



**Australian Government**

**The Treasury**

Decision Regulation Impact Statement

# Free Range Egg Labelling

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Consumer Affairs Australia New Zealand  
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# Summary

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The Legislative and Governance Forum on Consumer Affairs (CAF) agreed in June 2015 to develop options to enhance consumer certainty and confidence around free range egg labelling.

Consumers rely on the information provided on labels to choose eggs that meet their expectations. Currently there is not a single national definition of free range eggs. Recent evidence of misleading labelling and producer uncertainty regarding their labelling obligations under the Australian Consumer Law (ACL) means a case for government intervention can be made.

Feedback on the consultation Regulation Impact Statement (RIS) indicated a high level of consumer interest in the issue of free range egg labelling, with the vast majority of consumer submissions arguing for better regulation of the term 'free range' in egg labelling (See Section 5 - Consultation). However, clear evidence of broad-ranging consumer detriment was not forthcoming. Those consumers that engaged with the consultation process seemed well-informed regarding animal husbandry practices and argued that certain practices should not be considered 'free range'. Additionally, it is evident that those consumers who actively seek out eggs that meet their expectations are being catered for.

The risk, however, remains that the 'average consumer' may be purchasing eggs labelled as free range that do not meet their expectations even though consultations failed to establish a consistent set of expectations shared by all free range egg consumers.

While a level of consumer detriment can be identified and there is an identified need for some government intervention, overall any intervention should be commensurable with the size of the problem. Therefore any regulation that would have significant compliance costs or impact on the market cannot be justified.

Four options are outlined in this RIS:<sup>1</sup>

1. The status quo – continued enforcement of the ACL's misleading and deceptive conduct provisions, together with ongoing education campaigns;
2. An information standard for eggs labelled as free range that requires the disclosure of outdoor stocking density and sets a maximum outdoor stocking density of 10,000 birds per hectare;
3. An information standard under the ACL for eggs labelled as free range that provides a definition of 'free range' based on birds having meaningful and regular access to an outdoor range, requires the prominent disclosure of outdoor stocking density, and sets a maximum outdoor stocking density of 10,000 birds per hectare; or
4. An information standard that, in addition to setting standards for 'free range' and requiring disclosure of outdoor stocking density, as in Option 3, also creates an additional category for the labelling of eggs, 'open range', for eggs produced in circumstances with an outdoor stocking density of 1,500 birds per hectare or fewer.

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<sup>1</sup> Note that the exact wording of the options as outlined in the RIS may be subject to review in drafting the legislative instrument, should legal advice suggest alternative wording is necessary. The intent of the Ministers' preferred option will be preserved.

Drawing on substantial stakeholder consultations, a qualitative assessment of costs and benefits and quantification of compliance costs, the RIS concludes that Option 3 is likely to have the greatest net benefit to consumers and producers. It is expected to provide consumers with greater confidence in free range labels, while also offering producers greater certainty, primarily because:

- Stocking density disclosure would allow consumers to make their own judgement as to whether eggs labelled free range met their expectations;
- The minimum standards for free range would be defined for consumers and producers; and
- Producers would have certainty about the standards they should meet to avoid misleading consumers in relation to a free range claim.

In addition to providing consumers with additional information to address concerns raised in consultations, Option 3 is estimated to have a net regulatory compliance saving for business of \$0.2 million on average over ten years. This is because the upfront compliance costs for businesses of \$4.855 million would be outweighed over time by the \$0.686 million in annual compliance savings, as businesses reap the benefits of greater regulatory certainty.

It is also expected that Option 3 would not risk the creation of significant distortions in the market or unintentional conflicts with agricultural or food safety policies, which might arise if regulations significantly impeded on current industry practice or involved terminology different to that currently in regular use (for example under Option 4).

While Option 2 would also have a small net regulatory compliance saving of \$0.036 million on average over ten years (\$2.536 million in upfront costs balanced by \$0.29 million per annum in ongoing savings), it is not likely to provide consumers or producers with the same level of confidence provided under Option 3 as it does not create a minimum standard for free range egg labelling.

Option 4 could introduce significant complexity to the egg labelling system for both consumers and producers, without providing improvements in consumer information or producer confidence beyond those provided under Option 3. Option 4 is estimated to generate a regulatory compliance cost of \$0.346 million on average over ten years, with much more significant upfront costs (\$8.596 million) and less significant ongoing savings (\$0.513 million annually).

While the status quo (Option 1) would have no regulatory compliance cost, it is unlikely to address the problem as it does not provide more information to consumers and the effectiveness of enforcement guidance in reducing producer uncertainty is unclear.

More detailed analysis of the likely costs and benefits of each option for key stakeholders is contained in Section 4.

# 1. The problem

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Eggs sold to consumers are labelled in many 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.

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. In response, the proportion of eggs labelled as free range has increased substantially in recent years (see Appendix A). Over the last decade egg producers have made significant investments in infrastructure in response to these consumer preferences and new voluntary animal welfare standards.

Consumers rely on the label in order to tell the difference between free range, cage and barn laid eggs, since the eggs themselves do not look any different. Eggs labelled as free range sell at a higher price both because such production systems are more expensive to run and because consumers place extra value on eggs produced by hens in those systems.

The problem is that, in some cases, eggs labelled as free range have been found to come from hens that either cannot or do not go outside regularly (see Appendix B). It is relatively easy to mislead consumers and there is a financial incentive for producers to do so.

There has been some debate about what consumers’ expectations of free range eggs actually are. A range of recent consumer surveys have reached different conclusions. A common theme is that consumers expect that free range eggs come from birds that are not in cages and have access to the outdoors. Some consumers have expectations of greater animal welfare outcomes, particular production practices, or health benefits. (See Appendix C for a summary of stakeholder expectations identified in consultations.) One key element that influences the consumers that purchase free range eggs is the images and phrases used by producers on labels, which often show hens outdoors, or on grassy fields. Consumers lose out when they willingly pay more for eggs labelled as free range only to discover that they do not match expectations of how the eggs were produced. The producers of eggs who genuinely meet those expectations also lose out.

Consultation has failed to definitively establish what consumer expectations are, meaning that reaching a clear assessment of consumer detriment is extremely challenging. Evidence suggests that there is no single homogenous consumer expectation beyond birds being unconfined and having regular access to the outdoors (see Section 5 – Consultation and Appendix C).

What constitutes free range egg labelling is already addressed to some extent via existing regulation and voluntary schemes, including the Australian Consumer Law (ACL), a voluntary code of animal welfare (adopted by many producers), state and territory laws and industry-led accreditation schemes. (These are discussed in more detail in the description of the status quo, Option 1.) In recent years, the Australian Competition and Consumer Commission (ACCC) has succeeded in court action against some egg producers for misleading and deceptive conduct under the ACL (see Appendix B for further details of recent ACCC actions) which has contributed to the current guidelines and interpretation of free range.

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

## Estimates of consumer detriment

Misleading labelling of free range eggs — whether deliberate or not — could distort the Australian retail grocery egg market and could inhibit competition if genuinely labelled products are losing out to misleading claims. Misleading labels mean that consumers are unable to confidently 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 found that they were uncertain if they got what they expected when they bought eggs that made free range claims (Appendix C).

Consumers may be disadvantaged 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.<sup>2</sup> Higher egg prices may be — rightly or wrongly — taken as an indicator of ‘quality’ by some consumers. The 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<sup>3</sup> found that there is not a strong correlation between the stocking density of hens and the price of eggs labelled as free range.<sup>4</sup>

Stakeholder comment:

The main detriment is when people choose a higher welfare option but in actual fact they [are] being ripped off by not getting the welfare outcome for the chickens they are paying for. I got to the point I didn't know what I was buying any more so I got my own chickens.

Jodie McQueen,  
Submission to consultation process

Submissions to this process, citing research into consumer expectations, have not provided conclusive evidence for a single set of expectations for the term ‘free range’. Expectations about outdoor stocking densities, use of the outdoor range, and other production practices differ amongst consumers.

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 could result in higher prices over time. A number of submissions from producers indicated an unwillingness to invest further until their concerns regarding regulatory uncertainty were addressed. Free range 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.

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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, and CHOICE October 2015 online survey cited in submission to consultation process.

3 CHOICE, *Free Range Eggs: Making The Claim Meaningful*, June 2015; [CHOICE submission to consultation process](#).

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.



One estimate of consumer detriment was calculated by CHOICE in June 2015<sup>5</sup> based on the assumption that eggs were only free range where the production involved an outdoor stocking density of less than 1,500 hens per hectare. However, feedback from the consultation process did not show conclusively that this assumption aligns with consumer expectations of free range.

The large number of responses received through the consultation process from individual consumers (in the form of emails, brief comments and submissions) indicates there is some level of uncertainty amongst a segment of consumers, which sometimes affects buying decisions. However due to the number of factors that contribute to estimating consumer detriment this cannot be accurately quantified.

## 2. Objective of reform

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The policy objective is to enhance consumer confidence and certainty about egg labelling, including to better ensure that consumers are not misled by egg labels. This should support producer confidence and investment in the industry, although addressing producer uncertainty is not the primary objective of consumer affairs Ministers.

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.

Based on feedback received through consultations and submissions, consumer detriment arises from the 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.

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<sup>5</sup> CHOICE, *Free Range Eggs: Making The Claim Meaningful*, June 2015



### 3. Policy options

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The policy options identified in this RIS propose alternative ways to provide guidance to consumers and producers on egg labelling requirements. These proposals seek to make it easier for concerned consumers to identify some of the conditions under which eggs are produced; and improve producer understanding of what is required for eggs to be legitimately promoted to consumers as free range.

A range of options were proposed in the consultation RIS released on 5 October 2015. Following stakeholder feedback (see Section 5), the options have been refined to the following four.

#### Option 1: Status quo, with revised ACCC guidance

Under the existing regime, the problem of free range egg labelling is already being 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 the national law applied in all states and territories since 1 January 2011 which aims to protect consumers and ensure fair trading in Australia.<sup>6</sup>

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.<sup>7</sup> 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 made because the hens were

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6 The ACL is Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

7 Sections 18, 33 and 34 of the ACL.

not able to move around freely on an open range on an ordinary day and did not do so on most days.

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. The types of complaints received by ACL regulators regarding free range egg labelling are at Appendix D.

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 affect 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.

The success of recent misleading and deceptive conduct cases pursued by the ACCC suggest that the existing law is effective in ensuring that the most egregious cases of eggs being misrepresented are addressed.

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.

Larger producers have argued that the recent enforcement actions and interpretation of the misleading and deceptive conduct provisions have led to significant regulatory uncertainty, resulting in postponed investment in the industry and potentially undermining the value of recent capital investments. However, it is not clear that this uncertainty is any greater than that faced by other industries under the enforcement of the ACL's principle-based legislation.

## **The Model Code**

The *Model Code of Practice for the Welfare of Animals — Domestic Poultry 4<sup>th</sup> 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.

Consultation revealed inconsistent interpretations of the Model Code, specifically the recommendations in relation to stocking density for free range layer hens. Some stakeholders (primarily consumer advocacy groups, animal welfare groups and smaller pasture-based egg producers) interpret the Model Code as prescribing a maximum stocking density of 1,500 hens per hectare. Others (notably the larger egg producers and industry associations) note that the section on range rotation means that the Model Code does not specify a maximum outdoor stocking density if certain conditions are met. The latter interpretation has been supported by governments' primary industry departments.

The NSW Department of Primary Industries is currently leading a review of the Model Code and converting it into standards and guidelines. This project is expected to be completed by November

2017. Draft standards and guidelines are being prepared in consultation with industry and welfare groups, which will be taken to a wider group of national stakeholders in March 2016.

