-consistent legal definition of the phrase free range in terms of consumer expectations for eggs may reduce regulatory complexity for producers and retailers that operate across different jurisdictions with different laws (if the states also acted to repeal any inconsistent provisions). This would reduce economic barriers to trade in free range eggs across state boundaries. However, to the extent that other jurisdictions choose to retain their existing regulation of free range eggs for labelling or animal welfare purposes (see Appendix C), there may be some incompatibility with the information standard, creating additional compliance costs for producers and potential confusion for consumers. For example, both the Queensland and ACT regimes have specific requirements regarding stocking density. Under Option 2 (and its variations) a producer may be considered compliant with the information standard, but not with the jurisdiction's legislation.

Industry investment and innovation

Certainty provided by the standard may encourage some businesses to invest in new capital (for example barns, land and machinery) and increase their production of free range eggs.

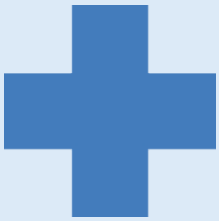
However in the long run, this option may reduce innovation to a limited extent. Social expectations of concepts like 'free range' vary over time and an information standard would codify a current accepted definition. A high level, less prescriptive definition would be expected to remain relevant for longer (for example Option 2) but may not address producer uncertainty or specific consumer preferences (for example Option 2a and Option 2b respectively).

Use of trademarks and industry certification

Egg producers would be able to continue to use other labels, accreditation schemes and certified trademark schemes provided they were consistent with the information standard. Producers could still indicate to consumers a specific claim, for example additional animal welfare considerations or eggs produced in a system somewhere between barn laid and free range. As the basic information standard establishes a principles-based definition of 'free range', existing accreditation schemes or certified trademarks that use the terms free range (for example, Free Range Farmers Association, Free Range Eggs and Poultry, Humane Choice Free Range, see Appendix D) may continue to do so as long as eggs certified under those regimes also meet the principle as established under the information standard (of most hens outside on most ordinary days). As such, consumers will not lose access to the additional information these mechanisms provide.

Also, while the information standards outlined as part of Option 2 potentially complement, rather than conflict with, the Model Code and any successor, the Model Code is not as prescriptive regarding production methods as any defence may be under Option 2b. This potential conflict may further increase complexity for producers.

31 An information standard would have zero or negligible impact on international trade and foreign producers or consumers as the import of shell eggs for human consumption is banned under quarantine regulations and exports account for less than 1 per cent of industry revenue (including the export of other egg products). Source: IBISWorld Industry Report A0172: *Egg Farming in Australia*; May 2015.



Benefits of Option 2 include:

- consumers confident that the label free range means eggs produced in a way that met a nationally consistent legal requirement;
- consumer able to differentiate within the category of free range eggs (Option 2b);
- reduce regulatory uncertainty facing producers and effectively reduce ongoing compliance costs compared to compliance with existing regulation;
- increase competition in the market, between and within egg categories, due to improved transparency;
- the continued use of accreditation and certified trademark schemes by egg producers to distinguish their products; and
- targets the specific market (free range eggs) with limited implications for other egg producers and consumers.

Costs associated with Option 2 include:

- consumers may not receive all information they consider relevant to make informed purchasing decisions;
- some transitional compliance costs for producers (associated with disclosure of stocking density, Option 2b);
- risk that egg producers might treat a defence provision as mandatory, thereby increasing production costs significantly and restricting innovation with big impacts on the industry and consumers;
- potential increase in price of free range eggs associated with transitional and potential ongoing compliance costs outlined above.

Focus questions

Core principle

20. Is the principle of most birds being outside on most ordinary days consistent with consumer expectations and an understanding of the production of eggs labelled as free range? Is 'most ordinary days', where 'ordinary' has the meaning provided in the Pirovic judgment, the best characterisation? Is there a better way of defining the frequency of birds being on the range?

21. If all eggs labelled as free range conformed to this principle, would this enhance consumer confidence and certainty about egg labelling? Would Option 2 ensure consumers have the ability to identify free range eggs that they can be certain have been produced in line with their values and expectations?

Focus questions *(continued)*

'Defence'

22. Does a defence improve certainty for producers that their labelling is not false or misleading? Is a defence necessary?
23. Does the example list of conditions provide confidence that most birds would be outside on most ordinary days? If not, what changes are necessary? What set of conditions would ensure most birds are outside on most ordinary days?

Disclosure of stocking density

24. Would an additional requirement to disclose indoor or outdoor stocking density be appropriate and beneficial? Why or why not?
25. What is the value of stocking density information to consumers? Will the disclosure of stocking densities enable consumers to distinguish between varying animal husbandry methods employed to produce free range eggs? Is it an appropriate factor on which consumers can base their choice?
26. If stocking density is to be labelled on the egg packaging, at what point should this be measured? When the hens are all inside or all outside or at a set time in an average day?
27. Should the information standard be more prescriptive regarding the format, size and placement of the disclosure of stocking density?

Scope of regulation

28. Should the proposed information standard apply to eggs sold at the farm door, or at farmer's markets, to retail consumers?
29. Should the proposed information standard apply to eggs sold at a wholesale level?
30. Should the proposed information standard apply to other products containing eggs, either at a retail grocery level or for consumption on the premises?

Option 3: Information standard for all categories of eggs

Option 3 would make an information standard that compels all egg producers to label their eggs as 'cage', 'barn' or 'free range'. Two variations of Option 3 are also considered: 'premium free range' (Option 3a; free range plus additional animal welfare conditions) and 'access to range' (Option 3b; a category between barn and free range in terms of hens' access to the outdoors).

This contrasts with Option 2, which only imposes requirements if producers voluntarily choose to label their eggs as free range, and then only codifies compliance with the case law notion of free range. Option 3 is the same as Option 2 for free range eggs but also requires that all eggs **must** be labelled as one of the defined categories.

The additional optional categories of egg labelling could be incorporated into the information standard to reflect nuances in consumer preferences and/or production methods that cannot be captured in the three broader categories. Providing a label for 'premium free range' eggs would allow eggs to be identified as produced by free-range production methods that also offer various animal welfare assurances in which consumers may be interested. An 'access to range' label could capture eggs produced by hens that have access to the outdoors but may not actually go outside on most ordinary days. That is, not quite in the free range category, but produced by hens with greater potential access to the outdoors than barn eggs.

Details of Option 3

The proposed information standard under Option 3 (outlined in Box 6) would define not just free range but also the extra categories, including 'barn' and 'cage' egg production; and require that all egg packaging must identify the eggs as belonging to one of these categories. Producers would need to ensure that their production systems meet the minimum requirements in the standard for each of the listed egg production methods. The proposed scope of the information standard is the grocery retail market for shell eggs.

The proposal is broadly similar in nature to the regulatory regime established in the ACT by the *Eggs (Labelling and Sale) Act 2001*, although the definition of free range differs. This law requires retailers to display signs telling shoppers whether the eggs are cage, barn laid or free range. The definitions of barn and cage laid eggs are consistent with those laid out in the Model Code, in an attempt to minimise compliance costs for producers.

Box 6: Option 3 — Information standard for all egg labelling — three categories

A person, in trade or commerce, must not provide eggs for sale unless they are produced by one of the following categories of production systems and labelled with that category (printed in standard type at least 6 mm high).

1. **Free range**

   Free range eggs are produced by hens that can, and do, move about freely on an open range on most ordinary days.

   An 'ordinary day' is every day other than a day when on the open ranges weather conditions endanger the safety or health of the laying hens or predators are present or the laying hens are being medicated.

2. **Barn; or**

   Barn eggs are produced by hens that are continually housed within a barn in which they are free to roam. The barn may have more than one level. The floor may be based on litter or other material such as slats or wire mesh.

3. **Cage**

   Cage eggs are produced by hens that are continually housed in a cage within a barn.

