



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

A guide for egg producers

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Australian Competition and Consumer Commission
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A guide for egg producers

The ACCC has produced this guide to help egg producers of all sizes understand their fair trading rights and obligations under the Australian Consumer Law (ACL). This guide will specifically assist producers to comply with the ACL when promoting or selling eggs as ‘free range’. It will also help consumers understand the law and our approach to ‘free range’ egg claims.

Since 26 April 2018 a National Information Standard (the Standard), made under the ACL, has set out requirements for egg producers using the words ‘free range’. To provide certainty to producers who choose to make free range claims, the ACL also sets out a ‘safe harbour defence’ (discussed further below) which came into effect on 1 September 2018.

The ACCC will have a role in enforcing the new Standard, however only a Court can provide a definitive ruling on whether you comply with the Standard.

The new standard

Under the Standard, egg producers may only use the words ‘free range’ where the eggs (whether packaged or unpackaged) were laid by hens that:

- had **meaningful** and **regular access to an outdoor range** during the daylight hours of the laying cycle
- were **able to roam and forage on the outdoor range**, and
- were subject to a **stocking density of 10 000 hens or less per hectare**.

Further, if the words ‘free range’ are used:

- on the packaging of eggs, the packaging must prominently state the stocking density, and
- in relation to unpackaged eggs, businesses must prominently display a sign containing the words ‘free range’, and which prominently states the stocking density.

In addition to the new Standard, egg producers must also continue to comply with existing requirements in the ACL. This means that egg producers must ensure any other claims they make when advertising or selling their eggs are accurate and truthful. This includes claims they make via the other words and pictures they use on their packaging and promotional material.

In addition to the ACL, egg producers will also need to comply with any applicable state or territory laws or regulations which deal with the keeping of hens.

Meaningful and regular access

Hens will have **meaningful** and **regular access to an outdoor range** when the indoor conditions provide access to, and encourage the use of, the outdoor range. Hens will not have meaningful and regular access to an outdoor range if they are unable to access the outdoor range because of the indoor conditions or the condition of the outdoor range.

When considering whether hens have meaningful and regular access to an outdoor range the ACCC will consider:

Indoors: The flock size and indoor conditions, including the nesting and rearing environment, physical architecture, and openings (either open sides or popholes) should allow hens continuous and unrestricted access to an outdoor range during daylight hours.

- *Flock size:* Flock size largely determines the ability of each hen to access an outdoor range. As larger flock sizes must be kept in larger barns, this means that a hen must travel further, and navigate past more unfamiliar hens, to reach an open side or pophole.
- *Internal architecture:* The set-up of a barn's interior affects the propensity of hens to exit to an outdoor range. Obstacles that reduce the likelihood of a hen using an exit include other hens, nesting boxes, conveyer belts, and feeding mechanisms.
- *Openings:* An available exit in close proximity, its size, location and ease of access all influence whether hens will use an outdoor range.

Egg producers may still prevent their hens from accessing the outdoor range for a period that is not unreasonable when the hens are undergoing nest box training, poor weather conditions would endanger them, they would be exposed to predators, they are being medicated or otherwise cared for, and in other 'exceptional circumstances' that pose a significant risk to the hens' health or safety.

Outdoors: Hens on an outdoor range tend to engage in their natural behaviours near adequate shelter. Providing a sufficient viable grazing area close to the barn will increase their use of an outdoor range.

Able to roam and forage on the outdoor range

It would be risky for an egg producer to label their eggs as 'free range' unless they have observed their hens using their outdoor range on a regular basis. Put in another way, if it is unusual for an egg producer's hens to roam and forage on an outdoor range (even if access to an outdoor range is provided in accordance with the above section) and they label their eggs as 'free range', they risk breaching the Standard and the ACL.

The ACCC does not expect egg producers to take a precise approach to tracking chickens or undertaking head counts in order to show that their hens are able to roam and forage on an outdoor range. Instead, we recommend that they take a common sense approach of observing whether their range is in regular use by the majority of their hens.

Stocking density

In the Standard, '**stocking density**' means the number of hens per hectare that would be on an outdoor range if every hen that has access to that outdoor range was on it at once. If that is over 10 000 hens per hectare, egg producers cannot claim that their eggs are 'free range'.

Labelling and signage requirements

The Standard requires that if egg producers sell **packaged** eggs and use the words 'free range' on their packaging, they must state the stocking density prominently on the packaging.

If egg producers sell their eggs **unpackaged** and use the words 'free range', the Standard requires that they prominently display a sign containing the words 'free range' and that the sign prominently states the outdoor stocking density. Further, if unpackaged eggs other than 'free range' eggs are being

displayed at or near the display of 'free range' eggs, the display of 'free range' eggs must be separate from the display of other eggs, so that a person at or near the displays can reasonably distinguish between 'free range' and other eggs.

We consider that words on packaging or signs are prominent if a person looking at the packaging or signage can easily find and read them.

Using other words and pictures

The Standard and the proposed safe harbour defence only apply to the use of the words 'free range' on packaging, signs and advertising material. The Standard does not require egg producers to, or stop egg producers from, using other words or pictures. However, the usual ACL prohibitions against false, misleading or deceptive conduct continue apply to all of the other words and pictures used.

Safe harbour defence

To provide egg producers with greater assurance, a 'safe harbour' defence has been introduced into the ACL for those egg producers that comply with the Standard. The safe harbour means if an egg producer can demonstrate that they have complied with the Standard, they will have protection from court proceedings being brought under the ACL that relate to the use of the words 'free range'.

To ensure that egg producers have this protection, they must be prepared to provide information that shows that they are complying with the Standard if required.

The safe harbour does not apply to any other words or pictures egg producers might use. It is important that egg producers carefully consider any additional claims they make to ensure they are accurate and not likely to mislead.

Further information

For email updates on ACCC work in the agriculture industry, see the [ACCC's Agriculture webpage](#) and join the [Agriculture Information Network](#).

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