## 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 E). 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.<sup>8</sup> 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 aim to provide greater certainty of required minimum standards; the issue is the extent to which marketing claims directed to consumers are valid.

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 at the point of sale, and these terms are defined in legislation.<sup>9</sup> In South Australia (SA), a voluntary code and trademark for the labelling of free range eggs was proposed, under which South Australian egg producers that meet certain conditions would be able to use a trademarked tick of approval.<sup>10</sup> No other jurisdiction has laws or regulations related to free range egg labelling. The majority of regimes outlined in Appendix E 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<sup>11</sup> 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. All are consistent with the Model Code (based on the interpretation that stocking density above 1,500 hens per hectare is acceptable when appropriate range rotation is practiced). These are summarised at Appendix F.<sup>12</sup>

Research and consultation suggests there is scope for industry certification to play a greater role in informing consumers. 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. However, given the lack of conclusive evidence of a single set of consumer expectations for free range eggs, the continued use of industry certification regimes and marketing practices may be the least interventionist means of ensuring those consumers that are

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8 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](http://www.choice.com.au/food-and-drink/meat-fish-and-eggs/eggs/articles/free-range-eggs).

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

10 More information on the draft framework can be found on the [Consumer and Business Services](http://www.consumerandbusinessservices.gov.au) website.

11 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.

12 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.

interested in additional information regarding egg production can identify products that meet their preferences. Industry would need to play a greater role in promoting such regimes and trademarks to consumers.

More recently other definitions have been proposed, but not formalised in regulation, including a definition of free range suggested by Egg Farmers of Australia (EFA).<sup>13</sup>

## 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.

This option would also see the development and publication of additional ACCC enforcement guidance to industry.

The ACCC considers that there has been some convergence on principles as part of the consultation process and that it is well-placed to adjust its guidance to encompass the principles of meaningful access and hens that regularly access the range.

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.

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. Importantly, these industry-led initiatives can respond flexibly to meet consumer demands today and as they evolve into the future.

## Option 2: Cap outdoor stocking density and require disclosure of maximum outdoor stocking density on label

Option 2 creates an information standard under the ACL that would require those producers that label their eggs as 'free range' to disclose outdoor stocking density and set a maximum outdoor stocking density of 10,000 birds per hectare for the production of free range eggs. See Appendix G for a summary of the role of information standards under the ACL.

### Option 2<sup>14</sup>

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13 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 on the Egg Farmers of Australia website.

Free range eggs must have been produced with an outdoor stocking density of no more than 10,000 hens per hectare.

If eggs are labelled as 'free range', the maximum outdoor stocking density (hens per hectare) must be prominently disclosed.

While by no means the sole or key determinant of a bird's ability to access the outdoors, consumer expectations of 'free range' seem to correspond primarily to outdoor space and external stocking density.<sup>15</sup>

Lower stocking densities are more expensive for producers as they require more land per hen and fewer hens per flock. 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 help consumers choose between free range eggs produced in different circumstances.

There is little conclusive scientific evidence to support the specification of a particular stocking density that is most beneficial to hens, noting that some stakeholders point out that the inclusion of a maximum outdoor stocking density for free range hens in the Model Code was initially an environmental management consideration. However, there seems to be an increasing industry consensus about the maximum outdoor stocking density appropriate for free range hens. There is also some focus by industry on the indoor stocking density of hens' laying facilities.<sup>16</sup>

Research suggests that no added benefit would be gained from packaging eggs with extra descriptors, such as beak treatment or stocking density descriptors.<sup>17</sup> This is because these extra animal husbandry practices are perceived by consumers as difficult to interpret without a high degree of knowledge and interest.<sup>18</sup> Similarly, with regard to stocking density, consumers generally find it difficult to conceptualise what a certain amount of hens per hectare looks like.<sup>19</sup> Consumers finding quick and easy cues, like the words 'free range', price, size and colour of eggs, to be more valuable when deciding which eggs to purchase.<sup>20</sup>

One way to overcome this could be to require producers to disclose the number of hens per square metre 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.

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<sup>14</sup> Note that the exact wording of the options as outlined in the RIS may be subject to review in drafting the legislative instrument, should legal advice suggest alternative wording is necessary. The intent of the Ministers' preferred option will be preserved.

<sup>15</sup> See Appendix C, and specifically the August 2015 QMR survey on behalf of NSW Farmers Association, 'Defining consumer expectations: what production practices are necessary to underpin confidence in free range labelling', and the October 2015 CHOICE survey 2015 'Free Range Egg Labelling'.

<sup>16</sup> For example see: [www.rspca.org.au/sites/default/files/website/what-we-do/working-with-farming-industry/RSPCALayerhensStandards.pdf](http://www.rspca.org.au/sites/default/files/website/what-we-do/working-with-farming-industry/RSPCALayerhensStandards.pdf).

<sup>17</sup> [AECL 2012 focus group research](#), page 45.

<sup>18</sup> *Ibid*, pages 47-52.

<sup>19</sup> *Ibid*, pages 30-32.

<sup>20</sup> *Ibid*, pages 47-52.

However, recent media and consumer focus on outdoor stocking density in relation to free range eggs, particularly surrounding stocking levels above or below 1,500 birds per hectare, suggests this terminology may be the best one to adopt in any disclosure requirement.

Stakeholder comment:

Most Australian consumers [want] accurate egg labelling. We choose and pay extra for eggs that we believe have been produced using humane methods. Those humane methods are based on the number of hens per hectare...  
... There must be set standards for what can be called a free-range hen. i.e. max 1500 per hectare.

Judy Hungerford,  
submission to consultation process

As with Option 1, no definition of free range is created. Rather, the enforcement of the misleading and deceptive conduct provisions remains the main form of regulation.

### **Option 3: Definition of ‘free range’ and disclosure obligations**

Option 3 would define the term ‘free range’ used to market eggs to consumers and require the disclosure of the maximum outdoor stocking density on the label.

#### **Option 3<sup>21</sup>**

Free range eggs must come from laying hens that had meaningful and regular access to an outdoor range where the hens were free to roam and forage during daylight hours except on days when on the open ranges such things as weather conditions endangered the safety or health of the laying hens, or predators were present, or the laying hens were being medicated.

The eggs must have been produced with an outdoor stocking density of no more than 10,000 hens per hectare (as per Option 2).

The maximum outdoor stocking density (hens per hectare) must be prominently disclosed (as per Option 2).

Compliance provides a safe harbour for misleading and deceptive conduct provisions in relation to the free range claim, but this does not extend to other representations.

The objective of requiring disclosure of maximum outdoor stocking density is to assist consumers to differentiate between the various stocking densities of free range eggs, should they wish to do so.

Note that this option is largely consistent with preferred option outlined by CHOICE in its June 2015 report ‘Free range eggs: Making the claim meaningful’<sup>22</sup> (although the CHOICE submission to the consultation process outlined a more prescriptive preferred option) and is largely consistent with the definition of free range developed by Egg Farmers Australia.

<sup>21</sup> Note that the exact wording of the options as outlined in the RIS may be subject to review in drafting the legislative instrument, should legal advice suggest alternative wording is necessary. The intent of the Ministers’ preferred option will be preserved.

<sup>22</sup> CHOICE, June 2015.



### *‘meaningful and regular access’*

The component of the proposed definition in Option 3 subject to the most debate during consultations was the concept of birds having ‘regular access’ to the outdoors.

A number of consumer groups and smaller producers argued for a definition of free range based around birds regularly going outside or being ‘free to regularly roam and forage’, as opposed to having access to an outdoor range. This is consistent with ACCC industry guidance based on ‘most birds outside on most days’. (See also Section 5: Consultation.)

Aside from the ACCC guidance, all other definitions of ‘free range’ currently in use imply that birds go outside but do not make this the measurable threshold for the definition. For example:

- The Model Code is legislated in all States and Territories except South Australia and the Northern Territory as a (voluntary) animal welfare safe-harbour and requires all birds to have ‘ready access through openings to the outdoor range during daylight hours for a minimum of 8 hours per day’;
- The existing ACT and Queensland industry-specific legislation mandate ‘access’ and other requirements but do not explicitly specify ‘birds outside’;
- The proposed South Australian Government voluntary industry code is based on ‘unrestricted access’;
- Bills tabled in the NSW, Tasmanian and Western Australian parliaments over the period 2011-2013 all defined free range in terms of the Model Code and ‘access to range’;
- All of the operating accreditation and trademark schemes relevant to free range define numerous requirements based on ‘access to range’ but do not mention ‘birds outside’ explicitly, including Australian Certified Organic, Humane Choice, RSPCA, Free Range Egg & Poultry Australia (FREPA), Free Range Farmers Association (FRFA) and AEC Assured (Australian Egg Corporation);
- The relevant EU Directives and Regulations, and the US Department of Agriculture definition, focus on access to an outdoor range. See Appendix H for details of US and European regulation.
- For further detail, see Appendices E, F and H.

EFA outlined its concerns regarding any requirement that hens regularly go outside (see Consultation section). The EFA noted the hens regularly going outside is the natural consequence of meaningful access to the outdoors, but that quantifying the proportion of hens that are outdoors is impractical and unworkable as a standard.

The phrasing ‘meaningful and regular access’ is therefore proposed as a means of ensuring free range birds have ready and frequent access to an outdoor range. It would not explicitly require nor imply that producers should quantify the number of birds outdoors. Also implicit in this phrase is the expectation that hens would be unconfined within the barn when not outdoors – that is, not held in cages when in the barn.

The intent behind ‘meaningful and regular access’ to a range could be further explained in the Explanatory Statement to the information standard, to guide the court’s interpretation. The ACCC would also issue revised enforcement guidance for producers, which would provide advice to producers on how regulators will interpret the information standard.

However, it should be noted that the exact wording of the information standard will be finalised following legal advice as the formal legislative instrument is drafted.

### *Amending the ACL to create a safe harbour*

The creation of a safe harbour for producers that comply with the information standard will require an amendment to the ACL.

Under the ACL, safe harbour defences provide certainty for businesses by deeming certain conduct not to be misleading or deceptive if it complies with specific criteria.

The information standard would compel egg producers to meet certain conditions if they choose to use the term ‘free range’ on labels. However, an information standard is a legislative instrument, and therefore cannot alter primary legislation to create a safe harbour. Legislative amendment is required to achieve that objective. For Option 3 (and Option 4) the criteria for the safe harbour defence would be compliance with the requirements of the information standard.

Implementation of Option 3 (or Option 4) would require both the making of an information standard by the Commonwealth Minister and an amendment of the ACL to create the corresponding safe harbour. (See Section 7 – Implementation and review and Appendix G for further details.)

## **Option 4: Definition of ‘free range’ and ‘open range’ and disclosure obligations**

Option 4 builds upon Option 3 and defines an optional second category for egg labelling – ‘open range’.

### **Option 4<sup>23</sup>**

In addition to the term ‘free range’, producers may use the term ‘open range’ where eggs are free range (as defined in Option 3) and produced with a maximum outdoor stocking density of 1,500 birds per hectare.

The label must disclose the maximum outdoor stocking density.

Compliance provides a safe harbour for misleading & deceptive conduct provisions in relation to the free range claim, but this does not extend to other representations. The objective of Option 4 would be to accommodate consumers and smaller scale producers who prefer a lower stocking density model of 1,500 hens per hectare or less.