Variation — Option 3a — A 'premium free range' category

The inclusion of the 'premium free range' egg category would accommodate those consumers who would prefer to purchases eggs from egg producers that not only employ free range production methods but also engage in practices that consumers believe are better for animal welfare. Research by consumer groups indicates that some consumers seek to purchase free range eggs believing that this production system is more natural and better for animal welfare, and often use stocking density as an indicator of animal welfare (Appendix F). The Model Code notes that it is not possible to relate stocking density to welfare in a simple manner. The Code sets a maximum stocking density of 1,500 layer hens per hectare, but notes that any higher bird density is acceptable only where regular rotation of birds onto fresh range areas occurs and close management is undertaken which provides some continuing fodder cover.

So while stocking density may be used as a proxy for animal welfare, other animal husbandry and welfare requirements should perhaps also be included in the development of any category intended to reflect some consumers' preferences for eggs produced in systems of higher animal welfare. Therefore Option 3a incorporates prohibitions on beak trimming and induced moulting as further indicators of animal welfare.

Variation — Option 3b — An 'access to range' category

An 'access to range' category would accommodate consumer expectations and industry practices where hens may have access to the outdoors, but may not necessarily be outside on most ordinary days. As noted in the discussion of Option 2, while the core definition of free range proposed in the information standards codifies the existing obligations under the ACL and the related case law, there may be some producers that currently label their eggs as free range but will not meet this definition. Inclusion of the 'access to range' category may allow these producers to continue to differentiate their products from barn and cage eggs, without making potentially costly production changes. It will also create a corresponding price point for consumers, offering a less expensive alternative to free range eggs.

There are fewer precedents and existing standards relating to the phrase 'access to range'. Producers currently use similar, but not identical, terms such as 'free to range' and 'free to roam'. In the Turi Foods case, the Federal Court stated: 'an ordinary and natural meaning of the phrase 'free to roam' when applied to chickens is … largely the uninhibited ability of the chickens to move around at will in an aimless manner'.[32] The phrase 'access to range' is proposed for Option 3b to clearly distinguish it from the free range requirement that most birds **must** make use of the range on most ordinary days.

Consumer expectations regarding specific animal welfare concerns are only partially addressed in the proposed options. The CHOICE survey noted the top two reasons that consumers buy free range eggs: 68 per cent buy free range eggs for better animal welfare and 52 per cent buy free range eggs to support free range egg producers. The focus questions of Option 3 seek stakeholder feedback on the value of requiring disclosure of more animal husbandry practices or compliance with specific animal welfare standards on free range egg packaging.

Box 7: Optional additional categories

Option 3a — Premium free range

Premium free range eggs are:

a) free range eggs as defined at (1) in Box 6; and

b) the maximum number of hens per hectare of outdoor space is 1,500 hens per hectare or less; and

c) induced moulting is not employed; and

d) beak trimming is employed only where other methods of preventing feather pecking have failed.

Option 3b — Access to range

Access to range eggs are:

a) barn eggs as defined at (2) in Box 6; and

b) produced by hens that have access to an outdoor range.

32 *Australian Competition and Consumer Commission v Turi Foods Pty Ltd* (no 4) [2013] FCA 665 at [100].

Focus questions

31. Is there consumer detriment associated with the labelling of barn and cage laid eggs? If so, how and why does this occur? Is it comparable with the consumer detriment associated with the misleading labelling of free range eggs?
32. Would the proposed definitions in Option 3 clearly define and capture the three broad methods of egg production?
33. Are the proposed definitions of 'barn' and 'cage' eggs consistent with existing regulation and practices? Are they consistent with consumer expectations? If not, how should they be amended and what would be the likely impact of this change?
34. Should the information standard be more prescriptive regarding the format, size and placement of the required information message?
35. Should the scope of the proposed information standard be broadened to other markets (wholesale, farm-gate sales, and restaurants)?

Additional optional categories of egg labelling

36. Is there value in a 'premium free range' category to regulate the use of superior animal welfare claims? Would this benefit consumers, noting existing certified trademarks and industry standards? How would it impact on producers?
37. Do the three specific animal husbandry methods identified provide an adequate indication of animal welfare outcomes in keeping with consumer expectations? Is 'premium' the best descriptor?
38. Would the inclusion of an 'access to range' category in the proposed information standard accurately reflect the 'grey area' between free range and 'barn' eggs for consumer expectation and production methods?
39. Would an 'access to range' category potentially increase consumer confusion about what is and what is not free range?

Preliminary impact analysis for Option 3

Option 3 seeks to improve consumer certainty by requiring all eggs sold at the grocery retail level to be labelled in one of three ways, thereby seeking to address concerns regarding eggs that are not free range being labelled free range or with phrasing similar to free range. The preliminary impact analysis considers costs and benefits compared with Option 2, as Option 3 is an incremental increase in regulation building upon Option 2.

Option 3 would not only provide consumers with greater certainty that eggs labelled as free range are produced in compliance with general consumer expectations (consistent with Options 1 and 2), but also improve certainty and understanding of other category labels. The additional requirement of Option 3 that all eggs be clearly labelled as the product of one of three production methods provides consumers with further details to inform their choices and may ensure consumer confidence that the eggs have been properly labelled to describe the method of production. This may assist in addressing any consumer confusion between free range eggs and eggs produced by similar, but not free range, production methods (for example, barn, free to range, free to roam). Unlike Option 2, by requiring labelling within specific categories Option 3 will explicitly address the risk of consumers being misled by labels that do not use the term 'free range', but seek to imply it. Of course, under either option ACL prohibitions on misleading labelling will continue to apply.

Similarly, Options 3a and 3b may provide consumers with greater detail and ability to differentiate between egg products. They may also provide additional scope for the information standard to accurately reflect animal welfare considerations of some consumers.

Market impact

Clear identification of all eggs for sale in the retail market may change the distribution of consumer demand between those three categories. For example, a January 2011 media article stated that in the ACT retailers have reported increases in the sales of free range eggs by as much as 90 per cent since its new labelling laws were introduced.[33] Depending on the reaction of suppliers to any potential change in demand, this may see an increase in the cost of free range eggs and the decline in the supply of other categories of eggs. Given cage eggs offer an affordable source of protein for less affluent consumers, a shift in supply and industry investment towards the more expensive methods of production may threaten food security for more vulnerable consumers. Price rises across the industry would have a relatively greater negative impact on consumers whose consumption preferences are necessarily driven by price rather than other factors.

Industry compliance and enforcement

Like Option 2, Option 3 may increase certainty for producers about the production processes required to label their eggs in certain ways.

The need for regulators to enforce ACL provisions against false and misleading representations and misleading or deceptive conduct may also be lower in the long term. These benefits may be greater for Option 3 as the information standard would cover barn as well as free range claims. However, this new and more detailed regulation may increase the costs on ACL regulators in enforcing compliance. These benefits are less clear for barn laid claims than for free range claims and stakeholder feedback is sought.

On the other hand, there will also be larger transitional costs compared with Option 2. Requirements to comply with specific definitions for barn and cage eggs may cause changes in supply and demand for different egg types and movements in egg prices. Producers that invested in equipment to produce barn eggs but which do not comply with the new definition of barn eggs would face either additional costs or use the label cage eggs and receive lower prices. Producers that currently do not use one of the prescribed labels or do not comply with the new definitions will need to update their labels. The additional optional categories may alleviate this burden to some extent, allowing producers to label their eggs more accurately and may mean that some producers may not need to change their production methods to accurately label their eggs.

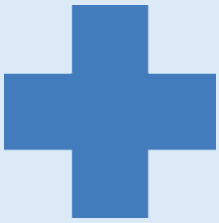
Interaction with other regulation

Similarly, consistency across jurisdictions may reduce economic barriers to trade across state borders (to the extent states repeal inconsistent provisions). However, to the extent that jurisdictions choose to retain their existing regulation of egg-labelling (see Appendix C), the likelihood of incompatibility with the information standards outlined under Option 3 is far greater than with Option 1 or Option 2. For example, Options 3a and 3b conflict with the ACT regime as they have additional categories for labelling of eggs, as well as a different definition of ‘free range’.

33 Labelling sees free range egg sales soar, **www.abc.net.au/news/2011-01-03/labelling-sees-free-range-egg-sales-soar/1892582.**

Innovation

In the long run, this option will also reduce innovation to a larger extent than Option 2. Mandating a limited set of labels based on current social expectations would make it more difficult for the industry to respond to changing consumer expectations over time. Moreover, while the requirements for a free range claim would codify case law, the requirements for barn laid eggs is a new requirement and may not line up well with existing or emerging production techniques. On the other hand, egg producers would be able to use accreditation schemes and certified trademark schemes to indicate specific credence claims in addition to the mandatory label categories.



