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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CONSUMER PROTECTION LEGISLATION AMENDMENT BILL 2018

EXPLANATORY STATEMENT

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Introduction

This Explanatory Statement is for the Consumer Protection Legislation Amendment Bill 2018 (the Bill) as presented in the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The Bill makes amendments to the *Eggs (Labelling and Sale) Act 2001* (the Eggs Act) and the *Fair Trading (Fuel Prices) Act 1993* (the Fuel Act). The Bill also creates an *Eggs (Labelling and Sale) Regulation 2018*.

The reforms to the Eggs Act will remedy inconsistencies in the regulation of egg labelling in the ACT that arose when the Commonwealth Government made the Australian Consumer Standard (Free Range Egg Labelling) Information Standard 2018 (Cwth) (the Information Standard).

The reforms to the Fuel Act will ensure that customers are provided with accurate information as to fuel prices at service stations, by prohibiting the display of discounted prices that may only be available to select customers, for example, those with a particular discount voucher. Instead service stations will be required to display the retail price available to all customers.

Summary of amendments – Eggs Act

Definitions

The Eggs Act has governed the labelling and sale of cage, barn, aviary and free-range eggs in the ACT since 2001. The definition of each type of egg in the Act refers to the conditions under which the hens that produced that eggs are kept, as outlined in Schedule 1 – for example, where the hens are housed, whether they have access to litter, perches, nests and the outdoors and whether they have the freedom and capacity to socialise and move freely. Conditions relating to stocking levels are cross referenced to the Model Code of Practice for the Welfare of Animals: Domestic Poultry (the Model Code).

Under the Eggs Act, ‘free-range egg’ is defined as ‘an egg laid by a hen kept in the conditions described in Schedule 1, item 4, column 3’. Schedule 1 states that hens that produce free-range eggs are kept with continuous daytime access to outdoor runs, access at all times to indoor litter, perches and nests, adequate protection at all times from predators and the

elements, and in accordance with the stocking level and other requirements for range systems under the Model Code.

The Model Code recommends a stocking density of 1500 hens per hectare for free-range systems, unless the hens are regularly rotated, in which case a higher stocking density is acceptable. The Model Code is currently being reviewed and will in time be replaced by Australian Animal Welfare Standards and Guidelines for Poultry (Guidelines). The ACT Government has long supported a maximum stocking density of 1500 hens per hectare for free-range eggs, on the basis that provides sufficient space for hens to roam with adequate access to sunlight and fresh air and reflects consumer expectations of what ‘free-range’ means.

However, in April 2018, the Commonwealth Government made the Australian Consumer Standard (Free Range Egg Labelling) Information Standard 2018 (Cwth) (the Information Standard), which sets a new standard across Australia relating to the labelling of free-range eggs. The Information Standard defines free-range eggs as eggs laid by hens that had meaningful and regular access to an outdoor range during daylight hours during the laying cycle, were able to roam and forage on the outdoor range and were subject to a maximum stocking density of 10,000 hens per hectare.

The different definitions create difficulties in terms of both interpretation and practical application. In some factual circumstances, the two will be directly inconsistent. To ensure legislative consistency and practical certainty for egg consumers, producers and retailers, the Bill amends the definition of ‘free-range eggs’ applying under the Eggs Act so that it replicates the Information Standard definition. This includes a requirement that free-range eggs have a maximum stocking density of 10,000 hens per hectare.

Given the technical nature of definitions relating to egg types, and to ensure that the Eggs Act is able to keep pace with the transient nature of Commonwealth regulation in this area, the Bill also amends the Eggs Act to link the definitions of each type of egg (free-range, aviary, cage and barn) to conditions (under which the hens that produce those eggs are kept) prescribed by Regulation, rather than Schedule 1 of the Act where those conditions are currently set out. This will ensure that the regulatory framework under the Eggs Act remains current and accurate and that the regulation can promptly and accurately capture relevant changes to the Commonwealth regulation.

The Bill creates the Eggs (Labelling and Sale) Regulation 2018 (the Regulation) which reproduces the conditions relating to hens producing aviary, cage and barn eggs previously contained in Schedule 1 of the Eggs. The conditions relating to hens producing free-range eggs align with those set out in the Information Standard.

Labelling requirements for free range eggs

The Bill also amends the Eggs Act to replicate the Information Standard requirement for the stocking density of free-range eggs to be displayed prominently on the packaging. This will provide consumers with additional information so that they can make an informed decision when purchasing eggs.