Eligible producers could choose to label their eggs as ‘open range’ as a means of conveying to consumers that the eggs are produced at a lower stocking density. Producers would not be obliged to adopt the ‘open range’ label. Consumers seeking to purchase free range eggs produced at a lower stocking density would be able to search for eggs labelled as ‘open range.’

The introduction of such a category could warrant CAANZ officials consulting further on other factors that could be considered as part of an ‘open range’ category. However, there has been insufficient

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<sup>23</sup> Note that the exact wording of the options as outlined in the RIS may be subject to review in drafting the legislative instrument, should legal advice suggest alternative wording is necessary. The intent of the Ministers’ preferred option will be preserved.

time for meaningful consultation on additional factors prior to CAF. Ministers could choose to explore further factors following CAF, noting that this would significantly delay a decision on the issue.



## 4. Impact analysis

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Undertaking a quantitative analysis of the costs and benefits of each of the four options, beyond specific and identifiable compliance costs for stakeholders, presents a number of challenges.

Producer submissions flagged that the uncertainty created by the current regulatory environment could have a range of impacts, from lost opportunities as businesses hold off further investment in the innovation of production practices, to real losses if future court rulings or other actions leave businesses exposed to claims of false and misleading conduct. As future changes in the regulatory environment cannot be predicted, these impacts cannot be quantified with any certainty.

Furthermore, the benefits for consumers in a more stable and transparent regulatory regime are mostly intangible. Consumers could be expected to benefit from greater confidence in 'free range' labels, and from easier comparison between products afforded by stocking density disclosure, but these impacts are likely to reflect the various levels of engagement of individual consumers with the issue.

The analysis of the impacts of each option is therefore mainly qualitative and focussed on reflecting the impacts presented by stakeholders throughout consultation, but does quantify the compliance costs of proposed regulations where possible.

### Calculating compliance costs

The compliance costs for businesses are outlined in the analysis of each option below. These compliance cost estimates are based on data and assumptions drawn from consultation.

There are estimated to be 277 primary enterprise egg farms (covering 79 per cent of egg production) and 5,400 secondary enterprise egg farms (9 per cent of egg production) in Australia.<sup>24</sup> An estimated 39 per cent of grocery eggs are sold as free range.<sup>25</sup> Applying this ratio to the total provides an estimate of 108 primary and 2106 secondary free range egg producers in Australia, which has been used as the base population of businesses affected by any regulatory change.

Compliance cost estimates have been based on these figures, and on additional estimates of compliance impacts developed through the consultation process. These estimates were included in the original consultation RIS on which numerous submissions were received, and have been refined to further reflect stakeholder views expressed through subsequent consultation (see Section 5). While in some instances assumptions have been unavoidable, these have been based on qualitative assessments developed in conjunction with stakeholders. The full quantitative compliance costing can be found at Appendix I.

### Analysis of Option 1

Option 1 represents the status quo, and there are therefore no compliance costs generated under this option. However, the challenges faced by businesses and consumers under the status quo provide a baseline from which the impact of other options can be measured.

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<sup>24</sup> ABS, June 2013.

<sup>25</sup> Australian Egg Corporation Limited, Australian egg industry overview — December 2014, 2014, [www.aecl.org/dmsdocument/462](http://www.aecl.org/dmsdocument/462).

### ***Producer impacts***

Maintaining the status quo would have benefits for some businesses where they use existing labelling practices to differentiate their products. Avoiding any new regulation of free range egg labelling would ensure no interference with accreditation and certified trademark schemes that are already in use, and would also leave flexibility for businesses to adapt to any changes in market conditions, industry best practice or consumer expectations without coming into conflict with the law.

However, under the status quo, producers face a number of costs arising from uncertainty in the regulatory settings that govern egg labelling. As the standards for free range eggs evolve and change through developing case law, producers need to stay up to date with the latest requirements and any new guidance from regulators. Stakeholders have indicated through consultation that it is reasonable to assume that this would require about 8 hours of work by each business over any given year.

Producers also need to monitor their compliance with these settings, for instance by undertaking quality checks across their properties and infrastructure, assumed to require around 60 hours per year for large primary producers, or 30 hours for smaller secondary producers.

Beyond these regular requirements for maintaining compliance in a shifting regulatory environment, producers face the risk that their assets might become stranded, or their investments wasted, if significant changes to the legal interpretation of free range were to occur. Producers indicated in consultations that this was a very significant concern across the industry.

### ***Consumer impacts***

Consumers also face uncertainty in the current regulatory environment. While terminology such as 'free range', as well as other marketing claims like 'organic', 'biodynamic' and 'fat free', provide a mechanism for consumers to differentiate between products, individuals have little capacity to investigate the meaning or veracity of such claims.

Submissions indicated that, to varying degrees, many consumers lack confidence that eggs marketed as 'free range' have been produced under the conditions they would expect. Products do not all provide the same level of information about their production methods, and there is no minimum standard that consumers can expect has been met.

Further, there is a risk that if substantial and sudden regulatory changes were to emerge from case law, these could affect the supply of free range eggs, potentially leading to price rises or other impacts in the egg market.

### ***Other impacts***

Some regulators are of the view that the status quo arrangements have been sufficient for successful court action to be taken against producers to address misleading claims. Maintaining the status quo ensures that there are no unintended conflicts between consumer regulations and agricultural policy and food standards.

Additionally, the lack of a national standard for free range has allowed states and territories to develop regulations that reflect expectations in their jurisdictions. Some states, however, have viewed taking such action as less preferable than adopting a national standard to align state and territory labelling practices.

### ***Total average compliance costs***

There are no specific compliance cost impacts resulting from the status quo.

## Analysis of Option 2

Option 2 would introduce an information standard setting a maximum stocking density for free range eggs at 10,000 hens per hectare, with mandatory stocking density disclosure where eggs are labelled free range.

### *Producer impacts*

This option would generate some upfront costs for producers, as they would need to take the time to understand what the new regulations are, read any guidance from the ACCC on interpretation and enforcement, and consider how the information standard would impact their current business practices. Given the straightforward nature of this change, this is only expected to require around 8 hours (one working day) per business.

Some producers would need to make amendments to their labels to meet the mandatory stocking density disclosure requirement. This would be a one off change to their label to reflect production practice (stocking density) at that time (any subsequent label design changes would be the result of individual business decisions about marketing, or decisions to change practices). Research suggests changes to labels would cost approximately \$3,000 for each primary producer (with more sophisticated labels) and \$500 for each secondary producer (using simpler labels).<sup>26</sup>

Costs from Option 2 would be offset by the benefits of increased certainty provided by the information standard. The information standard would reduce the scope for regulatory shifts based on court rulings from year to year, and would be expected to reduce the time producers would need to devote to staying abreast of these developments.

Consultations suggested a reasonable assumption is a reduction from 8 hours per year to 6. This reflects the fact that under Option 2, an amount of uncertainty would remain, for instance, over the specific interpretation of how hens access outdoor spaces, as well as minimum standards for housing and other welfare standards. This Option is also unlikely to reduce the amount of time producers spend monitoring their practices to ensure they are meeting current standards.

Given that some aspects of the regulatory environment would remain uncertain, some risks for businesses such as stranded assets<sup>27</sup> and lost investments could also remain. However, this option would retain the flexibility afforded under the status quo for producers to differentiate their products using labels, accreditations and trademark schemes outside of the term 'free range'.

Importantly, it is expected that most producers currently marketing their eggs as free range already comply with a maximum stocking density of 10,000 hens per hectare (as advised during consultations), so this new requirement is unlikely to generate significant costs for producers to restructure. As such, Option 2 could be considered an improvement on the status quo for producers, although some regulatory uncertainty would remain.

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<sup>26</sup> 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](http://www.health.gov.au/internet/main/publishing.nsf/Content/CF7E670597F383ADCA257BF0001BAFF5/$File/2014%20Cost%20Schedule%20for%20Food%20Labelling%20Changes%20.pdf),  
April 2014.

<sup>27</sup> Assets that have become obsolete or non-performing earlier than expected.

### ***Consumer impacts***

Option 2 would generate some benefits for consumers by ensuring stocking density is disclosed for all free range eggs. This would provide consumers with a mechanism to compare and differentiate between the production practices used to produce free range eggs, and provide information not previously available in all cases.

Consumers would be expected to read and interpret labelling information under normal circumstances, and so this is not estimated to create a specific compliance impact on individuals. While this might lead to genuine time savings for consumers, these impacts do not qualify as specific compliance costs savings.

Despite being unquantifiable, consultations suggest that consumers would consider better access to information about the production methods of free range eggs to be of significant benefit. Based on this feedback, while Option 2 might not provide consumers with certainty about all aspects of egg production practices, it would be an improvement on the status quo arrangements.

### ***Other impacts***

Option 2 would not restrict regulators from continuing to use misleading and deceptive conduct provisions in the ACL to address misleading labels. It would provide additional indicators to courts and regulators about what might constitute misleading conduct, although it would not provide certainty about all aspects of egg production.

This option could also be expected to have positive competition impacts. By improving the information available to consumers, it should help the market function more efficiently, with suppliers encouraged to more accurately meet the standards that consumers expect.

While there would be a very low risk of unintended conflicts with or implications for agricultural policy and food safety standards, this option may conflict with the Model Code by defining a less flexible maximum outdoor stocking density.

By creating a national standard for some aspects of free range egg production, it is possible that Option 2 could lead to conflicts with state and territory regulations should they develop independently. However, the Option is limited enough that it would not conflict with welfare requirements specific to certain jurisdictions (for instance, climate factors in tropical and sub-tropical regions). This risk could be further mitigated by states and territories considering the information standard when developing future regulations.

### ***Total average compliance costs***

Option 2 is estimated to generate an upfront compliance cost to businesses of \$2.536 million, and an ongoing annual compliance saving of \$0.29 million. There are no compliance costs for individuals, meaning the total average annual compliance cost over ten years is a small saving of \$0.036 million.



## **Analysis of Option 3**

Option 3 would introduce a definition for 'free range' that would give businesses a safe harbour from false and misleading conduct claims, in addition to the stocking density limit and disclosure requirements outlined under Option 2.

### ***Producer impacts***

As with Option 2, producers would face upfront costs as they come to terms with the new regulation, and make adjustment to labels to meet the disclosure requirement if necessary. Producers would face the same label changing requirements as under Option 2, and therefore the same costs. The broader information standard and safe harbour proposed under Option 3 would be substantially more complex than under Option 2, introducing a written definition of free range including a number of criteria that producers would have to understand and interpret. Stakeholders have indicated through consultation that it is reasonable to assume that producers would require 24 rather than 8 hours to learn about the new laws when they come into effect.

The benefits afforded to producers from a more stable and detailed definition of free range would be significantly greater than the benefits in Option 2. The clarity provided by the information standard, paired with the legal protection of a safe harbour, would significantly decrease the risk of the definition being subject to regular change in response to court judgements, reducing the hours businesses would need to spend monitoring these developments from 8 hours per year to an estimated 4 (some time would still be required to monitor changes to other related requirements such as animal welfare guidance and food safety standards).

In addition, it is expected that this certainty would allow larger producers to reduce the time spent monitoring and maintaining their compliance from 60 hours per year to 45. This is because the clearer definition would enable producers to 'set and forget' some aspects of their production practices, and would reduce recurring concerns that they may be non-compliant. Secondary producers, who already spend limited time (30 hours) on this ongoing compliance given their smaller scale of production, are unlikely to see similar benefits.

As with Option 2, the flexibility would remain for producers to use alternative labelling terms to differentiate and market their products – particularly for smaller producers. This, combined with the increased certainty and protection afforded for producers making free range claims, means that Option 3 is likely to be a significant improvement on the status quo for producers.