Benefits of Option 3 include:

- consumers confident that the label free range means eggs produced in a way that met a nationally consistent legal requirement;
- consumer able to differentiate within the category of free range eggs (Option 3a);
- consumers provided with consistent information to identify basic methods of egg production for all egg types;
- remove regulatory uncertainty facing free range egg producers and effectively reduce ongoing compliance costs compared to compliance with existing regulation;
- single national regime for free range, barn and cage eggs reduce the regulatory differences between jurisdictions and minimise associated compliance costs;
- greater competition in the broader egg market, between and within egg categories, due to improved transparency;
- the continued use of accreditation and certified trademark schemes by egg producers to distinguish their products (if consistent with the information standard).

Costs associated with Option 3 include:

- transitional compliance costs for all egg producers (associated with new labelling requirements);
- potential increase in ongoing compliance cost for some producers associated with better understanding of and compliance with existing obligations, similar in size to potential costs of Option 1 and 2, plus possible implications for supply;
- potential impact on demand for and price of other eggs (especially cage eggs);
- less flexible in response to changing consumer expectations, judicial decisions and industry best practice, thereby hindering innovation;
- greater potential for inconsistency with Model Code (and any successors) and other jurisdictions' regulations;
- scope of proposed regulation extends beyond the primary objective and problem identified.

4. Impact analysis

Quantifying the costs

Stakeholder input is requested to improve the accuracy of these estimates, including the provision of additional data, more accurate assumptions and better methodologies.

Option 1

Option 1 represents the status quo. The compliance costs associated with Option 1 are used as the baseline for comparing against the other options. Appendix G tabulates all compliance cost estimates.

Option 2

Producers would need to monitor their production to ensure their eggs conform to the information standard but this cost would be the same as under the status quo (Option 1).

As for option 1, free range egg producers would need to keep up to date with their ACL obligations and with guidance from regulators. However, the certainty provided by Option 2 could mean that free range egg producers would need to do this less frequently since the requirements would be expected to change less over time. It is estimated that an average free range egg producer currently spends about eight hours on these 'awareness' compliance activities each year, based on relatively infrequent court cases and changes to guidelines. This would be expected to continue in the first year of an information standard, but a benefit could be that producers would not need to do this again for about five years. This is an average saving of 6.4 hours per year, or $420 per year costed at $65.45 per hour[34] for the average free range egg producer. There are 277 egg farms in Australia[35] and 39 per cent of grocery eggs are sold as free range (Appendix A). Applying this ratio to the total provides an estimate of 108 free range egg farms in Australia.

The total compliance savings across the Australian industry for Option 2 are therefore estimated to be $45,000 per year (Appendix G).

Option 2a

The defence provision provides an option for greater certainty for some free range egg producers. This may reduce the monitoring compliance costs for some producers. Under both the status quo of Option 1 and the basic information standard of Option 2, free range egg producers need to maintain systems to monitor that most hens can and do move about freely on an open range on most ordinary days.

34 $65.45 per hour is the average wage of $37.40 per hour with a factor of 1.75 applied for overhead costs.

35 Australian Egg Corporation Limited, Australian egg industry overview — December 2014, 2014, **www.aecl.org/dmsdocument/462**.

For producers with production systems that satisfy the defence provision, Option 2a would allow those monitoring activities to be shifted to ensuring that the production conditions in the defence provision are maintained over time. Monitoring compliance should then need to be done less frequently and therefore at less cost. It is estimated that less than roughly 10 per cent of free range egg producers would currently practice the main features of the defence provision presented in Option 2a.[36] Each of these 11 producers (10 per cent of the assumed 108 total free range egg producers) would be estimated to spend about 20 hours per year on 'monitoring' compliance activities.

In contrast, producers that do not use the defence provision are estimated to spend roughly 60 hours per year on monitoring compliance (about 10 minutes per day). The defence provision is therefore estimated to facilitate a 'monitoring' compliance saving of 40 hours per year for each of these 11 free range egg producers, or 440 hours per year in total ($22,000 per year costed at $65.45 per hour).

The compliance savings for Option 2a, in addition to those of Option 2, are therefore estimated to be an extra $29,000 savings per year, assuming it can be used by 11 free range egg producers in Australia (Appendix G).

The defence provision under option 2a is intended to be voluntary. However, there is a risk that this becomes the de facto definition of free range animal husbandry practices in relation to free range eggs. While this is not the intention of the defence provision, if producers are concerned regarding residual uncertainty for enforcement, they may feel compelled to adopt the exact conditions as described in the defence. For the more than 90 per cent of free range egg producers that are estimated not to practice the main features of the defence provision, the costs of implementing the production settings of the defence provision would be substantial. The costs of this kind of change to the industry are difficult to estimate, but are likely to be quite large and likely to be much larger than any subsequent monitoring compliance saving. This kind of producer behavioural response to the defence provision would therefore increase production costs, hinder innovation and likely increase price for consumers.

There is therefore a risk that the compliance savings associated with Option 2a could be more than offset by increased production costs if producers treat the defence provision effectively as a requirement. Careful implementation would be necessary to manage this risk.

Option 2b

Option 2b would better enable consumers to choose between different free range eggs by requiring presentation of stocking densities on the packaging. Option 2b would provide brief, clear, accurate, transparent and consistent egg production information for free range eggs at the point of retail grocery sale.

The additional labelling costs under Option 2b are estimated to be about $3,000 per egg product.[37] This is a one-time cost per product to change the labelling artwork. It is estimated that there are about 100 free range egg products supplied in the grocery sector, so the extra compliance costs for industry to transition to new labels under Option 2b would be about $300,000 (Appendix G).

36 Based on preliminary discussion with an Egg Farmers of Australia representative.

37 PwC, 'Cost Schedule for Food Labelling Changes' **www.health.gov.au/internet/main/publishing.nsf/Content/CF7E670597F383ADCA257BF0001BAFF5/$File/2014%20Cost%20Schedule%20for%20Food%20Labelling%20Changes%20.pdf**, April 2014

Focus questions

40. What benefits would Option 2 provide to consumers? Would consumers be willing to pay more than they currently do for free range eggs to secure greater certainty? How much more per dozen?
41. What benefits would Option 2 provide to egg producers? What are the current costs (in $ estimates) imposed on producers from the existing regulatory uncertainty — for example reduced investment or costs of responding to regulators' enforcement actions?
42. How much time and effort do producers need to invest to comply with the status quo? How would this be affected if Option 2 were adopted?
43. What practical issues would producers face in complying with the requirements of Option 2? What are the likely costs, both in terms of any changes to labelling and any changes to production methods?
44. How would the adoption of the detailed defence provision under Option 2a affect the structure and size of the free range egg market? While the conditions outlined in such a defence would be intended to be voluntary, would producers feel compelled to comply?
45. What proportion of eggs currently labelled as free range would not be produced under conditions that would comply with those outlined in Option 2a?
46. What would be an appropriate transition period for the adoption of Option 2?

Data required

47. Can you provide more accurate data, including:
    - The number and size of free range egg producers?
    - The number of free range egg products available?
    - The cost of changing egg labelling?
    - The proportion of egg products currently labelled as free range that may be produced in conditions that would not conform to the information standard?

Options 3, 3a and 3b

As already noted, stakeholder input is requested to improve the accuracy of these estimates, including the provision of additional data, more accurate assumptions and better methodologies.

As the scope of Option 3 extends to all shell eggs for sale in the retail market, all egg producers in Australia will need to ensure that they are aware of and comply with the obligations in the information standard. As producers are aware of what production methods are employed on their farms, once producers become aware of the standard, the primary compliance cost will be in terms of changes to labelling.