Sale of unpackaged eggs

Section 6 of the Eggs Act currently provides that ‘a person must not sell hen eggs unless the eggs are packaged in accordance with the egg labelling requirements.’ This may be interpreted as prohibiting the sale of unpackaged hen eggs. The Bill amends section 6 so as to prohibit the sale of packaged hen eggs that are not labelled in accordance with the egg labelling requirements. The intent of this change is to allow for the sale of unpackaged eggs, provided that they comply with relevant definitions and display requirements set out in the Eggs Act.

Display requirements for packaged and unpackaged eggs

The Eggs Act currently requires retailers to display a sign near each type of eggs indicating the conditions under which the hens that produced the eggs were kept. The signage requirements for free-range eggs currently states ‘THESE ARE FREE-RANGE EGGS. Birds in a free-range system are housed in sheds and have access to an outdoor range.’

To ensure that the Eggs Act continues to reflect, as far as possible, the ACT Government’s current position and consumer expectations that a maximum stocking density of 1500 hens per hectare is more appropriate in terms of the humane treatment of free-range laying hens, the Bill amends this requirement so that signs for free-range eggs must include a statement that reads: ‘THESE ARE FREE-RANGE EGGS. The ACT Government supports a free-range stocking density of 1500 hens or less per hectare’. This will give context to consumers and allow them to make a comparison between the stocking density listed on an egg carton, and the ACT Government’s preferred maximum stocking density for free-range eggs which supports the welfare of animals.

Summary of amendments – Fuel Act

Prohibition against display of discounted fuel price

As part of their business model, some fuel retailers offer a conditional discount on the price of fuel for customers who meet certain criteria – for example, customers who hold a particular type of supermarket or other discount voucher. Often, the conditionally discounted price is displayed on the fuel price board, rather than the true retail price available to all. This practice is likely to mislead consumers, who may rely on information contained on fuel price boards to make a decision about purchasing fuel when driving past a service station.

The Bill amends the *Fair Trading (Fuel Prices) Act 1993* to prohibit the display of discounted fuel prices on fuel price boards at service stations. This will ensure consumers are provided with accurate pricing information when purchasing fuel.

Some fuel retailers who currently display conditionally discounted prices on fuel price boards may incur costs in modifying their fuel price boards to remove the discounted prices. To mitigate the impact on these retailers, and allow time for replacement livery to be produced, the Bill allows for an implementation period of six months before the new requirements commence.

Display requirements upon increasing or decreasing fuel prices

The Bill also requires that when fuel retailers increase or decrease fuel prices, they must change the price displayed on the fuel price board and fuel pumps in the prescribed order.

This will ensure that motorists always pay the price on the pump, which is required to be either the same as, or lower than, the undiscounted price displayed on the fuel price board.

Consequential amendments

Section 9A of the *Animal Welfare Act 1992* currently provides that a person commits an offence if they keep laying fowls for commercial egg production and the fowls are not kept in appropriate accommodation. ‘Appropriate accommodation’ is defined as accommodation that accords with or improves on the conditions set out in Schedule 1 of the Eggs Act.

As explained above, these conditions have been moved from Schedule 1 of the Eggs Act to the Regulation to ensure relevant changes to the Commonwealth regulation (particularly around the labelling of free-range eggs) can be promptly and accurately captured.

The Bill therefore makes consequential amendments to the *Animal Welfare Act 1992* to provide that ‘appropriate accommodation’ is accommodation that accords with or improves on the conditions set out in the Regulation

Human Rights Implications

Both the Eggs Act amendment requiring certain signage to be displayed near free-range eggs, and the Fuel Act amendment prohibiting the display of conditionally discounted prices on fuel price boards, may engage the right to freedom of expression under section 16 of the *Human Rights Act 2004* (HRA), insofar as those amendments affect individuals rather than corporations.

The preamble to the HRA notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights. Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including: (a) the nature of the right affected; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relationship between the limitation and its purpose; and (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The right to freedom of expression

The section 16 HRA right to freedom of expression protects expression in any medium, including written and oral communication, the media, public protest, broadcasting and artistic works. The right not only protects favourable information and ideas but also unpopular or inflammatory sentiments. The right includes the freedom to receive and impart information

by a wide variety of means including posters, pamphlets and dress. Commercial expression and advertising may fall within the definition although the right is vested in the individual rather than a corporation.

The importance of the purpose of the limitation

The amendments to the Eggs Act may limit the freedom of expression by requiring the stocking density of free-range eggs to be shown on the labelling. The amendments also modify the existing requirements in section 7B around the content of signage to be displayed with free-range eggs. The new statement required to be included on the sign, ‘The ACT Government supports a free range stocking density of 1500 hens or less per hectare,’ will protect animal welfare by encouraging consumers to purchase free-range eggs produced under more humane conditions, and provide additional context to consumers regarding the stocking density shown on egg labelling.