### ***Consumer impacts***

By establishing a firm definition for free range eggs, as well as limiting stocking density and requiring disclosure, Option 3 would provide consumers with a significant increase in the available information about eggs, and a greater degree of confidence in the free range label.

While these benefits might be unquantifiable (as in Option 2), they would help to address the lack of consumer confidence in the meaning of the free range label. Consumers could also be protected from market shocks or reduced investment in innovation that might occur from any regulatory shifts that may potentially impact producers as outlined under the 'producer impacts' analysis of Option 1.

A clear national standard that provides consumers with confidence in the free range label, as well as more readily available information about stocking density, would be a substantial improvement on the uncertainty being experienced by consumers under the status quo.

### ***Other impacts***

Option 3 would prevent regulators from bringing misleading and deceptive conduct actions against producers who satisfy the criteria in the information standard, but would not restrict them taking action over other aspects of labels outside of the term 'free range' (eg pictures). There would also be further benefits to courts in having a clear standard to compare conduct against, and similar competition benefits as described in Option 2.

As with Option 2, there could be a risk of unintended conflicts with agricultural or food safety policy, or with regulations in particular states or territories, although the definition proposed is not prescriptive enough to substantially conflict with welfare practices that are currently required in some states or territories. This risk would be minimised by the states and territories taking the national standard into account as future regulations are developed and reviewed.

The proposed definition in Option 3 is also broadly consistent with the Model Code (for instance, by referring to *access* to an open range) but is notably more prescriptive than Option 2.

### ***Total average compliance costs***

Option 3 is estimated to generate an upfront compliance cost to businesses of \$4.855 million, and an ongoing annual compliance saving of \$0.686 million. There are no compliance costs for individuals, meaning the total average annual compliance cost over ten years is a saving of \$0.2 million. While still small when spread across all producers, this saving is noticeably larger than that achieved under Option 2.

## **Analysis of Option 4**

Option 4 would see the introduction of a new 'open range' category, with a stocking density limit of 1,500 hens per hectare, in addition to the changes under Option 3.

### ***Producer impacts***

The changes proposed under Option 4 are substantially more complex than those in either Option 2 or 3. Producers would need to understand the new category, its definition, its interaction with the free range category, and its relevance to their own production practices, as well as the free range definition and safe harbour provisions captured in Option 3. Stakeholders have indicated through consultation that it is reasonable to assume that this would require a significant amount of time, when the new laws come into effect, estimated at 48 hours (six working days).

Some producers would have label change costs to comply with the stocking density disclosure requirements, as in the previous options. However, a subset of secondary producers (assumed to be 25 per cent or 527 small producers), who could be expected to adopt the 'open range' label, would need to make an additional (or more substantial) change to their label to include the new classification, rather than the 'free range' classification. It is assumed that producers will incur an additional \$500 cost to make this change.<sup>28</sup>

Some producers have also indicated through consultations that they would incur further costs from changing terminology in their business name registration and marketing and promotional material, if

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<sup>28</sup> No reliable estimates exist for the number of producers that might meet an 'open range' definition. However, it is likely that only a limited number of smaller producers would currently maintain a stocking density below 1,500 hens per hectare. Larger producers may decide to create an 'open range' product but this would be a business decision rather than a compliance cost.

they were to take steps to market themselves as 'open range'. These costs are difficult to quantify and may represent costs of business decisions rather than regulatory compliance costs, so have not been calculated as part of the specific regulatory impost to business. They nonetheless represent a cost that these producers would incur under Option 4.

Importantly, the annual compliance and monitoring time savings from the introduction of an additional category is unlikely to be larger under Option 4 than Option 3. The definition of 'free range' would be the same under each of these options, and the additional 'open range' category would not impact court interpretations of the base term 'free range'. Once a producer has understood which category they fit and made appropriate adjustments, their need to monitor any remaining changes to animal welfare guidance and food safety standards would remain at 4 hours annually, as estimated in Option 3. Likewise, the annual 15 hour reduction in the time taken to monitor compliance for large producers would also remain unchanged under Option 4.

It is expected that those smaller producers that do meet the 'open range' definition, and who choose to use it (estimated at 527 as above) would need to take an extra 5 hours per year to ensure their compliance with this additional standard, taking their time spent on maintaining their compliance from 30 to 35 hours each year.

It is therefore unlikely that the introduction of an additional category would generate any increased regulatory certainty for producers as compared with Option 3. It would, however, generate additional costs, both in adapting to a more complex system, and in making changes for those businesses that choose to use the new category. Option 4 is likely to represent a regulatory overreach from the perspective of businesses, and be less favourable than Option 3.

### ***Consumer impacts***

For eggs labelled as free range, Option 4 would have the same impacts on consumer confidence and information access as Option 3.

However, the introduction of an 'open range' category would add complications for consumers. As this term is not currently in wide use across the industry, consumers would need to take time to understand this new term and research its meaning and relationship to free range. The new category would also add to the variety of definitions and labels that already confront consumers. Consultations revealed contradictory interpretations of the term 'open range' and there was no consensus among either consumers or producers on what terminology would represent a higher standard than 'free range'.

Once understood, the new category could have some benefits for consumers seeking to buy eggs that they perceive have been produced at a higher standard. However, given that all options other than the status quo require mandatory disclosure of stocking density, it is not clear that the addition of a specific category for producers with a density below 1,500 hens per hectare would be of significant additional benefit.

The new category would also lack any further defining criteria beyond this stocking density limit and the protections provided in the free range definition in Option 3. As stocking density is only one aspect of egg production, a new category defined by this aspect alone is unlikely to provide the kind of assurance that consumers looking for eggs produced under perceived higher welfare standards would desire.

Given these concerns, and the added complexity for consumers, it is not clear that Option 4 would generate significant consumer benefits beyond those provided under Option 3.

### ***Other Impacts***

While possible interactions with agricultural and food standards might present similar risks under Option 4 as under Option 3, the introduction of a new category would be clearly inconsistent with the Model Code and existing state and territory regulations, as well as international practices – none of which recognise the term ‘open range’.

The new category would also introduce additional complexity for regulators in monitoring and enforcing compliance with multiple categories. These impacts would be inconsistent with the goal of achieving a nationally consistent set of regulations.

### ***Total average compliance costs***

Option 4 is estimated to generate an upfront compliance cost to businesses of \$8.596 million, and an ongoing annual compliance saving of \$0.513 million. There are no compliance costs for individuals, meaning the total average annual compliance cost over ten years is a cost of \$0.346 million. This is therefore the only option that is estimated to increase the regulatory burden on producers.

## 5. Consultation

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### Process

The Australian Treasury, on behalf of Consumer Affairs Australia and New Zealand (CAANZ<sup>29</sup>) undertook an extensive public consultation process. The objective of the consultation was to gather additional evidence on the extent of the problem and the policy options.

The Commonwealth Minister for Small Business and Assistant Treasurer commenced the consultation process with the release of the consultation regulation impact statement on 5 October 2015 and accompanying media statement. The paper was published on the consultations page of the Australian Treasury website.

Those stakeholders already identified as interested in the issue were notified of its publication by email. Treasury also announced the consultation process on social media, references to the consultation process and paper were added to the Australian Consumer Law website and all consumer affairs Ministers also sought to bring the consultation process to the attention of interested stakeholders.

While written submissions were originally due by 2 November 2015, significant public response to the consultation paper prompted an extension of the period for written submissions to 27 November 2015. The extension was to ensure that there was adequate time for all relevant stakeholders to provide their views to governments.

The very high level of public engagement with the consultation paper is indicated by the number of formal and informal submission received. The consultation process received:

- 149 submissions from consumers, egg producers, consumer advocacy groups, animal welfare groups, government agencies, retailers, academics and other stakeholders,
- 2,043 brief consumer comments via [www.treasury.gov.au](http://www.treasury.gov.au) and email,
- 7,505 emails from egg consumers as part of a campaign coordinated by the RSPCA, and
- 106 emails from consumers and producers coordinated by Egg Farmers of Australia (EFA).

Consumer affairs Ministers and CAANZ officials met with more than 20 stakeholders over a number of bilateral and roundtable meetings during November and December 2015 and January 2016. Ministers and officials visited a variety of egg farms. A full list of all non-confidential submissions received is at Appendix K.

### Key findings

Consultation indicated most stakeholders support additional regulation to clarify the meaning and use of 'free range', but views about its form vary widely, particularly about the definition of 'free range' egg production.

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<sup>29</sup> 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.

These views divide roughly between larger businesses that supply cheaper ‘free range’ eggs to supermarkets using intensive production systems and smaller businesses using pasture-based ‘free range’ systems, with support from consumer and animal welfare groups.

- Larger egg producers and their associations (EFA, NSW Farmers and others) generally argue for a definition of ‘free range’ based on birds having meaningful access to the outdoors.
- Almost all of the formal consumer feedback argues for a strict definition of ‘free range’ based on the principle that birds regularly range freely outdoors, together with various animal husbandry or animal welfare conditions.
  - Pasture-based producers, their industry groups and associated organisations (for example PROOF) also called for a strict definition of ‘free range’ (that is, animal husbandry practices and/or 1,500 hens per hectare or less).

Stakeholder comment:  
Consumer interest in the term free range is highly associated with perceptions of better standards of welfare for the hen so it is imperative that the definition of free range meets this expectation. Simply being able to move about freely on an open range does not guarantee good welfare. There are numerous other factors that influence the welfare of the layer hen, both inside and outside of the shed. For consumer expectations to be met with conviction, the definition of free range must also consider these influencing factors.

RSPCA Australia,  
submission to consultation process

Stakeholder comment:  
VFF Egg Group proposes a definition of free range in which hens which are not in cages have access to an outdoor range during the day, and the range has a stocking density of not more than 10,000 birds/ha.

Victorian Farmers Federation Egg Group,  
submission to consultation process

Stakeholder comment:  
In order to meet consumer expectations of animal welfare, it is essential that the definition of ‘free-range’ includes specific conditions like stocking density and husbandry practices.

Monique Sweetland,  
submission to consultation process

*Definition based on case law*

Specifically, a variety of stakeholders objected to a definition of ‘free range’ based upon the outcomes of recent ACCC enforcement cases for misleading labelling of eggs as ‘free range’ (as outlined in Options 2 and 3 of the consultation paper). While recent case law suggests that consumers understand ‘free range’ eggs to mean most birds access the outdoors on most ordinary days, a number of producers argued that this definition would be difficult to enforce and may require farmers to potentially force birds outdoors. EFA argued that larger producers, who supply 80 per cent of the market, are uncertain as to whether they would satisfy this definition, creating significant market disruption if implemented. Advocates for a definition of ‘free range’ to encompass low stocking density and animal welfare factors (for example, Humane Society International) argued that a definition based on the case law would be inadequate in terms of meeting those objectives.

- This feedback, in combination with additional research on existing definitions of 'free range', is reflected in the revised options outlined in this decision regulation impact statement, as the case-law based definition is no longer proposed. See the description of Option 3 for further analysis.

Stakeholder comment:

The ACCC definition is not workable as it would be very difficult to implement at a farm level. A farmer would have to force his animals out of the shed to comply. Hens, like humans have different behaviour habits, some like being outside more than others. When managing hens, the focus is on keeping hens as comfortable as possible. Should the farmer be forced to move hens outside when they are unwilling to do so themselves, means that farmers would be posing unnecessary stress on the birds. The ACCC definition of "most hens going outside on most ordinary days" lacks clarity as what is constituted by "most hens" and "most ordinary days". The definition is difficult to implement, difficult to measure and difficult to prosecute against.

