

choice

SUBMISSION TO TREASURY ON THE
AUSTRALIAN CONSUMER LAW (FREE RANGE
EGG LABELLING) INFORMATION STANDARD



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WWW.CHOICE.COM.AU E CAMPAGNS@CHOICE.COM.AU

57 CARRINGTON ROAD MARRICKVILLE NSW 2204 P 02 9577 3333 F 02 9577 3377

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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INTRODUCTION

CHOICE welcomes the opportunity to provide the following comments to the Commonwealth Treasury on the draft *Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017* (the information standard).

CHOICE has consistently advocated for improved free range egg labels on the basis that current free range claims are misleading consumers. Consumers pay a premium for eggs due to the belief that the eggs meet a higher standard or have certain intangible qualities. However, eggs labelled free range are often not farmed under conditions that consumers might expect when they buy them.¹

The result is that consumers have little certainty over free range egg claims. CHOICE's CluckAR app, which is designed to help consumers make informed choices when buying eggs,² is used to scan egg cartons over 2,600 times every day. Since its launch in April 2016, the app has been downloaded over 50,000 times and been used to scan over 819,000 egg cartons. The need for and popularity of the CluckAR app demonstrates that current free range egg labelling does not provide sufficient information for consumers to make an informed decision.

Consumers should have confidence that the term free range reflects their reasonable expectation that hens spend time outside, have room to move inside and out and that farmers employ animal welfare practices.³ However, the draft information standard fails to address the problem by placing no requirement on producers to meet these essential consumer expectations.

The standard does not require hens to go outside, does not specify conditions which would lead to hens being outside and relaxes the requirement for producers to even provide access to an outdoor range. The outcome is a standard that effectively protects certain egg producers from Federal Court action and reduces consumer protections against misleading and deceptive conduct and false and misleading representations under the Australian Consumer Law (ACL).

The consistent display of outdoor stocking density is the only element in the draft standard that would aid consumers. However, unless this information is displayed in a manner that gives context about the range of options in the market, consumers will not be able to meaningfully compare free range egg products.

A weak standard that preferences large scale egg producers over consumers will render the term free range meaningless. Already genuine producers are planning to remove the term free

¹ Australian consumer Law (Free Range Egg Labelling) Information Standard 2017 - Explanatory Statement

² <http://newthings.choice.com.au/cluckar>

³ CHOICE 2015 Submission to Consumer Affairs on Free Range Egg Labelling

range from their products in order to disassociate themselves with the proposed weak standard.

CHOICE proposes the following recommendations to rebalance the standard towards the needs of consumers:

CHOICE recommends that

1. To satisfy the definition 'meaningful and regular access to an outdoor range', there is a requirement that hens are regularly on an outdoor range.
2. Producers meet further indoor and outdoor conditions in order to label their eggs free range, including requirements for low indoor hen stocking densities, internal architecture that encourages hens to access the range, sufficient openings and an outdoor range that provides adequate shelter.
3. The exceptions are tightened to ensure they can only be relied upon for a limited number of days in extraordinary circumstances.
4. There should be a maximum stocking density of 1,500 hens per hectare for eggs to be labelled free range.
5. If the final standard allows maximum stocking densities above 1,500 hens per hectare, then stocking density should be displayed on a scale from 1 – 10,000 hens per hectare to allow consumers to truly compare free range egg products.

A free range standard must ensure that hens actually go outside

The definition of free range eggs in the draft information standard is that they are laid by hens that ‘had meaningful and regular access to an outdoor range during daylight hours across the laying cycle’.

This definition provides no clarity about whether hens actually access the outdoor range. Consumers need a number of assurances in order to have confidence that eggs labelled free range meet their expectations. Most importantly, this involves a requirement that eggs labelled free range come from hens that actually go outside.

The vast majority of consumers (87%) believe that it is important, very important or essential that eggs labelled ‘free range’ come from hens that actually go outside regularly.⁴ The marketing of free range eggs with hens in open fields perpetuates this very reasonable consumer expectation. Simply, when consumers think of free range, they think of hens being outside.

However, the definition of free range as hens having ‘meaningful and regular access to an outdoor range’ allows producers to call their eggs free range even if hens never leave the barn. This outcome falls short of consumers’ expectations and is inconsistent with the case law and the ACL. The Australian Competition and Consumer Commission (ACCC) has previously stated that it is clearly misleading to claim eggs are free range when the hens that laid the eggs never left the barn.⁵

The effect of this definition would be to shield producers who are engaging in misleading or deceptive conduct under the current law from prosecution. While the purpose of the ACL is to protect consumers from misleading claims, this standard will weaken these important protections, putting the needs of industry over clear and meaningful labelling.

The ACCC has recommended that the use of the term ‘free range’ requires that hens are able to move about freely on an open range on most days, and that most of the hens do so.⁶ This definition is consistent with case law and consumers’ expectations.