It is assumed that it would take producers approximately five hours to become fully informed regarding the new standard and then an additional one hour per year to maintain awareness. This is an average of 1.4 hours per year over 10 years. With an estimated 277 egg farms in Australia[38] of which 108 are free range producers (see Option 2), there are estimated to be 169 barn or cage producers. At an assumed cost of $65.45 per hour, this equates to a one-off transitional cost of $55,000 across the industry, with a subsequent ongoing annual cost of $11,000, or $15,000 per year over 10 years. This offsets the estimated $45,000 per year compliance savings for free range producers (Option 2) so the net awareness cost savings across the whole industry for Option 3 are estimated to be $30,000 per year (Appendix G).

In addition, the estimated cost to change labelling is approximately $3,000 per egg product.[39] This is a one-off cost per product to change the labelling artwork. It is estimated that there are about 250 egg products supplied in the grocery sector, with 100 of them labelled free range (Option 2), leaving 150 egg products that would need new labels. So the one-off compliance costs for industry to transition to new labels under Option 3 would be about $450,000 (Appendix G).

38 Australian Egg Corporation Limited, Australian egg industry overview — December 2014, 2014, **www.aecl.org/dmsdocument/462**.

39 PwC, 'Cost Schedule for Food Labelling Changes' **www.health.gov.au/internet/main/publishing.nsf/Content/CF7E670597F383ADCA257BF0001BAFF5/$File/2014%20Cost%20Schedule%20for%20Food%20Labelling%20Changes%20.pdf**, April 2014.

Focus questions

48. What benefits would Option 3 provide to consumers? How would they differ from Option 2?
49. Do consumers require additional certainty regarding barn and cage laid eggs? Will Option 3 provide this certainty? Would Option 3 assist consumers to identify eggs that they can be certain have been produced in line with their values and expectations?
50. Would Option 3 significantly change the demand for or supply of eggs? Will prices for eggs, or particular categories of eggs, change?
51. What are the practical issues and likely costs for producers associated with complying with the requirements in Option 3? How do these differ from Option 2?
52. Will producers benefit from additional clarification regarding the terms 'barn' and 'cage' eggs?
53. Do the definitions of 'barn' and 'cage' comply with existing industry practice? Would adoption of Option 3 cause significant structural changes in the egg industry?
54. To what extent would Option 3 inhibit innovation in the industry? For example, is it flexible enough to incorporate new production methods (such as 'aviary eggs') developed to address biosecurity, food safety or additional animal welfare concerns?
55. What would be an appropriate transition period in order to allow industry to comply with the requirements under Option 3?

Additional categories

56. Do the additional categories of 'access to range' or 'premium free range' provide consumers with additional valuable information when purchasing eggs? What is the value of that benefit to consumers?
57. What are the practical issues and likely costs for producers associated with complying with one or both of these additional categories? Given the additional categories are intended to reflect those methods of egg production that are similar to, but not entirely, free range, will this correspond with lower costs for producers compared to Option 3?
58. Will producers benefit from additional clarification of the term 'access to range'?
59. Is the definition of 'access to range' consistent with existing industry practice? What are existing industry practices regarding hens' access to an outdoor range? Would adoption of one or both additional optional categories cause significant structural changes in the egg industry?
60. What would be an appropriate transition period in order to allow industry to comply with the requirements?

Data required

61. Can you provide more accurate data, including:
    - The number and size of egg producers?
    - The number of egg products available?
    - The cost of changing egg labelling?

Quantifying the benefits

Currently inadequate data is available to allow a quantitative estimate of the benefits of the options outlined. Significantly less data is available regarding the benefits of each option compared to the compliance costs. Stakeholder feedback is sought to assist in this analysis before a final decision can be made. Possible methodologies for quantifying the benefits are outlined below, for comment.

Option 1

Ongoing enforcement action and additional guidance to industry could result in better compliance with the existing obligations under the ACL. Assuming that happened, the benefit to consumers of Option 1 could be greater certainty that products purchased comply with expectations.

To estimate the value of this certainty, the proposed methodology is to calculate the value of the premium paid by consumers for eggs currently labelled as free range, and then estimate the proportion of those eggs that may be mislabelled following the principles established under case law (that is, most birds outside on most ordinary days). An assumption on the proportion of mislabelled eggs could be based on the level of enforcement activity by regulators, relative to the size of the industry.

Option 2

The benefits to consumers of Option 2 are likely to be very similar to those of a well-implemented Option 1. In addition to the financial impact, consumers may also receive some increase in wellbeing from the perceived greater certainty that an information standard offers, although this is much harder to quantify.

Option 2a

The principle additional benefit of Option2a relative to Option 2 is intended to fall to producers, by providing additional guidance on what may be considered compliant with the information standard. This benefit is addressed in the analysis of compliance costs in the Preliminary impact analysis for Option 2.

Option 2b

The additional benefit to certain consumers of Option 2b compared to Option 2 could be calculated from an estimate of any price premium paid for free range eggs already clearly labelled with stocking density. This price premium could then be assumed to be the benefit that will accrue to that proportion of consumers for whom stocking density is a factor in their choice to purchase eggs labelled as free range. Data on this issue are available from recent consumer surveys (Appendix A).

Option 3

The benefits of Option 3, for free range egg consumers, will be very similar to those of Option 1 and Option 2. The incremental benefit to consumers of Option 3 compared to Option 2 will depend on the level of uncertainty facing consumers regarding the labelling of barn and cage eggs. One assumption is that purchasers of cage eggs will have no benefit from greater regulation of egg labelling as the most significant piece of information determining their purchase (that is, price) is already transparent.

Therefore any marginal benefit of Option 3 will accrue to purchasers of barn eggs. Using the same methodology as employed for free range labelling, the benefit to purchasers of barn eggs could be calculated as the price premium paid for barn eggs compared to cage eggs adjusted to reflect the proportion of barn eggs that are currently mislabelled. However, there is currently no evidence to suggest barn eggs are mislabelled. It may be the case that there is currently no consumer detriment relating to the labelling of barn eggs. Additional information is required from stakeholders.

On the other hand, producers may face costs due to reduced capacity to innovate and respond to changing demand and technology or to potential conflict with the Model Code and its successors.

The benefits may also be offset to the extent that prices increase across all labelling categories, leading to net costs for those consumers with low or zero benefit.

Option 3a

Like that for Option 2b, additional consumer benefit from the introduction of a 'premium free range' category can be calculated from the premium (as indicated by price) placed by consumers on eggs whose labels clearly identify them as free range **and** with consideration of additional animal welfare factors.

However, it is not clear the extent to which consumers who value these 'premium' factors are currently being misled if their purchasing decisions are based on existing certified trademarks and accreditation schemes.

Option 3b

The benefits of Option 3b are expected to accrue to both producers and consumers.

The creation of an 'access to range' category may allow some producers, whose eggs may not meet the definition of free range, to differentiate their eggs from barn eggs. These producers may face reduced capital and ongoing production costs compared to those associated with free range production practices. This investment saving would be a measure of the benefit of Option 3b. In the absence of this category, under Option 3, these producers would need to either invest these capital and ongoing production costs or cease labelling their eggs as free range.

Consumers whose preferences closely align with the 'access to range' definition, if faced with the limited choice between free range, barn or cage eggs, may need to purchase free range eggs to satisfy this preference. An 'access to range' category could allow these consumers to satisfy their preferences at a lower price. To calculate this benefit, it would be necessary to estimate the proportion of consumers currently purchasing free range eggs who would prefer 'access to range' in terms of price and production conditions.

Focus questions

62. Will the methodologies outlined accurately reflect the potential benefits of the options? Are all benefits identified? What would be a more accurate methodology?

63. Are the data available to allow these (or other) methodologies to be adopted? Can you provide useful data, either on an individual or industry level, including on:

    - The proportion of egg products currently labelled as free range that may be produced in conditions that would not conform to the information standard?
    - The non-financial benefit consumers will receive from greater certainty regarding egg labelling?
    - The proportion of other types of egg products that are mislabelled or misleading (including barn, cage and higher animal welfare)?
    - What proportion of consumers currently purchasing free range eggs would purchase access to range eggs? How much of a price differential would consumers expect? What is the production cost saving to 'access to range' producers compared to 'free range' production?
    - What would be the change to the volume and type of egg supply under Option 2? Under Option 3?