Commercial Egg Producers' Association of Western Australia,  
submission to consultation process

### *Defining new labelling terms*

The original consultation RIS included a proposal to create specific categories such as 'access to range' (for eggs from birds may not go outside on most ordinary days), or 'premium free range' (for eggs from birds kept in conditions that may be considered 'better' than standard free range) met with a variety of criticisms, primarily due to the potential impact on consumer understanding and market demand stemming from the introduction of new labels.

In both cases, those producers who would be most likely to use the new labels objected to any requirement to re-brand, instead arguing that they should retain the use of the term 'free range'. However, supporters of a definition of free range based on less-intensive farming practices (for example, CHOICE and Katham Springs Bio-Dynamic Free Range Eggs) supported the introduction of an 'access to range' category for those eggs that they consider should not be permitted to use the free range label.

Stakeholder comment:

Consumer confidence would never recover if the waters were muddied further with a term such as 'premium free range', confusing them further and allowing intensive free range producers to continue to hijack the free range market. Instead they should fall into the new proposed category 'access to range' which would provide a much more accurate and honest descriptor of their production system.

Humane Society International,  
submission to consultation process

Some consumer affairs Ministers subsequently recommended that the decision RIS should include analysis of an option to create both the definition of free range similar to Option 3 in this RIS and an 'open range' category for eggs produced at lower outdoor stocking density. Further consultations on this proposal were conducted with organisations representing larger and smaller producers. All stakeholders expressed concern regarding the nomenclature of any fourth category. A number of possible terms have been proposed, including 'open range', 'premium free range', 'pasture-raised' or 'free range plus', but stakeholders were concerned that none of these terms would accurately convey the nature of the product to consumers, potentially increasing consumer confusion.

Smaller producer groups consulted as part of the subsequent consultations on 'open range' – including FREPOSA 1500, Free Range Farmers Association (Vic), and PROOF – had a mixed response to the proposal. The Free Range Farmers Association (VIC) were supportive of an additional category that included additional factors of continued access to range and no beak treatment. However they were concerned that the phrase 'open range' or 'pasture-based' may be misleading and preferred 'premium free range'. FREPOSA 1500 and PROOF were both unsupportive of a specific additional category for small producers. Both were concerned that the term 'open range' will not mean much to consumers. FREPOSA 15000 suggested that the primary differentiation for their product should be outdoor stocking density. PROOF suggested if a new category was created it should only apply to mobile systems. Kossies Free Range Eggs also argued for a distinct category for low density farmers using mobile sheds.

Egg Farmers of Australia questioned the value of an arbitrary fourth category, arguing that the uncertainty of what should be captured by a fourth category underlines that it is unnecessary. The EFA also suggested a new category would distort the market and conflict with existing agriculture policy, including significant unintended flow-on effects for the review of the Model Code.

#### *Mandating labelling of all eggs*

One option proposed in the consultation paper was to mandate the labelling of all eggs as either 'cage', 'barn' or 'free range'. While some stakeholders (e.g. RSPCA and a number of individual consumers) favoured this proposal, a lack of evidence regarding existing consumer detriment suggests the regulation of 'cage' or 'barn' eggs would be unwarranted.

#### *Outdoor stocking density*

One of the key points of contention between stakeholders is the appropriate maximum outdoor stocking density for free range birds. Many smaller producers, animal welfare and consumer groups want the 'free range' outdoor stocking density capped at 1,500 birds per hectare. Larger producers support 10,000 birds per hectare with range management. This disagreement is due to differing interpretations of the Model Code.

- As the Model Code is due for review shortly, options outlined in this paper have been carefully designed to avoid pre-empting or limiting the outcome of that review.

#### *Animal welfare factors*

The majority of submissions from individual consumers, as well as those from CHOICE, Humane Society International (HSI) and RSPCA argue that consumers need extra information about 'free range' egg production such as beak trimming or forced moulting, or that these and other practices should be prohibited altogether for eggs labelled as free range. The basis of this argument is that consumers buy free range eggs because they believe that hen welfare is higher for free range hens, and this includes factors beyond access to and use of an outdoor range.

Smaller pasture-based 'free range' producers also indicated supported for either disclosing or banning such practices, so consumers can distinguish their eggs from those produced in more intensive systems.

The extent to which all consumers (as opposed to a more engaged subset) associate certain animal welfare practices with 'free range' eggs is uncertain, as indicated by the variation in findings of consumers surveys received as part of the consultation process (see Appendix C).

Furthermore, the consultation process received references to a variety of scientific studies with differing conclusions on the relationship between animal welfare and various free range practices.



While a bird's ability to exhibit natural behaviours was the most often cited indicator of high animal welfare in the consumer submissions received, scientific research suggests that 'to determine an animal's welfare in a given housing system, indicators such as mortality rate, physiological measures (typically of stress indicators), disease and health status, behaviour, and productivity must be examined together. Analysing a sole indicator, such as productivity, can often be misleading if other indicators suggest a conflicting conclusion.'<sup>30</sup> Notwithstanding the number of submissions calling for a definition of 'free range' to incorporate animal welfare factors, given the uncertainty outlined in Appendix C and the fact that regulation of animal welfare remains the policy responsibility of state and territory primary industry ministers, the options outlined in this regulation impact statement do not attempt to regulate or proscribe certain animal welfare practices.

Stakeholder comment:

Consumers may believe that the provision of a production system alone will lead to better bird welfare, but the reality is often different as the specific risks to bird health and welfare will have to be addressed in each production system. It is also acknowledged that consumers value egg parameters other than bird welfare such as food safety and nutritional status and these qualities are also affected by different egg production systems.

Animal Health Australia,  
submission to consultation process

#### *Other outcomes*

While the consultation process explicitly requested quantitative data from stakeholders regarding likely compliance costs of options or benefits (beyond price elasticity of demand), to inform the cost-benefit analysis to be conducted as part of this RIS, minimal such data was provided.

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<sup>30</sup> Shields, S and Duncan, I (undated, c.2013), '[An HSUS Report: A Comparison of the Welfare of Hens in Battery Cages and Alternative Systems](#)', Human Society of the United States; p.2



## 6. Conclusion

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As noted in the Summary, Option 3 is the recommended Option as it is likely to be the most effective at meeting the policy objective without imposing unnecessary costs. It establishes a clear baseline for free range egg production consistent with existing industry practice, general consumer expectations and current trademarks and legislation and provides consumers with additional information to help them distinguish between high and low intensity free range production.

Both a quantification of compliance costs and a qualitative comparative analysis of the costs and benefits of the options indicate Option 3 is likely to offer the greatest net public benefit.

## 7. Implementation and review

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According to consultation with Egg Farmers of Australia and other egg producers, the recommended option is unlikely to result in significant changes to production practices by most suppliers, but will require changes to labelling in most situations where a producer wishes to make a free range claim on the label, given the requirement to disclose the maximum outdoor stocking density and the varied occurrence of this practice in the market to date. It will also require an education campaign for producers, to ensure clear understanding of obligations under the information standard, and for consumers, to assist in informing consumers of the new labelling requirement and its meaning.

### *Making an information standard and amending the ACL to create a safe harbour*

An information standard is a legislative instrument. The precise drafting of the legislative instrument will be subject to legal advice on appropriate wording. Once made and registered by the Commonwealth Minister with responsibility for consumer affairs, it must be tabled in the Commonwealth Parliament and is subject to a 15 day disallowance period. The information standard will also be subject to a ten year sunset period.

As a legislative instrument, an information standard cannot alter primary legislation. Accordingly, it cannot operate as a safe harbour against provisions of the primary legislation such as sections 18, 29 and 33 of the ACL (misleading and deceptive conduct). In order to create a safe harbour reflecting the information standard, legislative amendment of the ACL will be required. Under the intergovernmental agreement governing the ACL, amendment of the law will require a vote of Consumer Affairs Ministers. Therefore when Ministers make a decision on the information standard, agreement to the corresponding amendment to the ACL will be sought.

### *Consumer education campaigns*

Given the impetus for the development of an information standard was consumers' widely- reported confusion regarding the meaning of 'free range' in relation to egg labelling, an effective consumer education campaign will be essential to the successful implementation of the recommended option, and should allow consumers to be more assertive and help drive competition.

Consumer affairs Ministers and fair trading regulators will have a role in informing consumers and other stakeholders of the information standard and its effect. In particular, it will be important that

consumers understand what is, and is not, meant by the use of 'free range' in egg labelling under the information standard, and what the outdoor stocking density, as disclosed on the label, means in practice.

However, given the high degree of consumer interest in the issue, it is in the industry's best interests to also have a significant role in informing consumers of how their eggs are produced and factors that are important in egg production. As the consultation process revealed, consumers have different levels of understanding of how and why eggs are produced through different methods and under different conditions. The education of consumers remains a key responsibility for the industry should it wish to address the expectations and perceptions of consumers.

Once consumer affairs Ministers have decided what option to adopt, CAANZ's Education and Information Advisory Committee (EIAC) can consider the best means of developing and implementing an education campaign, in concert with the egg industry, to inform consumers of the information standard. This consumer guidance could raise awareness of:

- Details of the information standard and its purpose;
- The different types of production methods leading eggs to be labelled as free range; and
- Other 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.<sup>31</sup> 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.

#### *Transition period*

Through consultations with egg producers, it was communicated that a 12 month transition period would be sufficient to allow existing stocks of labels to be used and for new labels to be printed in the event that changes were necessary.

If Consumer Affairs Ministers were also to agree to the Commonwealth proposal on country of origin labelling (CoOL) which has a transition period proposed to run for two years, ending on 30 June 2018,, an alignment of the transition period is sensible.

However, producers will be encouraged to adopt the new labelling requirements as early as reasonable. In a number of circumstances, it will be in producers' interests to adopt the new egg labelling requirements earlier.

Stakeholder comment:

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31 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](http://www.accc.gov.au/publications/country-of-origin-claims-the-australian-consumer-law).

Obsolete packaging costs would most likely be higher for the smaller producers, as the turnover of packaging is longer. Our preference in this instance would be for a grace period to apply to allow for old packaging to be utilised.

'Katham Springs' Bio-Dynamic Free Range Eggs',  
submission to consultation process

### *Producer education and compliance programs*

The effectiveness of the information standard in addressing consumer confusion regarding the term 'free range' when used on egg labels will in part depend on producers awareness of their obligation and their willingness and ability to comply.

An information standard made under the ACL applies nationally in all jurisdictions in Australia and is enforced by all ACL regulators. As such, any education and compliance campaign should be coordinated between the ACL regulators. EAIC and CAANZ's Compliance and Dispute Resolution Committee (CDRAC) will have a role in developing and coordinating the education, compliance and enforcement action of regulators, to ensure producers understand their rights and responsibilities under the information standard and that enforcement of the standard is coordinated between regulators.

### *Consideration of exemptions*

The Office of the NSW Small Business Commissioner asked that consideration be given to a possible small business exemption for smaller producers. As the scope of the Australian Consumer Law is limited to actions conducted in trade or commerce, any information standard will necessarily apply only to the sale of eggs labelled as free range. Egg producers not engaged in trade or commerce need not comply.

However, there are a significant number of small and micro egg producers across the country that do sell their eggs commercially. Exact data is very difficult to secure, with ABS data capturing primarily the larger commercial producers. Qualitative statements made during the consultations suggest smaller, less commercial producers make up the vast majority of egg producers by number (but a clear minority by output or bird).