We are concerned that the adoption of ‘meaningful and regular access’ as a standard for free range eggs stems from a deliberate misrepresentation of consumer research. From CHOICE’s own nationally representative surveys, it is clear that consumers expect free range eggs to come from chickens that have meaningful and regular access to the outdoors. Research shows that consumers also expect these chickens to actually go outside regularly. These statements are not incompatible. To accept the first statement as sufficient for a standard and ignore the second is disingenuous and will enshrine a standard that misleads the vast majority of consumers. This position was advocated by representatives of large-scale producers in meetings with the NSW Government and the Treasury. That it has subsequently been adopted

⁴ 2015 CHOICE Free Range Egg Labelling Survey, response to ‘How important do you think a national free range egg standard includes the following elements?’ Percentage shown are total rated essential, very important and important. n= 1677.

⁵ ACCC enforcement guidance – free range hen egg claims – October 2015

⁶ ACCC enforcement guidance – free range hen egg claims – October 2015

in the draft national information standard under the Australian Consumer Law – the main legislation designed to protect Australian consumers – is a concern.

Recommendation 1: That to satisfy the definition ‘meaningful and regular access to an outdoor range’, there is a requirement that hens are regularly on an outdoor range.

More conditions need to be met for producers to call their eggs free range

The draft standard specifies that there must be ‘regard to the extent to which hens are able to roam forage and display natural behaviours on the outdoor range to which the hens have access.’ Although these are important considerations, consumers have a wider perception of what constitutes free range which should also be reflected in a free range egg standard.

CHOICE asked a nationally representative sample of consumers what elements they considered important in a free range egg standard. The results were:

- 91% of free range egg buyers thought it was important that birds have room to move comfortably when they are outside.
- 91% of free range egg buyers thought it was important that birds have room to move comfortably when they are inside the barn.
- 89% of free range egg buyers thought it was important that farmers undertake animal welfare practices in the production of their eggs.⁷

CHOICE supports the ACCC’s guidance on the factors considered necessary to achieve ‘most hens moving about freely on an open range on most days’. CHOICE believes that the information standard should more clearly articulate the requirements that must be met to ensure birds actually go outside. This includes requirements for;

- Low indoor hen stocking densities;
- Internal architecture that encourages hens to access the range;
- Sufficient openings; and
- An outdoor range that provides adequate shelter.

Recommendation 2: That producers meet further indoor and outdoor conditions in order to label their eggs free range.

⁷ 2015 CHOICE Free Range Egg Labelling Survey, response to ‘How important do you think a national free range egg standard includes the following elements?’ Percentage shown are total rated essential, very important and important. n= 1677.

Exceptions for hens accessing the outdoor range are far too broad

The exceptions outlined in Section 7 (2)(a) are broad enough to ensure that any justification can be given for keeping hens indoors. While the issues listed are legitimate concerns, the exceptions are overly broad, and are therefore likely to be relied upon to avoid complying with the free range definition.

We have talked to numerous genuine free range egg farmers whose hens are consistently on the outdoor range regardless of the items listed. For example, the nature of free range egg farming with hens roaming on an outdoor range means there is always a potential risk of predators of some sort. Many genuine free range egg farmers employ Maremma sheepdogs to protect their hens against predators, demonstrating that risks can and should be managed. However, if such broad exceptions are allowed, it discourages farmers from employing mechanisms to encourage hens outside. Put simply it will result in eggs labelled free range coming from hens reared indoors.

CHOICE believes that the broad wording of the exceptions is a major concern and only diminishes consumers' certainty whether eggs labelled free range come from birds that go outside. Reference to the word 'occasions' is not strong or clear enough to indicate that the exceptions are truly exceptional and not routine. One way to address the risk of producers relying on broad exceptions is to restrict the number of days in a year that exceptions can apply. For example, exceptions could only be relied on for a maximum of twenty days in the year. This would mean genuine free range farmers have the protections for exceptional circumstances but that those looking to keep hens indoors rather than manage real risks are forced to call their eggs what they are – barn laid. Regulatory relief could be granted for truly exceptional circumstances, such as a long-running, major natural disaster that would mean hens need to stay in-doors for a long period of time.

Recommendation 3: That the exceptions are tightened to ensure they can only be relied upon for a limited number of days in extraordinary circumstances.

Maximum stocking density of 10,000 hens per hectare does not meet consumers' expectations

Low stocking density is associated with positive conditions for hens. 47% of egg buyers believe 1,500 hens per hectare or less is an appropriate outdoor stocking density, whereas 2% believe 10,000 hens per hectare is appropriate.⁸ For a standard to align with consumers' expectations, it should define a maximum stocking density of 1,500 hens per hectare. Egg producers stocking at densities of 10,000 hens per hectare do not meet consumers'

⁸ CHOICE 2015 Submission to Consumer Affairs on Free Range Egg Labelling

expectations and CHOICE has consistently rejected the notion that this is an acceptable maximum limit.

Recommendation 4: There should be a maximum stocking density of 1,500 hens per hectare for eggs to be labelled free range.