The amendments to the Fuel Act protect consumer rights and reduce possible detriment by ensuring consumers are provided with accurate information about fuel prices upon which to base their purchasing decisions.

The nature and extent of the limitation

Any limitation created by existing section 7B of the Eggs Act and the amendment to this section is minimal. It would apply only to individual egg retailers (the right to freedom of expression not being vested in corporations). These provisions do not otherwise limit the ability of retailers to express their views about the optimal stocking density of free-range eggs, or to otherwise advertise or promote particular brands of eggs. They also do not limit the ability of retailers to fully express themselves in other forums.

Similarly, any limitation created by the Fuel Act amendment will impact only upon individual fuel retailers, and will not prevent retailers from advertising the discounted price of fuel through other means. Fuel retailers will still be able to offer discount offers, including promoting these offers on fuel price boards, provided they do not advertise the discounted price on a fuel price board or fail to display the true retail price on the fuel price board alongside information about the discount offer.

The relationship between the limitation and its purpose

The purpose of any limitation created by the amendments to the Eggs Act is to aid in informed consumer decision making and support the welfare and humane treatment of animals. The limitation is therefore directly related to the purpose.

Similarly, any restriction created by amendments to the Fuel Act is directly related to the purpose, which is to protect consumers from being misled and ensure that they are accurately informed as to the price of fuel.

Less restrictive means reasonably available to achieve the purpose

There are no less restrictive means available to reasonably achieve the relevant purposes.

Climate Change Impacts

This Bill has no measurable climate change impacts.

Gender Impacts

This Bill has no gender impacts.

CLAUSE NOTES

Clause 1 Name of Act

This clause names this Act the *Consumer Protection Legislation Amendment Act 2018*.

Clause 2 Commencement

This clause provides that section 7 and Part 3 of the Act will commence 6 months after the notification day.

The remaining provisions automatically commence 6 months after the notification day, or an earlier day fixed by the Minister by written notice.

Clause 3 Legislation amended

This clause provides that the Act amends the *Eggs (Labelling and Sale) Act 2001* and the *Fair Trading (Fuel Prices) Act 1993*. The note to Clause 3 provides that the Act will also amend the *Animal Welfare Act 2001* as set out in Schedule 1.

Clause 4 Eggs (Labelling and Sale) Regulation 2018 – sch 2

This clause provides that the provisions of Schedule 2 are, on the commencement of section 4, taken to be a regulation made under section 8 of the *Eggs (Labelling and Sale) Act 2001*.

Part 2 Eggs (Labelling and Sale) Act 2001

Clause 5 Section 5

This clause substitutes a new section 5 which sets out ‘egg labelling requirements’. The new section provides that egg labelling requirements means conspicuously displaying on the packaging for the eggs a statement which identifies the type of eggs (for example, free-range, barn or cage) and if the eggs are free-range, the stocking density for the hens that laid those eggs. This aligns with the requirement under the Commonwealth’s Information Standard for the labelling on packaged free-range eggs to include stocking density.

Subsection (2) provides that a labelling requirement is conspicuously displayed if it is in standard type of at least 6mm high. This reproduces the technical requirements previously set out in section 5 and ensures that relevant information is easily read by consumers.

Clause 6 Section 6

This clause substitutes a new offence provision relating to the labelling of eggs. Previously, it was an offence to sell eggs if they were not packaged in accordance with the egg labelling requirements. This led to a possible interpretation that it was an offence to sell unpackaged eggs in the ACT.

The new section 6 clarifies that it is an offence to sell packaged eggs unless they comply with the egg labelling requirements. By implication, unpackaged eggs may be sold provided the sale is in compliance with other requirements set out in the Act, including those relating to the display of eggs.

Clause 7 Free-range eggs – retail display Section 7B (2) (a)

This clause amends the current signage requirements relating to free-range eggs to require the sign to now state “THESE ARE FREE-RANGE EGGS. The ACT Government supports a stocking density of 1 500 hens or less per hectare.”

This will give context to consumers and allow them to make a comparison between the stocking density listed on an egg carton, and the ACT Government’s preferred maximum stocking density which supports the welfare and humane treatment of laying hens.