The submission of the Office of the NSW Small Business Commissioner cites as an example the NSW small business exemption provided to the national Primary Production and Processing Standard for Eggs and Egg Product requirement that an egg producer must not sell eggs unless each individual egg is marked with the producers' unique identification. Exemptions, where available, are made on a state-by-state basis – for example, in Victoria there is an exemption from this requirement for producers with fewer than 50 egg producing birds. In NSW an exemption from stamping applies to small egg farmers that produce less than 20 dozen (240) eggs/week *and, either* sell those eggs direct from the farm gate, or use those eggs for a fundraising activity *where the eggs will be cooked*. In Tasmania, all commercial egg producers are required to stamp their eggs with the unique identification mark, regardless of production levels.

Other food labelling requirements, including the revised country of origin labelling requirements currently being developed, do not include small business exemptions.

As the recommended option does not mandate specific action from producers (but instead states that if a particular term is used on the label then certain conditions must be met), and the primary compliance cost of the option are transitional with a recommended long transition period, no exemption for small business is proposed.

### *Integration with existing state and territory regulation*

Regulation of the use of the term 'free range' on egg labels has the potential to overlap significantly with existing regulation made by states and territories, potentially creating additional compliance costs for producers and potential confusion for consumers.

As noted in the discussion of Option 1, the regulation of animal welfare and husbandry issues is the responsibility of the states and territories, with some state and territory governments incorporating the Model Code into their own regulatory frameworks for animal welfare (as summarised at Appendix E). As the recommended option is consistent with, although not identical to, the Model Code, its implementation should not cause significant conflict with existing regulation linked to the Model Code.

The Queensland and ACT regimes both include specific definitions of free range. Upon initial examination, both these definitions appear consistent with, although not identical to, the recommended option.

While there may be some benefit in identical definitions of free range across jurisdictions regulation, it is worth noting that any information standard under the ACL should not be seen to supplant or determine animal welfare regulation.

### *Review*

While the preferred option is not particularly prescriptive, regular review will be required to ensure that remains consistent with industry best practice, animal welfare regulation and consumer expectations.

As the industry innovates and consumer expectations evolve, the practices outlined in the recommendation option may need to be refined. In particular, a review of the information standard may be required once the review of the Model Code is complete, to consider any potential inconsistencies.

# 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)<sup>32</sup>, the market value of grocery eggs has steadily risen from \$1.3 to \$1.8 billion between 2010 and 2015:<sup>33</sup>

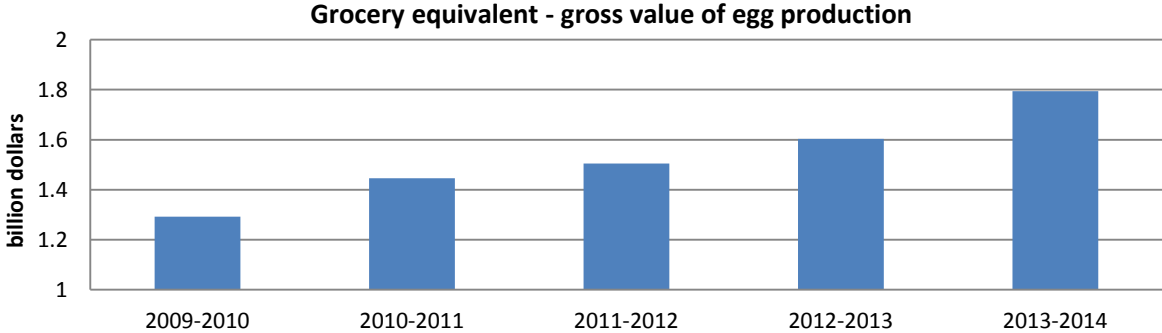
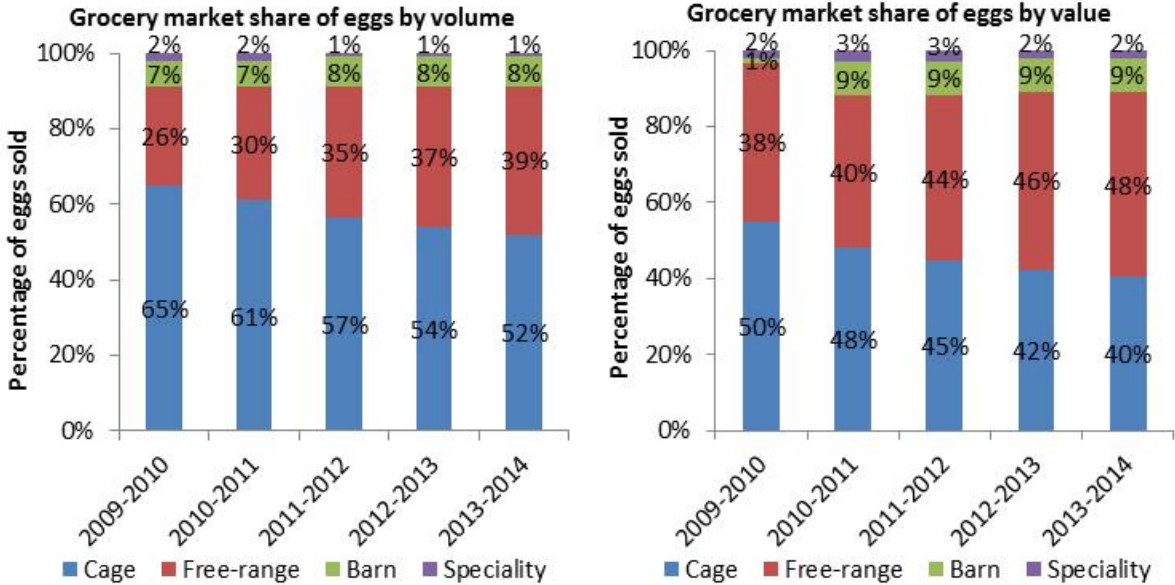


Figure 1 Source: AECL.

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.<sup>34</sup> 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.

<sup>32</sup> AECL is an industry services body or provider of marketing, research and development services for the benefit of all stakeholders, principally egg producers.  
<sup>33</sup> AZTEC, as cited in, Australian Egg Corporation Limited, [Australian egg industry overview](#) — December 2014, 2014.  
<sup>34</sup> *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.<sup>35</sup>
- 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.<sup>36</sup> 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.

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35 *ibid.*

36 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](http://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	a) 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	b) 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	c) 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. d) 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. e) 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	f) 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. g) 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)	h) 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'. i) 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	j) 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. k) The ACCC alleges that hens were unable to move about freely on an open range each day. l) 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.<sup>37</sup>

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:<sup>38</sup>

- 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.

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

38 See [www.accc.gov.au/media-release/federal-court-orders-300000-penalty-after-finding-free-range-egg-claims-to-be-misleading](http://www.accc.gov.au/media-release/federal-court-orders-300000-penalty-after-finding-free-range-egg-claims-to-be-misleading)

## Appendix C — What do consumers think are free range eggs?

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Evidence received as part of the public consultation process indicates that consumer expectations vary when it comes to the key factors in producing free range eggs.

The majority of submissions received directly from consumers called for a definition of free range that encompassed low-stocking densities and regular use of an outdoor range. A large proportion also asked that specific animal husbandry practices be banned or identified. For example:

### Example One:

I believe there should be a National Standard for eggs labelled 'Free Range' that should include a maximum number of chickens that should be kept inside a shed at night, and a maximum of 1500 birds per hectare for outdoor facilities. Free range farms should have a low density of birds as this determines their access to outdoors. I do not feel that a farm that has 10,000 birds per hectare should be allowed to be labelled free range. Free Range hens should not be subject to beak trimming, should have access to outdoors and have access to green areas and shade. There should be mandatory labelling of beak treatment and outdoor stocking density on egg cartons.

### Example Two:

When I buy free range eggs I expect that those hens have had at least 8 hours a day outside doing what comes naturally to hens, scratching in dirt, picking at grass, lying in the sun and picking at insects. At night for their safety to be housed in barns still with room to move freely. I also expect there to be no more than 2500 hens per hectare.

Written comments received online during consultation period.

However, the majority of submissions from individual consumers may be from those stakeholders that are most engaged in the issue of egg labelling and most concerned with issues of animal welfare. Therefore it is not clear that these submissions can be interpreted as representative of 'average' consumer opinion.

The outcomes of surveys of a broader set of consumers were less consistent in terms of identifying consumers' expectations of stocking density, use of an outdoor range and animal welfare factors.

### Meaning of 'free range'

An October 2015 survey by CHOICE<sup>39</sup> of a representative sample of consumers found that 87 per cent of consumers surveyed believe it is important, very important or essential that free range eggs comes from birds that actually go outside regularly. When asked about other elements that

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<sup>39</sup> 2015 CHOICE Free Range Egg Labelling Survey. GMI-Lightspeed administered and managed the fieldwork for the October 2015 survey conducted among 1,695 Australians aged 18-75 years with quotas to ensure the final sample was representative of the Australian population by age groups, gender and state and data weighted to the latest ABS population data.

free-range buyers think should be in the standard, 91% said birds should have room to move comfortably when outdoors; the same proportion indicated birds should have room to move comfortable inside the barn; and 89% said that farmers should undertake animal welfare practices.

When asked about the definition of 'free range' proposed in the Consultation Paper and based on the Pirovic case law (most birds outside on most ordinary days), 22% of consumers found the 'Pirovic'-based definition adequate, but 27% wanted animal welfare factors included too, 16% wanted an extra category for high welfare free range eggs and 14% wanted a declaration of stocking density as well.

Humane Society International conducted an online survey in October 2015 on its website.<sup>40</sup> Of those surveyed, 98 per cent agreed 'free range' egg cartons should display the outdoor stocking density for hens, and 91 per cent that beak treatment should be displayed on the box.

An earlier 2014 CHOICE survey<sup>41</sup> asked consumer about free range eggs and found that the majority of respondents believe that free range means 'free to roam', 'access to the outdoors' and 'cage-free'.

This earlier CHOICE survey is consistent with the findings of an August 2015 survey commissioned by the NSW Farmers' Association. The Survey found that when asked what they think are the minimum conditions for hens for their eggs to be labelled as 'free range', 53% said 'not in a cage' or 'unconfined' and 22% said 'access to the outdoors'.<sup>42</sup> In addition, 18% of those surveyed had no view on what the term should mean. Other popular responses were 'not crowded' (18%), access to a dust bath (10%), shelter at night (8%), stocking density (8%) and 'good conditions' or 'well looked after' (6%).

#### Appropriate stocking density

The CHOICE October 2015 consumer survey also asked consumers about what would be an appropriate outdoor stocking density. When presented with little background information about the issue, 41 per cent said they did not know or were unsure, 25 per cent said 750 hens per hectare, 22% said 1500 hens per hectare, 9% said 2500 hens per hectare and 2% said 10000 hens per hectare. Once the question was rephrased to include data on certain other standards and definitions for free range, the popularity of 750 and 1500 hens per hectare increased.

The survey on the HSI website found that 41 per cent of respondents said 750 hens per hectare is an appropriate maximum outdoor stocking density; 57 per cent said 1,500; 1 per cent said 10,000 and 1 per cent said a maximum didn't need to be specified.

Alternatively, the August 2015 survey commissioned by NSW Farmers found that, when presented by diagrammatic representations of outdoor stocking density, 72% of respondents consider one hen per square metre (the equivalent of 10,000 birds per hectare) to either meet or exceeded their expectations of an appropriate stocking density. A stocking density of one hen per six square metres

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<sup>40</sup> The survey was completed by 1,400 respondents, which contained representation across all groups for gender, age, and location.