The display of stocking density should allow consumers to truly compare free range egg products

CHOICE supports the requirement for consistent and clear declaration of stocking density for eggs labelled free range.

Stocking density works as an indicator of the conditions in which the hens were kept and is valued by many consumers. However, for many, stocking density is a complex concept and in isolation can be meaningless. Unless there are products with other stocking densities to compare against, many consumers will fail to make an informed choice about the eggs they are buying. With the major supermarkets primarily stocking free range eggs with stocking densities of 10,000 hens per hectare⁹, consumers will not have any alternate products to compare against and the display of stocking density could be futile.

If the final standard allows stocking densities above 1,500 birds per hectare, out of line with consumers' expectations, then CHOICE proposes that stocking density is displayed as a scale from 1 to 10,000 hens per hectare. This mirrors labelling practices for other complex markets such as energy efficiency with the Energy Rating and nutritional information with the Health Star Rating (HSR).

Scales or rating systems are extremely useful for consumers. A 2014 consumer study of Energy Ratings highlighted that the star energy rating labels are highly recognisable with 79% of consumers saying that the labels provide them with useful information.¹⁰ In the case of HSRs, the star rating takes the complexity and time out of shopping allowing consumers to quickly compare the nutritional information of food products.¹¹ A scale provides necessary context about the range of options in the market.

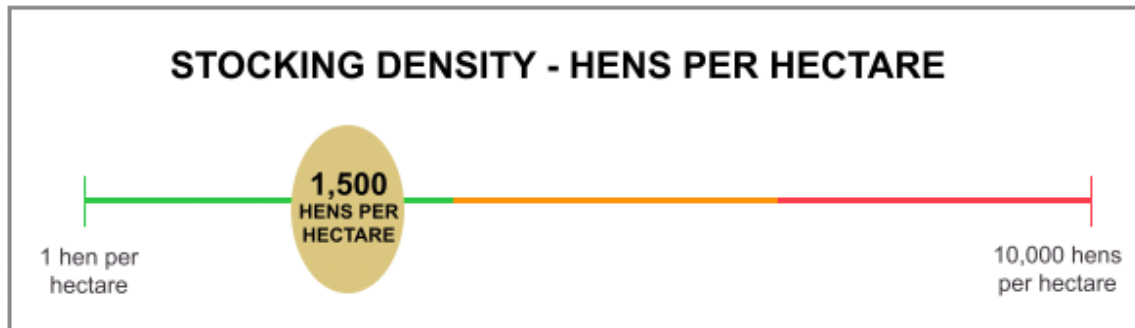
The display of stocking density on a scale would truly allow consumers to make an informed choice without having to study labels or rely on apps, especially in retail situations with only one stocking density option.

⁹ The largest producers and sellers of free range eggs - Aldi, Coles, Eco Eggs, Farm Pride, Manning Valley, Pace Farm and Woolworths – have stocking densities of 10,000 hens per hectare.

¹⁰ http://www.acilallen.com.au/cms_files/ACILAllen_EnergyRatingLabels2014.pdf

¹¹ <http://healthstarrating.gov.au/internet/healthstarrating/publishing.nsf/Content/frequently-asked-questions-consumers>

Example stocking density label for free range eggs



As producers will be changing their labels in line with the new standard, this will impose no extra costs or red tape on producers while delivering substantial benefit to consumers.

Stocking density should be displayed as hens per hectare. Our data highlights that consumers most easily comprehend stocking density in this format (compared to hens per meter squared).¹² To ensure that this information is displayed in a relatable manner, it should be provided in a scale format, consistent with standardised consumer labels for other products.

Recommendation 5: If the final standard allows maximum stocking densities above 1,500 hens per hectare, then stocking density should be displayed on a scale from 1 – 10,000 hens per hectare to allow consumers to truly compare free range egg products.

¹² 2015 CHOICE Free Range Egg Labelling Survey in response to: 'If outdoor stocking density were required to be listed on egg cartons for free range eggs, how would you prefer to see this information?' n=1677

CONCLUSION

The draft free range egg standard allows producers to label their products in a way that will mislead consumers. It proposes labels that are inconsistent with basic consumer protections under the ACL as well as several determinations by the Federal Court.

The purpose of a national information standard for free range eggs should not be to protect producers who might be misleading consumers. Nor should it be about trying to change farming practices or to encourage consumers to choose one particular product over another. It is simply to give consumers accurate information about whether a product meets their expectations and understanding, so they can decide whether they wish to pay a premium.

The draft standard undoubtedly reduces red tape for producers by providing no requirement for hens to go outside. This not only misleads consumers, it also substantially increases the red tape for consumers, requiring them to access apps and websites in order to solve their growing uncertainty.

CHOICE urges Treasury to incorporate the outlined recommendations into the proposed standard. Failure to do so will make any standard redundant in the eyes of the consumers and undermine the integrity of information standards under the Australian Consumer Law.