5. Consultation plan

The Australian Treasury on behalf of Consumer Affairs Australia and New Zealand (CAANZ) will undertake an extensive public consultation process, during which it will accept submissions on this regulation impact statement (RIS) and will hold roundtable discussions to engage major stakeholders, including animal welfare task groups, industry members and consumer bodies. The objective of the consultation is to gather additional evidence on the extent of the problem and the policy options.

The consultation process will begin with the release of this paper on the consultations page of the Australian Treasury website — **www.treasury.gov.au/ConsultationsandReviews/Consultations**.

CAANZ intends to reach a broad cross-section of stakeholders. It will be important to assess the views of both egg consumers and producers. Stakeholders are asked to provide any written submissions on the focus questions within four weeks of the release of this consultation paper and by **Monday 2 November 2015** via the submission facility on the Australian Treasury website or via email to: **AustralianConsumerLaw@treasury.gov.au**.

Treasury will also be conduct targeted consultation meetings with stakeholders in a range of locations, including roundtables with stakeholders to discuss the high level questions raised in this paper and the stakeholder feedback received. Following this, further targeted consultation may be necessary to clarify any issues or questions that arise. If an information standard is subsequently prepared, further targeted consultation with key stakeholders may take place on a draft standard, to be presented to Consumer Affairs Ministers through the Legislative and Governance Forum on Consumer Affairs (CAF) in early 2016.

Once the initial consultation process has concluded, a final or decision-making RIS will be produced to discuss the results of the consultation process, the evidence that has been gathered and the preferred policy option. Both the Consultation Paper and the decision-making RIS will be published on the Office of Best Practice Regulation (OBPR) website.

All submissions to the consultation process will be published on the Australian Treasury website, unless authors have indicated that they would like all or part of their submission to remain in confidence.

CAANZ has consistently designed the consultation procedures in line with OBPR consultation principles and has ensured that there is flexibility to maximise stakeholder participation in the consultation process.

Once the initial consultation period has concluded, outcomes of the stakeholder consultation will be conveyed by CAANZ to Consumer Affairs Ministers through CAF. Feedback from stakeholder consultation will inform the final, decision-making RIS.

6. Conclusion

While some consumers place a high premium on the value of free range eggs, consumers may be misled regarding the nature of the product they are purchasing. In addition, uncertainty among producers about what is required to label an egg as free range may also cause consumer detriment if it discourages new investment in barns and equipment. Any option that addresses these concerns will increase the level of transparency and therefore competition in the market.

Government intervention could encourage the market to provide consumers with reliable information with which to make meaningful consumption choices. This would only be warranted if this objective seems unachievable under the status quo.

Three main options have been outlined, with a selection of sub-options, for possible government intervention.

Option 1 (the status quo) would maintain the existing legal obligation under the ACL for egg producers not to deceive or mislead consumers. Existing certification and trade mark regimes would continue to operate without any need for amendment, to allow product differentiation and certified premium marketing claims. ACCC guidance to industry would clarify compliance requirements for egg producers.

As the status quo, this option is likely to have minimal compliance costs for producers. Achievement of the objective of reducing the likelihood of consumers being misled by egg labels would depend on ongoing compliance with the existing ACL obligation by egg producers and enforcement by ACL regulators (with associated costs to producers and regulators) where necessary. Addressing producer uncertainty will rely on the additional guidance provided by the ACCC.

Given the potential for conflict or inconsistency between any national information standard and existing state and territory regulation, unless other regimes are removed or amended, Option 1 may be the preferred option as the benefits of a single national regime are unlikely to accrue in full.

Option 2 (the basic information standard for free range eggs) effectively codifies the case law, proposing an information standard that would stipulate that eggs should not be labelled as free range unless most hens can and do go outside on most ordinary days. Should stakeholders consider that more detailed guidance is necessary in an information standard, Option 2 could incorporate a set of conditions under which eggs are most likely to be produced in a free range manner. Option 2 could also require the packaging of any eggs labelled as free range to disclose the relevant outdoor stocking density.

To the extent that Option 2 codifies the case law only, its costs and benefits are likely to be similar to Option 1. However, the variations outlined for Option 2 allow any government intervention to be more targeted to specific industry and consumer concerns, should stakeholder feedback suggest it is warranted. This option may be preferred if stakeholder feedback indicates some additional information is required for both producers and consumers, without imposing too significant a compliance burden.

Option 3 (an information standard for all egg labelling) would require all eggs for sale to be labelled as one of three or four specific categories (‘free range’, ‘barn’, ‘cage’ and possibly ‘access to range’ and ‘premium free range’).

The proposal would provide clear information for consumers on what production methods are employed, but as the option may stifle innovation and impose an ongoing regulatory burden across

the entire industry, and not just free range producers, significant benefits would need to be demonstrated in order to outweigh the larger and more widely distributed compliance costs.

Stakeholder feedback on the potential benefits and costs of each of the options will be crucial in identifying which proposal has the greatest net benefit for the community, taking into account all the impacts.

Appendix A — The size and value of the free range egg grocery market

According to industry statistics provided by the Australian Egg Corporation Ltd (AECL) (an industry services body or provider of marketing, research and development services for the benefit of all stakeholders, principally egg producers), the market value of grocery eggs has steadily risen from $1.3 to $1.8 billion between 2010 and 2015:[40]

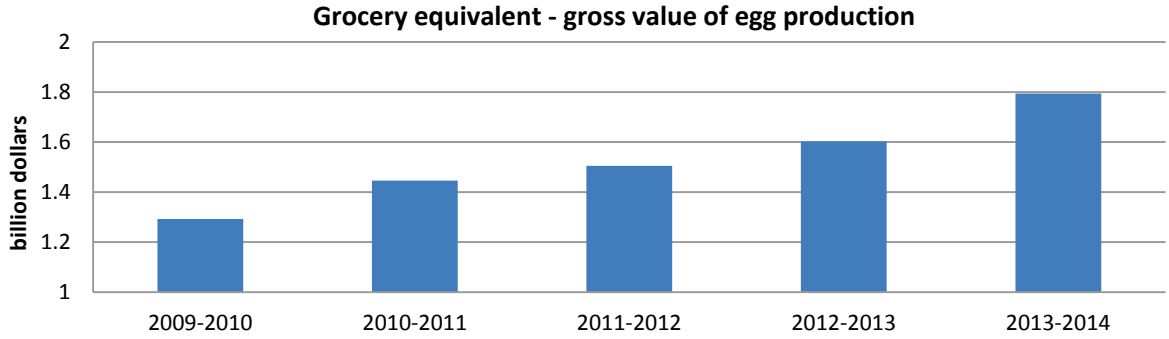
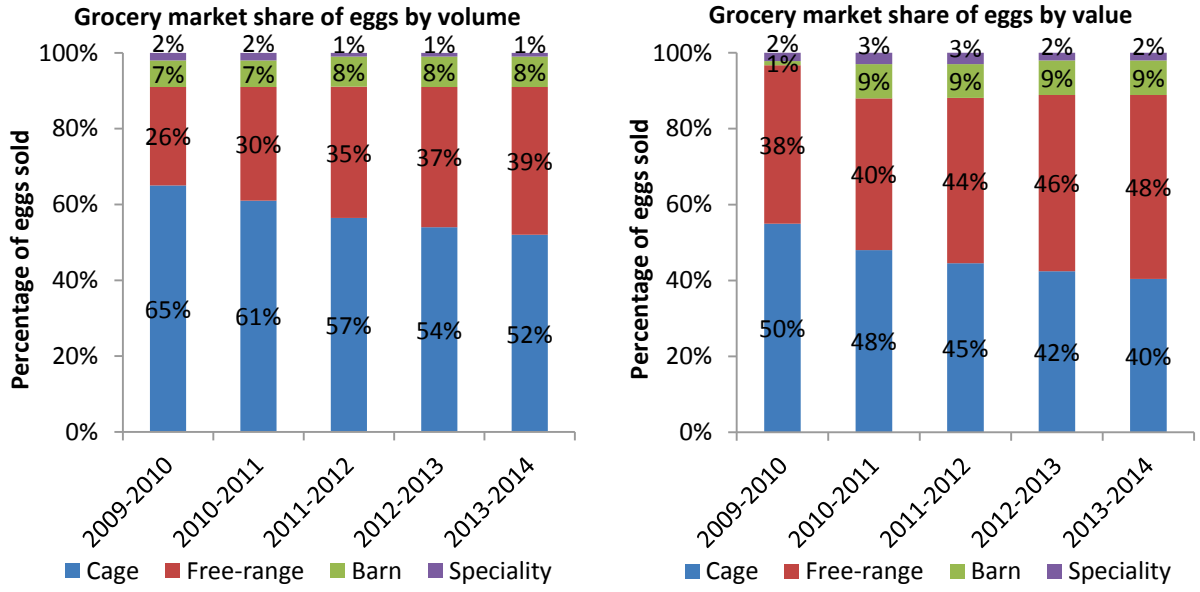


Figure 1 Source: AECL.