<sup>41</sup> 2014 CHOICE Free Range Egg Survey. GMI-Lightspeed administered and managed the fieldwork for the November 2014 survey conducted among 1,696 Australians aged 18-75 years with quotas to ensure the final sample was representative of the Australian population by age groups, gender and state and data weighted to the latest ABS population data.

<sup>42</sup> Quantum Market Research August 2015 online survey of 1,200 free range egg buyers aged over 18 across all states and territories, sourced from an ISO-accredited market research panel and screened to ensure accuracy.

(1500 birds per hectare) was expected by 11% of free range buyers, and 10 birds per square metre by 7%.

#### Why purchase free range eggs?

The reasons why consumers purchase free range eggs also seem to vary. The October 2015 CHOICE survey reported the following responses: animal welfare (57%), to support genuine free range producers (44%), better taste (34%), healthier (30%), better for environment (29%), chemical free (28%), on special (20%) and more nutritious (19%).

In response to the 2015 HSI website survey, 97 per cent of respondents said their primary motivation for buying free range eggs is the welfare of the hens, 2 per cent choose free range because of the health benefits for them, and 1 per cent due to care for the environment.

## Appendix D — Complaints to ACL regulators

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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%
<b>ACCC total</b>	<b>179</b>	

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<sup>43</sup> 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<sup>44</sup> 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.

The 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.

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43 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).

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

## Appendix E — Relevant regulation across jurisdictions<sup>45</sup>

State/ territory	Outdoor stocking density	Indoor stocking density	Access outdoor	Exits	Free range defined	Caged-eggs	Barn-laid defined	Package labelling	Sale display requirements
<b>NSW — Model Code applies voluntarily</b>	Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Model Code — max 30kg/m <sup>2</sup> (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
<b>QLD — Animal Care &amp; Protection Amendment Regulation (No 2) 2013</b>	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

<sup>45</sup> 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
<b>WA — Model Code applies voluntarily</b>	Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Model Code — max 30kg/m <sup>2</sup> (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
<b>VIC — Model Code applies voluntarily</b>	Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Model Code — max 30kg/m <sup>2</sup> (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
<b>ACT — Egg (Labelling and Sale) Act 2001</b>	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 <sup>2</sup> (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
<b>SA — Proposed voluntary industry code under the <i>Fair Trading Act 1987</i> (SA) and associated trademark.</b>	Max 1,500 hens per hectare	Model Code — max 30kg/m <sup>2</sup> (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
<b>NT — Model Code applies voluntarily</b>	Model Code — max 1,500 hens per hectare, but higher numbers acceptable if regularly rotated and continuing fodder	Model Code — max 30kg/m <sup>2</sup> (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 F — Free range eggs accreditation and certified trademark schemes<sup>46</sup>

Scheme	Model Code compliant	Features/practices			Logos and labelling
		Hens' access to outdoors and shelter	Stock density	Animal management practices	
<b>Australian Egg Corporation Limited (Egg Corp Assured certified trademark)</b>	Yes	<ul style="list-style-type: none"> <li>Access to range outdoors during daylight hours (minimum 8 hours).</li> <li>Hens on the range have access to shaded areas and shelter from rain.</li> <li>Windbreaks should be provided in exposed areas.</li> <li>Every reasonable effort must be made to protect hens from predators at all times.</li> </ul>	<p><b>Outdoor</b></p> <ul style="list-style-type: none"> <li>Maximum 1,500 layer hens per hectare.</li> <li>Higher numbers acceptable, when hens are regularly rotated onto fresh ranges and close management, providing for some continuing fodder cover.</li> </ul> <p><b>Indoor</b></p> <ul style="list-style-type: none"> <li>Maximum 30 kg/m<sup>2</sup> (approximately 15 birds per square metre)</li> </ul>	<ul style="list-style-type: none"> <li>Beak trimming should be performed by an experienced operator or under supervision of an experienced operator.</li> </ul>	<ul style="list-style-type: none"> <li>Certified egg producers are entitled to use the ECA Certification trademark.</li> <li>Cartons must state the egg production system, e.g. cage, barn, free range.</li> <li>Producers use own label.</li> </ul>
<b>Australian Certified Organic Ltd (Australian Certified Organic Standard 2013)</b>	Yes plus additional standards	<ul style="list-style-type: none"> <li>Access to pastured areas during the majority of daylight hours.</li> <li>Vegetative cover or other means of shading shall be designed and positioned to ensure hens have ease of access and avoid aerial predators as well as protection from extreme weather.</li> </ul>	<p><b>Outdoor</b></p> <ul style="list-style-type: none"> <li>Maximum 2,500 hens per hectare where stock or forage rotation is practiced.</li> <li>Maximum of 1,500 hens per hectare for set stocking systems.</li> </ul> <p><b>Indoor</b></p> <ul style="list-style-type: none"> <li>Maximum 16 kg/m<sup>2</sup> (approximately 8 birds per square metre)</li> </ul>	<ul style="list-style-type: none"> <li>Systematic beak trimming and use of poly peeper are prohibited. However the standard does provide for exemptions.</li> <li>Withholding feed and water to induce moulting is prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Certified egg producers can use the Australian Certified Organic logo.</li> </ul>

<sup>46</sup> Labelling: Egg production systems, NSW Food Authority website, with some amendments.

Scheme	Model Code compliant	Features/practices			
		Hens' access to outdoors and shelter	Stock density	Animal management practices	Logos and labelling
<b>Free Range Farmers Association Inc.</b>  <b>(Free Range Farmers Association Inc. Standards — Egg Production — Rev 12 — 2013)</b>	Yes plus additional standards	<ul style="list-style-type: none"> <li>▪ Unrestricted access to free range runs during daylight hours.</li> <li>▪ Permanent access to weatherproof housing.</li> <li>▪ Adequate shade and wind protection must be provided.</li> </ul>	<p><b>Outdoor</b></p> <ul style="list-style-type: none"> <li>▪ Maximum 750 hens per hectare.</li> </ul> <p><b>Indoor</b></p> <ul style="list-style-type: none"> <li>▪ Maximum 15 kg/m<sup>2</sup> (approximately 7 birds per square metre)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Practices such as beak trimming, toe clipping and induced moulting are prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Accredited farmers display the Free range Farmers Association Inc. Victoria logo.</li> </ul>
<b>Free Range Egg and Poultry Australia Limited</b>  <b>(FREPA Free Range Egg Standards certified trademark)</b>	Yes plus additional standards	<p>Unrestricted access to range outdoor during daylight hours.</p> <p>Outdoor area must have shade, shelter and palatable vegetation.</p>	<p><b>Outdoor</b></p> <p>Maximum 1,500 hens per hectare, but fewer if land is not sustainable at this stocking density.</p> <p><b>Indoor</b></p> <ul style="list-style-type: none"> <li>▪ Sliding scale depending on total number of birds: <ul style="list-style-type: none"> <li>➤ 10 birds per square metre up to 1,000 birds</li> <li>➤ 9 birds per square metre up to 2,000 birds</li> <li>➤ 8 birds per square metre up to 3,000 birds</li> <li>➤ 7 birds per square metre up to 4,000 birds</li> <li>➤ 6 birds per square metre over 4,000 birds.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Beak trimming is only allowed in accordance with the Egg Industry Accreditation Program.</li> <li>▪ Induced moulting is not permitted.</li> <li>▪ Use of poly peeper is not permitted.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Certified members allowed to use the Free range Egg and Poultry Australia Limited logo.</li> </ul>

Scheme	Model Code compliant	Features/practices			
		Hens' access to outdoors and shelter	Stock density	Animal management practices	Logos and labelling
<b>Humane Choice (True Free Range certified trademark)</b>	Yes plus additional standards	<ul style="list-style-type: none"> <li>Free movement and access to paddock for a minimum of 8 hours per day.</li> <li>Outdoor shelter should include windbreaks and shade.</li> </ul>	<p><b>Outdoor</b></p> <ul style="list-style-type: none"> <li>Maximum 1,500 hens per hectare.</li> </ul> <p><b>Indoor</b></p> <ul style="list-style-type: none"> <li>Not less than one square metre for every 5 birds including the roosting area</li> </ul>	<ul style="list-style-type: none"> <li>Practices such as beak trimming and induced moulting are prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Producers can use the Human Choice True Free range logo.</li> </ul>
<b>RSPCA (Approved Farming Scheme Standards – Layer Hens (August 2015))</b>	Yes plus additional standards	<ul style="list-style-type: none"> <li>Daily access to range outdoors immediately after egg-laying period.</li> <li>Sufficient overhead shade should be provided to encourage hens to access the range.</li> </ul>	<p><b>Outdoor</b></p> <ul style="list-style-type: none"> <li>Maximum 1,500 hens per hectare on farms where there is no rotation to other areas, or</li> <li>Maximum of 2,500 hens per hectare where hens can be rotated to other outdoor areas.</li> </ul> <p><b>Indoor</b></p> <ul style="list-style-type: none"> <li>No more than 7 bids per square metre of usable area for floor-based systems</li> <li>No more than 9 bids per square metre of usable area for tiered systems</li> </ul>	<ul style="list-style-type: none"> <li>Beak trimming only under certain conditions or with prior approval from RSPCA.</li> <li>Induced moulting not permitted.</li> </ul>	<ul style="list-style-type: none"> <li>Accredited farms are authorised to use the RSPCA 'Paw of Approval' logo.</li> </ul>
<b>Coles (Coles Egg Production Standard for Free Range eggs)</b>	Yes	<ul style="list-style-type: none"> <li>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.</li> </ul>	<p><b>Outdoor</b></p> <ul style="list-style-type: none"> <li>A maximum of 10,000 hens per hectare, with every hen allocated at least one square metre of outdoor space.</li> </ul> <p><b>Indoor</b></p> <ul style="list-style-type: none"> <li>Max 12 birds per square metre for all horizontal surfaces As per Model Code</li> </ul>	<ul style="list-style-type: none"> <li>Beak trimming is to be avoided through provision of proper environment and breed selection.</li> <li>Where required, only allow a single beak trim to be undertaken by an accredited person under vet supervision.</li> </ul>	<ul style="list-style-type: none"> <li>Coles brand (private label) free range eggs.</li> </ul>

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	<ul style="list-style-type: none"> <li>Outdoor range areas are designed to protect hens from extremes of weather and temperature.</li> </ul>	<b>Outdoor</b> <ul style="list-style-type: none"> <li>1,500 hens per hectare.</li> <li>Up to 10,000 per hectare allowed if hens are regularly rotated onto fresh range areas.</li> </ul>	<ul style="list-style-type: none"> <li>Beak trimming must be done by an accredited person.</li> </ul>	<ul style="list-style-type: none"> <li>Woolworths Macro and Select brand free range eggs.</li> </ul>
			<b>Indoor</b> <ul style="list-style-type: none"> <li>As per Model Code, max 30kg/m<sup>2</sup> (approximately 15 birds per square metre)</li> </ul>		

## Appendix G - Information standards under the ACL

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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.

# Appendix H- International approaches

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## United States

The U.S. Department of Agriculture (USDA) requires that egg producers be able to demonstrate that 'free range' (or 'free roaming') egg layers have access to the outdoors.<sup>47</sup>

There is no formal government oversight as to the quality of the external environment, or the amount of time the hen has access to it. Many producers label their eggs as *cage-free* in addition to, or instead of, *free-range*. Recently, US egg labels have expanded to include the term 'barn-roaming', to more accurately describe the source of those eggs that are laid by hens which cannot range freely, but are confined to a barn instead of a more restrictive cage.

