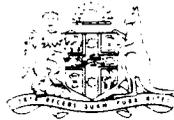


EGG INDUSTRY (REPEAL AND DEREGULATION) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are set out in clause 3 of the Bill. They are:

- (a) to deregulate the egg industry by dismantling the system of control over the production, supply and marketing of eggs and egg products established under the Egg Industry Act 1983 by repealing that Act; and
- (b) to provide for the continued wholesomeness and purity of eggs and egg products in the interests of public health; and
- (c) to provide a scheme for giving financial assistance to certain persons affected by the abolition by the proposed Act of the State Hen Quota established under the repealed Act; and
- (d) to enable a reconstituted New South Wales Egg Corporation to trade in eggs and other products on a competitive basis until such time as it is sold or finally dissolved.

PART 1 - PRELIMINARY

This Part provides for certain preliminary matters, and includes provisions:

- (a) specifying the short title of the proposed Act (clause 1); and
- (b) providing for the commencement, with minor exceptions, of the proposed Act on a day or days to be appointed by proclamation (clause 2); and
- (c) specifying the objects of the proposed Act (clause 3); and
- (d) defining certain expressions, including "marketing", for the purposes of the proposed Act (clause 4).

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**PART 2 - REPEALS AND DISSOLUTION OF
CORPORATION CONSTITUTED UNDER
REPEALED ACT**

This Part provides for the repeal of the Egg Industry Act 1983 and the regulations under it (clause 5) and for the dissolution of the New South Wales Egg Corporation and the Poultry Farmer Licensing Committee (clause 6).

**PART 3 - RECONSTITUTION OF CORPORATION
AND FUNCTIONS UNDER THIS ACT**

This Part, which contains 4 Divisions, provides for the administration of the reconstituted Corporation and specifies its functions. The Corporation will no longer have a monopoly over the marketing of eggs but will be able to market eggs competitively and carry out functions in relation to eggs, egg products and other products so that its resources are utilised until it is sold or finally dissolved.

Division 1 contains clause 7 which constitutes the Corporation and provides that it is a continuation of, and the same legal entity as, the dissolved Corporation.

Division 2 specifies the functions of the Corporation, and includes provisions:

- (a) providing that the Corporation is to have such functions as may be conferred or imposed on it under the proposed or any other Act (clause 8); and
- (b) specifying the extent of the Corporation's marketing functions (clause 9); and
- (c) specifying further ancillary functions to those already enumerated (clause 10).

Division 3 sets out the managerial structure of the Corporation, and includes provisions:

- (a) constituting a New South Wales Egg Corporation Board consisting of the Managing Director and 3 other members appointed by the Minister (clause 11); and
- (b) specifying that the function of the Board is to determine the policies of the Corporation (clause 12); and
- (c) providing that there is to be a Managing Director of the Corporation appointed by the Minister (clause 13); and
- (d) specifying that the function of the Managing Director is to manage and control the Corporation in accordance with the policies of the Board and the directions of its Chairperson (clause 14); and
- (e) providing that the Board is subject to the control and direction of the Minister for Agriculture and Rural Affairs (clause 15); and
- (f) requiring the Corporation to supply certain information to the Minister if required to do so (clause 16); and

- (g) enabling the Corporation to delegate its functions (clause 17).

Division 4 deals with the staff of the Corporation. Staff formerly employed by the Corporation to be dissolved by the proposed Act are to automatically become staff of the new Corporation (clause 6, Schedule 5). The Division includes provisions:

- (a) enabling the Corporation to employ staff (clause 18); and
- (b) enabling the Corporation to fix the salary, wages and conditions of employment of its staff (clause 19); and
- (c) enabling regulations to be made relating to the employment of the staff (clause 20); and
- (d) enabling the Corporation to use the staff or facilities of various bodies (clause 21); and
- (e) enabling the Corporation to engage consultants (clause 22).

PART 4 - SALE OF CORPORATION'S BUSINESS UNDERTAKING AND DISSOLUTION OF CORPORATION

This Part authorises the sale of the business undertaking of the Corporation. It authorises the Minister to sell the whole or part of the undertaking. The sale may be effected by a direct sale of assets etc. to a purchaser or by the sale of the shares in a subsidiary company controlled by the Minister to which the assets etc. have been transferred. The proceeds of the sale are to be paid into the Consolidated Fund.

The Part also provides for the dissolution of the Corporation after the sale or if no sale is effected.

Division 1 contains clause 23 which defines certain expressions, including "assets" and "business undertaking", for the purposes of the proposed Part.

