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TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING)  
BILL 2017

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EXPOSURE DRAFT EXPLANATORY MEMORANDUM



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## ***Glossary***

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ACL	Australian Consumer Law; Schedule 2 to the <i>Competition and Consumer Act 2010</i>



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# **Chapter 1**

## **Safe harbour for complying with an information standard about free range eggs**

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### **Outline of chapter**

1.1 Schedule # to the Bill amends the Australian Consumer Law, which is Schedule 2 to the *Competition and Consumer Act 2010* (ACL). The amendments provide that compliance with an information standard about free range eggs made under the ACL will provide a safe harbour defence to the provisions of the ACL prohibiting false, misleading or deceptive conduct or representations.

1.2 All legislative references in this chapter are to the ACL, unless otherwise specified.

### **Context of amendments**

1.3 Section 134 of the ACL provides that the Minister may make an information standard that specifies particular information must be provided about particular kinds of goods and services. Information standards can prescribe requirements for product descriptions and labelling.

1.4 The Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017 (Information Standard) was registered on the Federal Register of Legislation on 26 April 2017, and commences on 26 April 2018. The Information Standard provides for display and labelling requirements for free range eggs.

1.5 Currently, compliance with the requirements of an information standard made under the ACL is not a defence to an allegation of false, misleading or deceptive conduct under the ACL.

## Summary of new law

1.6 Schedule # to the Bill amends the ACL to provide for a safe harbour defence to an allegation of false, misleading or deceptive conduct where a person has complied with the labelling or display requirements that are specified in the information standard for free range eggs.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Compliance with an information standard for the display and labelling of free range eggs is a safe harbour defence to certain allegations of false, misleading or deceptive conduct or representations.	No equivalent.

## Detailed explanation of new law

### Safe harbour

1.7 Schedule # to the Bill amends the ACL to provide that compliance with an information standard made under section 134 about free range egg labelling or display requirements is a safe harbour defence to an alleged contravention of;

- section 18 (misleading or deceptive conduct);
- paragraph 29(1)(a) (false or misleading representations about goods); or
- paragraph 151(1)(a) (offences relating to false or misleading representations about goods). [*Schedule #, items 1 and 2, subsections 2(1), 137A(1), (3) and (4), ACL*]

1.8 The representations covered by the safe harbour defence are those limited to complying with the labelling or display requirements for free range eggs that are specified in the information standard. Any other conduct, including representations, can contravene the false, misleading or deceptive conduct or representation provisions if it falls outside the scope of the information standard.

## **Evidential burden**

1.9 In proceedings concerning a breach of a prohibition of false, misleading or deceptive conduct or representations, a person seeking to rely on the safe harbour defence bears an evidential burden. *[Schedule #, item 2, subsection 137A(2), ACL]*

1.10 This evidential burden is appropriate because the evidence as to whether a defendant has complied with an information standard and the free range egg labelling or display requirements are specifically within the knowledge and control of the defendant. The practical difficulty and cost associated with investigating whether a defendant has complied with an information standard would constitute a significant hurdle for the prosecution. Requiring the prosecution to adduce evidence of compliance would also undermine the integrity of the relevant provisions as the prosecution would be required to provide evidence to disprove the alleged false, misleading or deceptive conduct or representation.

## **Commencement**

1.11 Schedule # commences on the day after the Bill receives the Royal Assent.