## Europe

Marketing standards are defined for the European market. Since 2004, the egg farming method used has to be stated on the eggs and on the boxes with a code. The conditions cover continuous daytime access, the quality and size of the range and a maximum outdoor stocking density of 2,500 hens per hectare (with exceptions).

### 1. Commission Regulation (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs

'Free-range eggs' must be produced in systems of production which satisfy at least the conditions specified in Article 4 of Council Directive 1999/74/EC.

In particular, the following conditions must be satisfied:

- (a) hens must have continuous daytime access to open-air runs. However, this requirement does not prevent a producer from restricting access for a limited period of time in the morning hours in accordance with usual good farming practice, including good animal husbandry practice. In case of other restrictions, including veterinary restrictions, adopted under Community law to protect public and animal health, having the effect of restricting access of hens to open-air runs, eggs may continue to be marketed as 'free-range eggs' for the duration of the restriction, but under no circumstances for more than 12 weeks;
- (b) open-air runs to which hens have access must be mainly covered with vegetation and not be used for other purposes except for orchards, woodland and livestock grazing if the latter is authorised by the competent authorities;
- (c) the maximum stocking density of open-air runs must not be greater than 2 500 hens per hectare of ground available to the hens or one hen per 4 m<sup>2</sup> at all times. However, where at least 10 m<sup>2</sup> per hen is available and where rotation is practised and hens are given even access to the whole area over the flock's life, each paddock used must at any time assure at least 2,5 m<sup>2</sup> per hen;
- (d) open-air runs must not extend beyond a radius of 150 m from the nearest pophole of the building. However, an extension of up to 350 m from the nearest pophole of the building is permissible provided that a sufficient number of shelters as referred to in Article 4(1)(3)(b)(ii)

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<sup>47</sup> United States Department of Agriculture Food Safety and Inspection Service; 'Food Safety Information'; [www.fsis.usda.gov/wps/wcm/connect/e2853601-3edb-45d3-90dc-1bef17b7f277/Meat\\_and\\_Poultry\\_Labeling\\_Terms.pdf?MOD=AJPERES](http://www.fsis.usda.gov/wps/wcm/connect/e2853601-3edb-45d3-90dc-1bef17b7f277/Meat_and_Poultry_Labeling_Terms.pdf?MOD=AJPERES)



of Directive 1999/74/EC are evenly distributed throughout the whole open-air run with at least four shelters per hectare.

## **2. Article 4 of Council Directive 1999/74/EC**

1. Member States shall ensure that from 1 January 2002 all newly built or rebuilt systems of production referred to in this chapter and all such systems of production brought into use for the first time comply at least with the requirements below.

1. All systems must be equipped in such a way that all laying hens have:

(a) either linear feeders providing at least 10 cm per bird or circular feeders providing at least 4 cm per bird;

(b) either continuous drinking troughs providing 2,5 cm per hen or circular drinking troughs providing 1 cm per hen.

In addition, where nipple drinkers or cups are used, there shall be at least one nipple drinker or cup for every 10 hens. Where drinking points are plumbed in, at least two cups or two nipple drinkers shall be within reach of each hen;

(c) at least one nest for every seven hens. If group nests are used, there must be at least 1 m<sup>2</sup> of nest space for a maximum of 120 hens;

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

(e) at least 250 cm<sup>2</sup> of littered area per hen, the litter occupying at least one third of the ground surface.

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

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

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

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

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

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

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

(b) If laying hens have access to open runs:

(i) there must be several popholes giving direct access to the outer area, at least 35 cm high and 40 cm wide and extending along the entire length of the building; in any case, a total opening of 2 m must be available per group of 1000 hens;

(ii) open runs must be:

- of an area appropriate to the stocking density and to the nature of the ground, in order to prevent any contamination;

- equipped with shelter from inclement weather and predators and, if necessary, appropriate drinking troughs.

4. The stocking density must not exceed nine laying hens per m<sup>2</sup> usable area.

However, where the usable area corresponds to the available ground surface, Member States may, until 31 December 2011, authorise a stocking density of 12 hens per m<sup>2</sup> of available area for those establishments applying this system on 3 August 1999.

2. Member States shall ensure that the minimum requirements laid down in paragraph 1 apply to all alternative systems from 1 January 2007.

## Appendix I — Compliance cost estimates

### Assumptions and key data:

No. of primary (large) producers:	108	Labour cost/hour:	\$65.45
No. of secondary (small) producers:	2106	Producers eligible for 'open range':	527

### Compliance cost estimates:

		Option 1	Option 2	Option 3	Option 4
<b>Business Costs</b>	<b>Awareness of new laws</b>				
	Hours required	-	8	24	48
	Businesses affected	-	2,214	2,214	2,214
	<i>Total cost</i>	-	\$ 1,159,250	\$ 3,477,751	\$ 6,955,502
	<b>Label change (large producers)</b>				
	Cost per label	-	\$ 3,000	\$ 3,000	\$ 3,000
	Businesses affected	-	108	108	108
	<i>Total cost</i>	-	\$ 324,000	\$ 324,000	\$ 324,000
	<b>Label change (small producers)</b>				
	Cost per label	-	\$ 500	\$ 500	\$ 500
	Businesses affected	-	2,106	2,106	2,106
	<i>Total cost</i>	-	\$ 1,053,000	\$ 1,053,000	\$ 1,053,000
	<b>Label change ('open range')</b>				
	Cost per label	-	-	-	\$ 500
	Businesses affected	-	-	-	527
	<i>Total cost</i>	-	-	-	\$ 263,250
	<b>Total upfront cost to businesses</b>	-	<b>\$ 2,536,250</b>	<b>\$ 4,854,751</b>	<b>\$ 8,595,752</b>
	<b>Awareness of changing laws</b>				
	Hours required	-	-2	-4	-4
	Businesses affected	-	2,214	2,214	2,214
<i>Total cost</i>	-	-\$ 289,813	-\$ 579,625	-\$ 579,625	
<b>Compliance (large producers)</b>					
Hours required	-	-	-15	-15	
Businesses affected	-	-	108	108	
<i>Total cost</i>	-	-	-\$ 106,029	-\$ 106,029	
<b>Compliance ('open range')</b>					
Hours required	-	-	-	5	
Businesses affected	-	-	-	527	

	<i>Total cost</i>	-	-	-	\$ 172,297
	<i>Total annual ongoing cost to businesses</i>	-	<b>-\$ 289,813</b>	<b>-\$ 685,654</b>	<b>-\$ 513,357</b>
<b>Individuals' Costs</b>	<i>Total upfront cost to individuals</i>	-	-	-	-
	<i>Total annual ongoing cost to individuals</i>	-	-	-	-
<b>Totals</b>	Net average annual cost to businesses over 10 years	-	<b>-\$ 36,188</b>	<b>-\$ 200,179</b>	\$ 346,218
	Net average annual cost to individuals over 10 years	-	-	-	-
	<b>Total average cost (all)</b>	-	<b>-\$ 36,188</b>	<b>-\$ 200,179</b>	<b>\$ 346,218</b>

## Appendix J – Submissions received

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CAANZ received 149 submissions in response to the consultation paper. Of these submissions, 35 were confidential. The 114 non-confidential submissions are listed below and available on the Commonwealth Treasury consultations website.

In addition, the consultation process received 2043 informal comments via the website and 7611 emails.

- |                                                               |                                                          |
|---------------------------------------------------------------|----------------------------------------------------------|
| 1. Allan, Janet                                               | 29. Crichlow, Audrey                                     |
| 2. Animal Defenders Office                                    | 30. Davis, Charles                                       |
| 3. Animal Health Australia                                    | 31. De Burgh, David                                      |
| 4. Animal Justice Party                                       | 32. Edwards, Margaret                                    |
| 5. Animal Law Institute                                       | 33. Egg Farmers of Australia                             |
| 6. Animals Australia                                          | 34. Eichenberger, Ayshea                                 |
| 7. Ansara, Martha                                             | 35. Eynon, Sarah-Jane                                    |
| 8. Australian Chicken Meat Federation                         | 36. Fleurieu Free Range Eggs                             |
| 9. Australian Food and Grocery Council                        | 37. Fraser, Todd and Jessica                             |
| 10. Australian Veterinary Association                         | 38. Free Range Farmers Association Victoria              |
| 11. Baker, Lisa MLA                                           | 39. Freeranger Eggs                                      |
| 12. Baker, Robert                                             | 40. FREPOSA 1500                                         |
| 13. Barristers Animal Welfare Panel                           | 41. Gelman, Julie                                        |
| 14. Barton, Sue                                               | 42. Glasencnik, Traudy                                   |
| 15. Boulton, Alison                                           | 43. Greig, Lynn                                          |
| 16. Bourne, James                                             | 44. Gumnut Gardens                                       |
| 17. Brown, Jennifer                                           | 45. Hanstead, Garry                                      |
| 18. Brown, Robert                                             | 46. MacLaren, the Hon Lyn MLC                            |
| 19. Buckman, James                                            | 47. Humane Society International                         |
| 20. Burke, Bede                                               | 48. Humane Society International - additional submission |
| 21. Castles, Julie                                            | 49. Hummerston, Beth                                     |
| 22. Cate ten, Roel                                            | 50. Hungerford, Judy                                     |
| 23. CHOICE                                                    | 51. Hunt, Elaine                                         |
| 24. Coles                                                     | 52. IdleWilde Open Range Farm                            |
| 25. Commercial Egg Producers Association of Western Australia | 53. Isaac, Geoff                                         |
| 26. Cooper, Sylvia                                            | 54. Katham Springs                                       |
| 27. Cottle, Jenny                                             | 55. Kendall, Jan                                         |
| 28. Cox, Russell                                              | 56. Kidd, Andy                                           |

57. Koci, Stephen
58. Kossies Free Range Eggs
59. Lashbrook Farm
60. Laurence, Dinny
61. Law Society of South Australia
62. Lewis, Johanna
63. Londey, Michael
64. Mackenzie, Jane
65. Marshall, Duncan
66. Matheson, Anne Louise
67. Mclsaac, Kevin
68. McKibben, Mervyn
69. McQueen, Jodie
70. Morrison, Karen
71. Neal, Trevor
72. Nelson, Serena Faber
73. NSW Department of Primary Industries
74. NSW Farmers
75. Nugent, Michael
76. Oates, Jayson
77. Office of the NSW Small Business Commissioner
78. O'Leary, Janis
79. Panvino, Calogero
80. Park, Samuel
81. Parry, Rob
82. Power, Julie
83. PROOF
84. Prus, Sarah
85. Queensland United Egg Producers
86. Rattenbury, Shane MLA
87. Rechten, Rebekka
88. Rhoades, Marlene
89. Rothfield, David
90. RSPCA Australia
91. Ruhnke, Isabelle
92. Safe Food Production QLD
93. Santi, Isaliah
94. Scarborough, Geoff
95. Sentient
96. Sin, Su Li
97. South Australian Local Egg Section
98. Sullivan, Corinna
99. Sweetland, Monique
100. Swick, Robert
101. Tabar, Golnaz Bassam
102. The Greens NSW
103. Thomas-Wurth, Jehni
104. Thompson, Kramer
105. Tskchenko, Oksana Alekseevna
106. Vernon, Kay
107. Victorian Farmers Federation
108. Voiceless
109. Walsh, Linda
110. Werner, Greta
111. Williams, Senator John
112. Winners Circle Free Range Eggs
113. World Animal Protection
114. Yamstick