Division 2 sets out the 2 alternative procedures for sale of the Corporation, and includes provisions:

- (a) authorising the Minister to enter into an agreement for the sale of all or part of the Corporation's business undertaking (clause 24); and
- (b) enabling the Minister to determine the manner in which the sale is to be conducted and providing that the Chairperson of the Board is to be the agent for the sale (clause 25); and
- (c) authorising the sale of the whole or part of the undertaking directly to a purchaser (clause 26); and
- (d) authorising the sale by means of a sale of shares in a subsidiary company to which the whole or part of the undertaking has been transferred (clause 27); and
- (e) providing for the vesting of the Corporation's assets, rights and liabilities in the purchaser to whom the undertaking is sold or the subsidiary company to which the undertaking is transferred prior to the sale (clause 28);

(The proposed clause is intended to facilitate the sale by avoiding the necessity for extensive documentation and the exercise by third parties of

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rights to renegotiate loans etc. as a result of the change in ownership of the undertaking).

Division 3 makes provision for matters ancillary to or consequential on the sale, and includes provisions:

- (a) providing for employment of the staff of the Corporation in some instances by the person or company that acquires the business undertaking (clause 29); and
- (b) enabling the Treasurer to require the Corporation to pay from its cash reserves into the Consolidated Fund an amount determined by the Treasurer to be surplus to its requirements (clause 30); and
- (c) providing for the closure of the Egg Corporation Fund in the Special Deposits Account (clause 31); and
- (d) requiring the proceeds of sale (after deducting the costs of the sale) to be paid into the Consolidated Fund (clause 32); and
- (e) providing that stamp duty may be paid on a sale of the undertaking to a purchaser despite the statutory vesting (associated documents to give effect to the statutory vesting are not to be dutiable and the payment of stamp duty on the transfer of shares in a subsidiary company is preserved) (clause 33); and
- (f) providing that the disclosure of information for the purposes of the sale is not to be regarded as a breach of contract or confidence or other civil wrong or as a contravention of certain statutory provisions relating to secrecy (clause 34).

Division 4 provides for the dissolution of the Corporation following the sale or if there is no sale, and includes provisions:

- (a) providing for the dissolution (clause 35); and
- (b) providing that the persons who, before the dissolution, held office as members of the Board of the Corporation cease to hold office and are not entitled to any remuneration or compensation because of that loss (with the exception of the Managing Director who is to be entitled to the same compensation as statutory officers removed under Part 8 of the Public Sector Management Act 1988) (clause 36).

PART 5 - HEN QUOTA COMMITTEE

This Part establishes a Hen Quota Committee which is to administer the Hen Quota Payment Scheme proposed to be established by the Act, and includes provisions:

- (a) constituting the Committee and providing that it has the functions conferred on it by the proposed or any other Act (clause 37); and
- (b) enabling the Committee to arrange for the use of staff of various bodies (including the Corporation) (clause 38); and
- (c) providing that the Committee is to consist of 3 members appointed by the Minister (one of whom is to have legal qualifications and one of whom is to have qualifications or experience in the field of finance) and the

- Director-General of the Department of Agriculture and Fisheries or a nominee (clause 39); and
- (d) ensuring that none of the members of the Committee have a personal interest in payments under the Scheme (clause 39 (3)); and
 - (e) specifying the principal function of the Committee (clause 40); and
 - (f) providing for the dissolution of the Committee once it has fulfilled that function (clause 41).

PART 6 - HEN QUOTA PAYMENT SCHEME

This Part, which contains 5 Divisions, sets up a Scheme to provide financial assistance to certain persons shown to be producers on the Register of Licences or to be lessors of hen quotas, following the abolition by the proposed Act of the State Hen Quota. The Scheme recognises the practice within the egg industry of regarding hen quota as a form of property capable of being leased or otherwise dealt with.

Payments are to be made to persons determined to be eligible under the Scheme at a basic rate of \$15 per hen quota, less any amounts owed to the Corporation by the claimant (including any amounts owed to the Corporation as collecting agent for the Commonwealth of levies payable under the Poultry Industry Levy Act 1965 of the Commonwealth).

Division 1 contains clause 42 which defines certain expressions for the purposes of the Part.

Division 2 sets out the basic features of the Scheme, and includes provisions:

- (a) constituting the Scheme and specifying its purpose (clause 43); and
- (b) specifying the eligibility criteria for payment under the Scheme and providing that the Committee may generally rely on the Register of Licences in determining eligibility (clause 44); and
- (c) making transitional arrangements in relation to agreements to transfer hen quota approved by the Poultry Farmer Licensing Committee under the Egg Industry Act 1983 before the relevant day for the purpose of determining eligibility under the proposed Scheme (clause 45); and
- (d) enabling the Minister to specify a final date for determination of claims under the Scheme (clause 46); and
- (e) specifying the persons eligible to make a claim under the Scheme (clause 47); and
- (f) providing for the Committee to determine how claims are to be made (clause 48); and
- (g) enabling the Committee to set a date by which claims must be made and requiring them to publicise the date (clause 49); and
- (h) enabling the Committee to require a claimant to provide evidence to support a claim or to assist in establishing entitlement to a particular hen quota (clause 50); and

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- (i) requiring the Committee to investigate all claims and enabling them to allow or disallow any particular or all claims (clause 51); and
- (j) requiring the Committee to notify a claimant of its determination (clause 52); and
- (k) enabling the claimant to seek a review of the determination (clause 53); and
- (l) requiring the Committee to review its earlier determination by reconsidering the evidence on which it was based and enabling the Committee to formally hear the matter if it believes a hearing is necessary (clause 54).