In 2014, the grocery market share of eggs was predominately made up of cage (52%) and free range (39%) eggs, with barn (8%) and speciality (1%) eggs consuming only a small part of the market.[41] The grocery market share of cage eggs has declined over recent years, while the free range egg share has increased from around 25 per cent in 2010 to around 40 per cent in 2014.



Figures 2 and 3. Source: AZTEC reported by AECL.

40 AZTEC, as cited in, Australian Egg Corporation Limited, Australian egg industry overview — December 2014, 2014, **www.aecl.org/dmsdocument/462**.

41 ibid.

A range of surveys have been undertaken to illustrate the existence of a significant price premium for eggs labelled as free range. These include:

- Data provided by the AECL showing an almost 50 cent difference in the retail price per dozen for eggs labelled as free range compared to eggs labelled as barn laid.[42]

- NSW Fair Trading reported in 2013 that the average price per 100 grams of free range eggs in Sydney was $0.94, $0.76 for barn eggs and $0.56 for caged eggs.[43] With a medium egg weighing in around 50 grams, a free range egg is therefore around 10 cents more expensive than a barn egg and 20 cents more expensive than a caged egg.

The higher price of free range eggs is generally attributed to additional costs of production associated with free range egg production (as compared to cage or barn eggs), for example the provision of an outdoor area and, in some cases, lower stocking density; and a recognition that free range is a premium claim for which some consumers are willing to pay more for than cage or barn laid eggs.

42 ibid.

43 Research undertaken in Sydney on 8 August 2013 by NSW Fair Trading , **www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Response_to_choice_super_complaint_on_free-range_egg_claims.pdf**.

Appendix B — Summary of ACCC legal action to date

2011: C.I. & Co Pty Ltd

- Penalised $50,000 for packaging eggs with the terms 'free range' and 'fresh range' when either most or all of the eggs were laid by hens in cages.

2012: Rosie's Free Range Eggs

- Penalised $50,000 for packaging eggs with the label 'free range', images of the proprietor outdoors surrounded by hens and with a statement that the eggs came 'straight from the chooks to you'; when in reality the eggs were laid by hens in cages.

2014: Pirovic Enterprise Pty Ltd

- Federal Court found false and misleading conduct by labelling and promoting eggs as free range on the basis that hens were unable to move around freely on an open range on most ordinary days. This did not occur for a number of reasons which reduced the ability and propensity of the hens to exit the barns and move freely.
- Factors considered included stocking densities of the barns, flock sizes in the barns, and the number, size, placement and operation of the physical openings to the open range.
- Ordered to pay a pecuniary penalty of $300,000, $25,000 towards the ACCC's court costs and to establish a Trade Practices Compliance Program.

2015: RL Adams Pty Ltd (t/a Darling Downs Fresh

- Federal Court found false and misleading conduct by labelling and promoting eggs as free range when the hens were not able to move around freely on an open range on an ordinary day and did not do so on most days.
- Ordered to pay a pecuniary penalty of $250,000, implement a compliance program, publish corrective notices and contribute to the ACCC's costs.

Deorodi Pty Ltd and Holland Farms Pty Ltd (t/a Free Range Eggs)

- Action instituted for false and misleading conduct for claiming on its website that its eggs were free range and stating on packaging that the eggs were 'certified free range' and 'our hens graze on open pastures'.
- The ACCC alleges that hens did not move about freely on an open range each day due to a number of factors including pop hole sizes and flock sizes.

Snowdale Holdings Pty Ltd

- Pending judgment for false and misleading conduct by claiming eggs were free range, stating 'our birds love the outdoors' and using pictures of hens outdoors.
- The ACCC alleges that hens were unable to move about freely on an open range each day.
- Snowdale Holding's defence is that they did not engage in false or misleading conduct as their hens had access to the outdoor range, but chose not to go outside.

Details of recent court cases

When a court decides whether labelling claims are false or misleading, it must consider how a reasonable person would understand the relevant claims (in the circumstances) and the ordinary meaning of the claims being made (by words or pictorial representation or by other means). That is, courts consider the general meaning of a representation rather than whether it matches a legislated definition, including for alternative claims such as 'free to roam' or 'farm range'. A producer who complies with an accreditation or certified trademark scheme definition may still mislead consumers where the scheme's definition does not match the more common meaning of the words used.

In the case of *Pirovic*, the hens were found not to move about freely on an open range on most ordinary days because a number of factors reduced the ability and propensity of the hens to leave their barns and move freely including:

a) the stocking densities of the barns;

b) the flock sizes in the barns; and

c) the number, size, placement and operation of the physical openings to the open range.[44]

Following the *Pirovic* decision, the ACCC alerted peak industry bodies of the decision and that there are a number of farming conditions that can impact on whether hens are able to, and do, move freely on an open range each day, including:[45]

- the conditions of the internal areas the hens are housed in;
- the time of the day and how regularly the openings are opened;
- the size and condition of the outdoor area, including any shaded areas, the presence of food, water and different vegetation and ground conditions;
- the stocking density of any outdoor area; and
- whether the hens have been trained or conditioned to remain indoors.

44 ACCC v Pirovic Enterprises (No 2) [2014] FCA 1028

45 See **www.accc.gov.au/media-release/federal-court-orders-300000-penalty-after-finding-free-range-egg-claims-to-be-misleading**

Appendix C — Relevant regulation across jurisdictions[46]

State/ territory	Outdoor stocking density	Indoor stocking density	Access outdoor	Exits	Free range defined	Caged-eggs	Barn-laid defined	Package labelling	Sale display requirements
NSW — Model Code applies voluntarily	Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Model Code — max 30kg/m^2 (approx. 15 birds per square metre)	Model Code applies	Model Code applies	Model Code applies	Model Code applies	Model Code applies	Australian Consumer Law applies	Australian Consumer Law applies
QLD — Animal Care & Protection Amendment Regulation (No 2) 2013	10,000 hens per hectare	No max set under Regulation, but Model Code applies voluntarily	Maximum of 1,500 fowl per hectare for free range eggs. 10,000 hens per hectare are allowed where additional animal welfare parameter are met.	Model Code applies	Model Code applies. Free range defined as 10,000 hens per hectare where the range is managed to prevent unsuitable conditions, birds have access to the outdoor area through specified minimum-sized shed openings and birds have access to the outdoor area for at least 8 hours per day, once they are fully feathered.	Model Code applies	Model Code applies	Australian Consumer Law applies	Australian Consumer Law applies

46 Currently the ACT is the only jurisdiction with specific regulation of egg labelling. South Australia is developing draft regulation. In all other jurisdictions, any regulation in relation to free range hens relates to animal welfare objectives, including the voluntary adoption of the Model Code.