Clause 8 Conditions under which hens are kept Schedule 1

This clause omits Schedule 1 which describes the conditions under which hens that produce free-range, barn, cage and aviary eggs are kept. These conditions will instead be set out in a regulation. The conditions applying to hens producing barn, cage and aviary eggs are reproduced from schedule 1. The conditions applying to hens producing free-range eggs are reproduced from the Information Standard. Locating these conditions in a regulation rather than in Schedule 1 of the Eggs Act means that relevant changes to Commonwealth regulation can be captured more swiftly and that the regulatory framework under the Eggs Act remains current and accurate.

Clause 9 Dictionary, new definition of *aviary eggs*

This clause inserts a definition of ‘aviary eggs’ into the definitions of the Eggs Act. This definition had previously been omitted in error. Aviary eggs means eggs laid by hens kept in conditions stated in the regulation.

Clause 10 Dictionary, definitions of *barn eggs*, etc

This clause amends the dictionary definitions of barn-eggs and cage eggs so that the definitions refer to the regulation instead of Schedule 1.

Clause 11 Dictionary, definition of *code*

This clause removes the Act's definition of 'code'.

Part 3 Fair Trading (Fuel Prices) Act 1993

Clause 12 Dictionary, definition of *free-range* eggs

This clause defines free-range eggs as eggs laid by hens kept in conditions states in the regulation, instead of Schedule 1.

Clause 13 Dictionary, new definition of *stocking density*

This clause inserts a new definition in the dictionary, of stocking density. Stocking density means the maximum number of hens per hectare that have access to an outdoor range on any day during the laying cycle. This aligns with the definition of stocking density in the Information Standard.

Clause 14 New section 5A

This clause inserts a new offence. The new offence applies if a fuel price board displays a discounted fuel price.

It is also an offence to change the price displayed on the fuel price board before changing the price at the corresponding fuel pump. This ensures that motorists always pay the price on the pump, which is either the same as, or lower than, the undiscounted price displayed on the fuel price board.

The maximum penalty for this offence is 20 penalty units.

The clause also defines "price board" as a board, sign or other notice in relation to a service station that displays information regarding the price of types of fuel for sale by retail at the service station, and is visible to a person passing the service station.

Clause 15 Dictionary, new definition of *discounted fuel price*

This clause inserts a new definition of "discounted fuel price" into the dictionary. Discounted fuel price means the price per litre payable on the sale of fuel by retail after any discount is applied.

This clause replaces the current definition of "retail price" with a new definition which clarifies that the retail price is the price per litre payable for fuel without any discount applied.

Clause 16 Dictionary, definition of *retail price*

This clause amends the Act's definition of retail price. The new definition of retail price, of a specified fuel, means the price per litre payable on the sale of fuel by retail without any discount applied.

**Schedule 1 Animal Welfare Act 1992 –
Consequential amendment**

[1.1] Section 9A (3), definition of *appropriate accommodation*

This clause replaces the current definition of “appropriate accommodation” in section 9A of the *Animal Welfare Act 1992*, which refers to the conditions under which laying hens are kept in Schedule 1 of the Eggs Act. The new definition instead refers to the conditions under which laying hens are kept in the new Eggs (Sale and Labelling) Regulation 2018.

**Schedule 2 New Eggs (Labelling and Sale)
Regulation**

This Schedule makes the new Eggs (Labelling and Sale) Regulation 2018.

[1] Name of regulation

This clause names the regulation as the Eggs (Labelling and Sale) Regulation 2018.

[2] Dictionary

This clause states that the dictionary at the end of regulation is part of the regulation.

[3] Notes

This clause states that a note included in the regulation is explanatory and is not part of the regulation.

[4] Aviary eggs – Act, dict, definition of *aviary eggs*

This clause prescribes the conditions for keeping hens that lay aviary eggs.

[5] Barn eggs – Act, dict, definition of *barn eggs*

This clause prescribes the conditions for keeping hens that lay barn eggs.

[6] Cage eggs – Act, dict, definition of *cage eggs*

This clause prescribes the conditions for keeping hens that lay cage eggs.

[7] Free-range eggs – Act, dict, def *free-range eggs*

This clause prescribes the conditions for keeping hens that lay free-range eggs.

[8] Disapplication of Legislation Act, s 47(6)

By defining code in the dictionary below, the regulation has incorporated the code. The Legislation Act, s 47 (6) provides that an incorporated document, and any amendment or replacement of such a document, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (6) may be displaced by the incorporating instrument (this regulation) (see s 47 (7)). The Legislation Act, s 47 (6) is displaced here because the incorporated code is subject to copyright and may be accessed on the internet.

Dictionary

The dictionary provides a definition of ‘code’.