Division 3 contains provisions specifying the manner of holding hearings and the powers of the Committee in regard to such matters as the summoning of witnesses and taking of evidence (clauses 55-58).

Division 4 contains clause 59 which enables a claimant to appeal to the Supreme Court on a question of law arising out of a hearing within 21 days of receiving notice of the Committee's decision on its review of a determination under the Scheme.

Division 5 provides details as to the payments to be made under the Scheme, and includes provisions:

- (a) specifying the manner of calculating payments (clause 60); and
- (b) describing the nature of the payments and enabling the Committee to require a claimant to execute an agreement in the nature of a release before receiving any payment (clause 61); and
- (c) ousting any challenges, appeals or similar actions regarding determinations of the Committee under the proposed Part (clause 62).

PART 7 - EGGS AND EGG PRODUCTS

The Egg Industry Act 1983 provided for complete regulation of all aspects of the egg industry, including matters relating to the purity and wholesomeness of eggs and egg products. This Part will provide for limited regulation of the sale of hen eggs in the interests of public health, and includes provisions:

- (a) defining certain expressions for the purposes of the proposed Part (clause 63); and
- (b) creating an offence of persons (other than wholesalers or manufacturers) selling eggs which fail to comply with the health standards to be prescribed for eggs under the proposed Part (clause 64); and
- (c) enabling regulations to be made prescribing those standards and for related purposes (clause 65); and
- (d) providing for the employment of inspectors to ensure the standards are complied with (clause 66); and

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- (e) specifying the powers of inspectors (clause 67); and
- (f) providing for the issue of search warrants to inspectors (clause 68).

PART 8 - FINANCE

This Part contains financial provisions relating to the Corporation, and includes provisions:

- (a) establishing an Egg Corporation Fund (clause 69); and
- (b) providing for the payment into the Fund of money received by or on account of the Corporation (clause 70); and
- (c) providing for the payment from the Fund of all amounts required for the administration of the Act (clause 71); and
- (d) enabling the Corporation to invest money (clause 72); and
- (e) providing for the banking of money received on account of the Fund (clause 73); and
- (f) providing for the financial year of the Corporation (clause 74).

PART 9 - MISCELLANEOUS

This Part deals with miscellaneous matters, and includes provisions:

- (a) excluding certain persons from personal liability for matters or things done in good faith for the purpose of executing the proposed Act (clause 75); and
- (b) providing for the manner of service of documents on the Corporation (clause 76); and
- (c) providing for the recovery of charges, fees and money by the Corporation (clause 77); and
- (d) making it an offence to disclose certain information obtained in connection with the administration and execution of the proposed Act (clause 78); and
- (e) providing that proceedings for offences against the proposed Act or regulations are to be dealt with summarily before a Magistrate (clause 79); and
- (f) enabling the Governor to make regulations for the purposes of the proposed Act, including regulations imposing penalties not exceeding 5 penalty units (\$500) (clause 80); and
- (g) providing for the enactment of savings and transitional provisions (clause 81); and
- (h) amending the Search Warrants Act 1985 to apply its provisions to search warrants sought by inspectors under proposed Part 7 (clause 82); and
- (i) amending the Public Authorities (Financial Arrangements) Act 1987 to enable the Corporation or Hen Quota Committee to borrow in accordance with that Act (clause 83); and
- (j) amending the Statutory and Other Offices Remuneration Act 1975 to provide for the determination of the salary of a full-time Chairperson of the Board (clause 84); and

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- (k) providing for the amendment of Schedule 3 to the proposed Act if the proposed Senior Executive Service is established (clause 85); and
- (l) amending the Ombudsman Act 1974 to ensure that the actions of the Committee cannot be challenged under that Act (clause 86).

SCHEDULES

Schedule 1 contains provisions relating to members of the Board.

Schedule 2 contains provisions relating to the procedure of the Board.

Schedule 3 contains provisions relating to the Managing Director.

Schedule 4 applies appropriate provisions of Schedules 1 and 2 to the Committee and its members.

Schedule 5 contains savings and transitional provisions, including a provision that enables the regulations under the proposed Act to make further provisions of savings or transitional nature as a consequence of the enactment of the proposed Act.