State/ territory	Outdoor stocking density	Indoor stocking density	Access outdoor	Exits	Free range defined	Caged-eggs	Barn-laid defined	Package labelling	Sale display requirements
WA — Model Code applies voluntarily	Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Model Code — max 30kg/m^2 (approx. 15 birds per square metre)	Model Code applies	Model Code applies	Model Code applies	Model Code applies	Model Code applies	Australian Consumer Law applies	Australian Consumer Law applies
VIC — Model Code applies voluntarily	Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Model Code — max 30kg/m^2 (approx. 15 birds per square metre)	Model Code applies	Model Code applies	Model Code applies	Model Code applies	Model Code applies	Australian Consumer Law applies	Australian Consumer Law applies
ACT — Egg (Labelling and Sale) Act 2001	Requires compliance with Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Requires compliance with Model Code — 30kg/m^2 (approx. 15 birds per square metre)	Model Code applies	Model Code applies		Hens are kept in cages: (a) without access to litter, perch or nest; and (b) in accordance with the stocking level and other requirements for cage systems under the code. Provision enacted by ACT legislation.	Hens are kept: (a) with freedom and capacity to socialise, move freely within the shed, stretch, perch, nest, dust bathe, flap and fly; (b) with adequate perching facilities and	Cage, barn and free-range eggs: Specific signage must be displayed on egg packaging. Signs must be placed prominently to be seen and read easily by a person at or near the display. The statement on the sign must	Reference to the egg labelling requirements, for hen eggs, means— (a) the egg packaging displays the relevant expression in schedule 1 indicating the conditions under which

State/ territory	Outdoor stocking density	Indoor stocking density	Access outdoor	Exits	Free range defined	Caged-eggs	Barn-laid defined	Package labelling	Sale display requirements
							nests available to all birds within the shed to accommodate needs; (c) with half the housing kept under litter; and (d) in accordance with the stocking level and other requirements for deep litter systems on a single level under the Code. Provision enacted by ACT legislation.	be printed in: (i) a colour that contrasts with the background colour of the sign; and (ii) Arial bold typeface in a size not less than 50 point. Provision enacted by ACT legislation. Australian Consumer Law also applies.	the hens that produced the eggs are kept; (b) the relevant expression is preceded or followed by the word 'egg' or 'eggs'; and (c) the relevant expression is conspicuously displayed on the packaging in standard type of at least 6mm high. Provision enacted by ACT legislation; Australian Consumer Law also applies.
TAS — Model Code applies voluntarily **N.B. The Tasmanian Government did not proceed with the Egg Labelling and Sale Bill 2013.**	Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Model Code — max 30kg/m^2 (approx. 15 birds per square metre)	Model Code applies	Model Code applies	Model Code applies	Model Code applies	Model Code applies	Australian Consumer Law applies.	Australian Consumer Law applies.

State/ territory	Outdoor stocking density	Indoor stocking density	Access outdoor	Exits	Free range defined	Caged-eggs	Barn-laid defined	Package labelling	Sale display requirements
SA — Drafting of Regulations under the *Fair Trading Act 1987* (SA) in progress. Regulations will allow the establishment of a voluntary industry code and a certified trademark.	Max 1,500 hens per hectare	Model Code — max 30kg/m^2 (approx. 15 birds per square metre)	Minimum 8 hours per day during daylight hours, except during adverse weather conditions or during outbreaks of disease or threat of disease. Shelter must include reasonable windbreaks and shade.	Model Code Applies	Standards as outlined in the Model Code (e.g. stocking density, access to range).	Model Code applies	Model Code Applies	Prescribed voluntary industry code (i.e. opt-in) will allow use of certified trademark	Model Code Applies
NT — Model Code applies voluntarily	Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Model Code — max 30kg/m^2 (approx. 15 birds per square metre)	Model Code applies	Model Code applies	Model Code applies		Model Code applies	Australian Consumer Law applies	Australian Consumer Law applies

Appendix D — Free range eggs accreditation and certified trademark schemes[47]

Scheme	Model Code compliant	Features/practices			Logos and labelling
		Hens' access to outdoors and shelter	Stock density	Animal management practices	
Australian Egg Corporation Limited **(Egg Corp Assured certified trademark)**	Yes	▪ Access to range outdoors during daylight hours (minimum 8 hours). ▪ Hens on the range have access to shaded areas and shelter from rain. ▪ Windbreaks should be provided in exposed areas. ▪ Every reasonable effort must be made to protect hens from predators at all times.	**Outdoor** ▪ Maximum 1,500 layer hens per hectare. ▪ Higher numbers acceptable, when hens are regularly rotated onto fresh ranges and close management, providing for some continuing fodder cover. **Indoor** ▪ Maximum 30 kg/m2 (approximately 15 birds per square metre)	▪ Beak trimming should be performed by an experienced operator or under supervision of an experienced operator.	▪ Certified egg producers are entitled to use the ECA Certification trademark. ▪ Cartons must state the egg production system, e.g. cage, barn, free range. ▪ Producers use own label.
Australian Certified Organic Ltd **(Australian Certified Organic Standard 2013)**	Yes plus additional standards	▪ Access to pastured areas during that majority of daylight hours. ▪ Vegetative cover or other means of shading shall be designed and positioned to ensure hens have ease of access to harbour and avoid aerial predators as well as protection from extreme weather.	**Outdoor** ▪ Maximum 2,500 hens per hectare where stock or forage rotation is practiced. ▪ Maximum of 1,500 hens per hectare for set stocking systems. **Indoor** ▪ Maximum 16 kg/m2 (approximately 8 birds per square metre)	▪ Systematic beak trimming and use of poly peepers are prohibited. However the standard does provide for exemptions. ▪ Withholding feed and water to induce moulting is prohibited.	▪ Certified egg producers can use the Australian Certified Organic logo.

47 Labelling: Egg production systems, NSW Food Authority website, **www.foodauthority.nsw.gov.au/consumers/food-labels/labelling-and-the-law/egg-labelling**/, with some amendments.

Scheme	Model Code compliant	Features/practices			Logos and labelling
		Hens' access to outdoors and shelter	Stock density	Animal management practices	
Free Range Farmers Association Inc. **(Free Range Farmers Association Inc. Standards — Egg Production — Rev 12 — 2013)**	Yes plus additional standards	▪ Unrestricted access to free range runs during daylight hours. ▪ Permanent access to weatherproof housing. ▪ Adequate shade and wind protection must be provided.	**Outdoor** ▪ Maximum 750 hens per hectare. **Indoor** ▪ Maximum 15 kg/m2 (approximately 7 birds per square metre)	▪ Practices such as beak trimming, toe clipping and induced moulting are prohibited.	▪ Accredited farmers display the Free range Farmers Association Inc. Victoria logo.
Free Range Egg and Poultry Australia Limited **(FREPA Free Range Egg Standards certified trademark)**	Yes plus additional standards	Unrestricted access to range outdoor during daylight hours. Outdoor area must have shade, shelter and palatable vegetation.	**Outdoor** Maximum 1,500 hens per hectare, but fewer if land is not sustainable at this stocking density. **Indoor** ▪ Sliding scale depending on total number of birds: ➢ 10 birds per square metre up to 1,000 birds ➢ 9 birds per square metre up to 2,000 birds ➢ 8 birds per square metre up to 3,000 birds ➢ 7 birds per square metre up to 4,000 birds ➢ 6 birds per square metre over 4,000 birds.	▪ Beak trimming is only allowed in accordance with the Egg Industry Accreditation Program. ▪ Induced moulting is not permitted. ▪ Use of poly peepers is not permitted.	▪ Certified members allowed to use the Free range Egg and Poultry Australia Limited logo.

Scheme	Model Code compliant	Features/practices			Logos and labelling
		Hens' access to outdoors and shelter	Stock density	Animal management practices	
Humane Choice (True Free Range certified trademark)	Yes plus additional standards	▪ Free movement and access to paddock for a minimum of 8 hours per day. ▪ Outdoor shelter should include windbreaks and shade.	**Outdoor** ▪ Maximum 1,500 hens per hectare. **Indoor** ▪ Not less than one square metre for every 5 birds including the roosting area	▪ Practices such as beak trimming and induced moulting are prohibited.	▪ Producers can use the Human Choice True Free range logo.
RSPCA **(Approved Farming Scheme Standards — Layer Hens (August 2015))**	Yes plus additional standards	▪ Daily access to range outdoors immediately after egg-laying period. ▪ Sufficient overhead shade should be provided to encourage hens to access the range.	**Outdoor** ▪ Maximum 1,500 hens per hectare on farms where there is no rotation to other areas, or ▪ Maximum of 2,500 hens per hectare where hens can be rotated to other outdoor areas. **Indoor** ▪ No more than 7 bids per square metre of usable area for floor-based systems ▪ No more than 9 bids per square metre of usable area for tiered systems	▪ Beak trimming only under certain conditions or with prior approval from RSPCA. ▪ Induced moulting not permitted.	▪ Accredited farms are authorised to use the RSPCA 'Paw of Approval' logo.
Coles **(Coles Egg Production Standard for Free Range eggs)**	Yes	▪ Outdoor areas are designed to encourage hens to roam, protect them from extremes of weather and temperature, and allow natural flock behaviour such as roaming around, perching and dust bathing.	**Outdoor** ▪ A maximum of 10,000 hens per hectare, with every hen allocated at least one square metre of outdoor space. **Indoor** ▪ Max 12 birds per square metre for all horizontal surfaces As per Model Code	▪ Beak trimming is to be avoided through provision of proper environment and breed selection. ▪ Where required, only allow a single beak trim to be undertaken by an accredited person under vet supervision.	▪ Coles brand (private label) free range eggs.

