

ACCC Guidance on free range egg and chicken meat claims during avian flu outbreak

The ACCC is providing this guidance in relation to its position in situations when avian influenza outbreaks have led to urgent housing orders being put in place. The aim is to provide free range egg and chicken meat producers with regulatory certainty about the ACCC's enforcement approach when a housing order or producer decision to impose voluntary housing due to avian influenza conflict with the Free Range Labelling Information Standard and the Australian Consumer Law.

The Australian Consumer Law prohibits misleading or deceptive conduct and certain representations which are false or misleading.

In normal circumstances, it would be a breach of the Free Range Labelling Information Standard and the Australian Consumer Law for an egg or chicken meat producer to label their product as free range when it was produced by chickens housed without access to outside areas.

Free range egg producers subject to housing orders

Under the Free Range Labelling Information Standard, free range egg producers may prevent their hens from accessing the outdoor range for a period that is "not unreasonable" in a range of circumstances, including where they are being medicated or otherwise cared for, or in 'exceptional circumstances' that pose a significant risk to the hens' health or safety.

The ACCC is aware that free-range egg and chicken producers may be required under government orders to house their flocks for certain periods, in response to the current avian influenza outbreak.

In these circumstances, the ACCC considers that the avian influenza outbreak resulting in government housing orders will constitute 'exceptional circumstances'.

Accordingly, free range egg producers who are subject to the ongoing government housing orders will not face enforcement action from the ACCC in relation to their free range labelling claims as a result of their compliance with the orders.

Voluntary housing by free range egg producers in proximity to outbreaks

In addition, the ACCC will not take enforcement action in relation to free range egg claims (on labels or packaging) made by free range egg producers located in areas proximate to restricted areas who voluntarily house their hens for up to two months from the date of the first housing order in their relevant State, while housing orders are in force in the restricted areas.

Free range chicken meat growers

While there is no information standard that applies to free range chicken meat, the ACCC recognises the exceptional circumstances which currently apply.

Accordingly, the ACCC will exercise its discretion and not take enforcement action in relation to free range labelling claims made by free range chicken meat growers in restricted areas as a result of their compliance with housing orders, for the period in which housing orders apply to them.

For free range chicken meat producers who voluntarily house their chickens due to their proximity to restricted areas in which housing orders are in force, the ACCC will exercise its discretion and not take enforcement action in relation to free range labelling claims made by

free range chicken meat growers for up to two months from the date of the housing order in their relevant State.

When should free range claims cease to be made?

We strongly encourage all affected producers and retailers who are making free range claims about eggs or chicken meat during this emergency period to consider contingency labelling arrangements if housing orders are for an extended duration, which could include temporary alternative labelling or packaging.

Further, where a free range egg or chicken meat producer is voluntarily housing chickens for more than two months from the date of the first restricted area order in their relevant State, the ACCC would be concerned if the producer is continuing to make free range claims about eggs or chicken meat produced from those chickens.

This is because consumers rely on the accuracy of these claims, and in many cases are prepared to pay a premium for free range products.

Please note that the ACCC's guidance does not bind or represent the approach that may be taken by other ACL regulators (such as State Fair Trading agencies) or private parties under the Australian Consumer Law.