Scheme	Model Code compliant	Features/practices			Logos and labelling
		Hens' access to outdoors and shelter	Stock density	Animal management practices	
Woolworth **(Egg Corp Assured certified trademark)**	Yes	▪ Outdoor range areas are designed to protect hens from extremes of weather and temperature.	**Outdoor** ▪ 1,500 hens per hectare. ▪ Up to 10,000 per hectare allowed if hens are regularly rotated onto fresh range areas. **Indoor** ▪ As per Model Code, max 30kg/m^2 (approximately 15 birds per square metre)	▪ Beak trimming must be done by an accredited person.	▪ Woolworths Macro and Select brand free range eggs.

Appendix E — Complaints to ACL regulators

Between 1 January 2012 and 30 June 2015 the ACCC received 179 contacts to its Infocentre related to egg labelling.

A breakdown of the issues in these contacts follows:

Issue	Contacts	Percentage of total
False representation of free range	88	49%
AECL certification trademark application	68	38%
Feedback on the definition of free range	9	5%
Producer enquiries on egg representations	7	4%
False green claims	3	2%
Feedback on the benefits of free range	3	2%
False representations as to origin	1	1%
ACCC total	**179**	

The ACCC also received 1,600 submissions during its assessment of the AECL certification trademark application.

During the 2013-14 and 2014-15 financial years, no complaints were recorded by the ACT, New South Wales, Northern Territory, Queensland[48] or Tasmania. One complaint was recorded by Victoria related to rotten eggs which subsequently turned out to be mislabelled as free-range; one complaint was recorded by Western Australia[49] in relation to eggs being labelled as 'farm fresh' despite being resold by the vendor; and one complaint was recorded by South Australia related to home-grown eggs being sold as free range at a market stall.

This lack of complaints could be attributed to consumers being unaware that they have been misled, a lack of awareness of the current labelling obligation or inadequate consumer interest in the issue to justify the lodging of a formal complaint. Also, these complaints to consumer protection agencies do not include complaints that may have been made to food safety authorities.

48 Queensland received two complaints in the first six months of 2013, one provided for information only and the other concerning claims of free range eggs and organic meats (which was resolved with the trader).

49 Western Australia received four other complaints regarding the misrepresentation of eggs as free range over the period from 2006 to 2013.

Appendix F — What do consumers think are free range eggs?

Consumer expectations vary when it comes to the key factors in producing free range eggs.

Recent research indicates that while consumers generally have a broad understanding of what they mean by 'free range', awareness of the breadth of factors that comprise free range production varies (some of these factors are summarised at Appendix D).

The 2014 CHOICE survey[50] asked consumer about free range and found that the majority of respondents believe that free range means free to roam, access to the outdoors and cage-free. Twenty-eight per cent of free range egg buyers did not have confidence that the eggs they buy are produced under what they expect to be free range conditions.

Similarly a 2012 online survey of CHOICE members[51] found that in relation to free range eggs, the most popular descriptions of what free range means concerns the ability of birds to move around and access the outdoors, and that the majority of participants did not know what an appropriate maximum stocking density should be. In terms of the specific meaning of free range:

- 69% said: Hens are never confined in cages.
- 66% said: Hens have more outdoor space.
- 65% said: Hens have easy access to pasture.
- 48% said: Hens have more indoor space.
- 47% said: Beak trimming, wing clipping etc. prohibited.
- 43% said: Growth promoters prohibited.
- 33% said: Antibiotics prohibited.
- 11% said: Environmental impacts minimised.

These results are consistent with market research commissioned by the AECL in 2012[52] which found that 55 per cent of consumer respondents expected free range hens to be given shade by a building containing nests and perches (not cages), to be secured at night and to be protected from inclement weather and predators. The survey also found that 67 per cent of survey respondents agreed both that egg labelling is misleading and that they are uncertain they get what they expect when purchasing free range and organic eggs. Similarly, 63 per cent agreed that egg producers who produce eggs of more than one type (for example both free range and cage) cannot be trusted to label egg type correctly.

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50 Cited in CHOICE; *Free range eggs: Making the claim meaningful*; June 2015. Survey conducted in November 2014 covering 1696 people nationwide. **www.choice.com.au/~/media/619b60e5a1f04b2191d09fd9dab4c72e.ashx**.

51 CHOICE online survey completed 23 April 2012 to 4 May 2012. **www.choice.com.au/~/media/3042a3fe97cb4613882f415aa4e56b00.ashx**.

52 Julie Dang & Associates Pty Ltd, *Production methods understanding & QA evaluation: A market research report*, Prepared for Australian Egg Corporation Ltd, May 2012, **www.aecl.org/dmsdocument/465**. National survey of 5,015 males and females, aged 18-64 years, who were the main grocery buyer for the household who bought eggs at least once every three weeks and had purchased in the last three weeks.

In contrast to the perception of some consumers, free range is not synonymous with increased animal welfare. For instance, a number of industry participants and animal experts note that hens prefer to flock in large numbers and remain inside for safety. This is reflected in the Model Code, which states that visual contact with other members of the species is a basic need for all poultry, at the same level as needs such as being fed, watered and having the ability to freely move, sit or lie down.[53] This argument is not justification for the use of free range claims where the hens do not range freely, but instead may support producer choice for other descriptions such as barn laid eggs.

Indeed, it appears that some consumers equate free range with overall issues of humane egg production. Animal welfare issues are broader than just whether or not eggs are produced in a manner that can fairly be described as free range.

53 Primary Industries Ministerial Council, Model Code of Practice for the Welfare of Animals — Domestic Poultry, 4th ed, SCARM Report 83, CSIRO, Victoria, 2002, page 1.

Appendix G — Compliance cost estimates

Cost	Option 1 (status quo)		Option 2		Option 2a		Option 2b		Option 3		Option 3a		Option 3b	
	free-range	barn/ cage	free-range	barn/ cage	free-range	barn/ cage	free-range	barn/ cage	free-range	barn/ cage	free-range	barn/ cage	free-range	barn/ cage
AWARENESS														
hrs/producer/year	8	0	1.6	0	1.6	0	1.6	0	1.6	1.4	1.6	1.4	1.6	1.4
$/producer/year	$524	$ -	$105	$ -	$105	$ -	$105	$ -	$105	$92	$105	$92	$105	$92
$/year	$56,549	$ -	$11,310	$ -	$11,310	$ -	$11,310	$ -	$11,310	$15,485	$11,310	$15,485	$11,310	$15,485
MONITORING														
hrs/producer/year	60	0	60	0	56	0	60	0	60	0	60	0	60	0
$/producer/year	$3,927	$ -	$3,927	$ -	$3,665	$ -	$3,927	$ -	$3,927	$ -	$3,927	$ -	$3,927	$ -
$/year	$424,116	$ -	$424,116	$ -	$395,842	$ -	$424,116	$ -	$424,116	$ -	$424,116	$ -	$424,116	$ -
label change	$ -	$ -	$ -	$ -	$ -	$ -	$300,000	$ -	$ -	$450,000	$ -	$450,000	$ -	$450,000
total	$480,665	$ -	$435,426	$ -	$407,151	$ -	$735,426	$ -	$435,426	$465,485	$435,426	$465,485	$435,426	$465,485
total all producers	$480,665		$435,426		$407,151		$735,426		$900,911		$900,911		$900,911	
cf status quo	$ -	million	-$0.045	million	-$0.074	million	$0.255	million	$0.420	million	$0.420	million	$0.420	million