

SOUTH AUSTRALIA

MARKETING OF EGGS ACT, 1941

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 October 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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APPENDIX LEGISLATIVE HISTORY

MARKETING OF EGGS ACT, 1941

being

Marketing of Eggs Act, 1941, No. 41 of 1941
[Assented to 20 November 1941]

as amended by

Marketing of Eggs Act Amendment Act, 1942, No. 3 of 1942 [Assented to 10 September 1942]
Marketing of Eggs Act Amendment Act, 1945, No. 30 of 1945 [Assented to 3 January 1946]
Marketing of Eggs Act Amendment Act, 1949, No. 5 of 1949 [Assented to 29 September 1949]
Marketing of Eggs Act Amendment Act, 1954, No. 10 of 1954 [Assented to 30 September 1954]
Marketing of Eggs Act Amendment Act, 1957, No. 9 of 1957 [Assented to 26 September 1957]
Marketing of Eggs Act Amendment Act, 1959, No. 17 of 1959 [Assented to 19 November 1959]
Marketing of Eggs Act Amendment Act, 1963, No. 17 of 1963 [Assented to 7 November 1963]
Marketing of Eggs Act Amendment Act (No. 2), 1963, No. 61 of 1963 [Assented to 5 December 1963]
Marketing of Eggs Act Amendment Act, 1965, No. 19 of 1965 [Assented to 10 November 1965]
Marketing of Eggs Act Amendment Act, 1966, No. 73 of 1966 [Assented to 1 December 1966]
Marketing of Eggs Act Amendment Act, 1972, No. 103 of 1972 [Assented to 16 November 1972]¹
Statute Law Revision Act, 1973, No. 77 of 1973 [Assented to 6 December 1973]
Marketing of Eggs Act Amendment Act, 1980, No. 11 of 1980 [Assented to 3 April 1980]
Marketing of Eggs Act Amendment Act, 1983, No. 118 of 1983 [Assented to 22 December 1983]
Marketing of Eggs Act Amendment Act, 1987, No. 71 of 1987 [Assented to 5 November 1987]²

¹ Came into operation 18 January 1973: *Gaz.* 18 January 1973, p. 190.

² Came into operation 3 December 1987: *Gaz.* 3 December 1987, p. 1733.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act relating to the marketing of eggs.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *Marketing of Eggs Act, 1941*.

Interpretation

2. (1) In this Act, unless the context otherwise requires or some other meaning is clearly intended—

"the board" means The South Australian Egg Board constituted under this Act:

* * * * *

"eggs" means eggs of fowls, and the yolks and whites of such eggs, in any of the following forms namely:—eggs in shell, liquid whole eggs, liquid whites of eggs, liquid yolks of eggs, dried whole eggs and dried separated whites and yolks of eggs:

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"hen" means a female domesticated fowl of the genus *gallus domesticus* that is not less than 22 weeks old:

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"member" includes chairman:

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"producer" means a person who keeps more than fifty female fowls which have commenced laying eggs:

"Producer Agent" means a Producer Agent licensed by the board under section 20 of this Act whose licence is for the time being in force:

"registered agent" means agent of the board for the time being registered under this Act:

"sell" includes barter; and "sale" has a corresponding meaning.

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The South Australian Egg Board

The South Australian Egg Board

4. (1) The South Australian Egg Board is established.

(2) The board is a body corporate.

(3) Where an apparently genuine document purports to bear the common seal of the board, it will be presumed in legal proceedings, in the absence of proof to the contrary, that the document has been duly executed by the board.

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Members of the board

5. (1) The board consists of five members appointed by the Minister and of these—

(a) two must be appointed on the nomination of the United Farmers and Stockowners of S.A. Incorporated;

(b) one must be a person with experience in financial management;

and

(c) one must be appointed to represent the interests of consumers of eggs.

(2) A member of the board will be appointed to preside at its meetings.

(3) A member will be appointed for a term not exceeding four years on such conditions as the Minister determines and, at the expiration of that term, will be eligible for reappointment.

(4) The Minister may appoint a person to be a deputy of a member and if the member is, for any reason, absent or unable to act, the deputy may act in the member's place.

(5) The requirement of nomination made by this section in relation to the appointment of a member extends to the appointment of the member's deputy.

(6) The Minister may remove a member from office for—

(a) a breach of, or non-compliance with, the conditions of the member's appointment;

(b) mental or physical incapacity to carry out official duties satisfactorily;

(c) neglect of duty;

or

(d) dishonourable conduct.

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(7) The office of a member becomes vacant if the member—

- (a) dies;
- (b) completes a term of office and is not reappointed;
- (c) attains the age of 65;
- (d) resigns by written notice to the Minister;

or

(e) is removed from office by the Minister pursuant to subsection (5).

(8) Upon the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

Procedures at meetings of the board

6. (1) Three members of the board (of whom at least one is a member appointed on the nomination of the United Farmers and Stockowners of S.A. Incorporated) constitute a quorum of the board.

(2) Meetings of the board will be chaired by the member appointed to preside or, in the absence of that member, by a member chosen by those present at the meeting.

(3) A question arising before the board will be determined in accordance with the opinion of a majority of the members present or, where they are equally divided in opinion, in accordance with the opinion of the person presiding at the meeting.

(4) The board must cause accurate minutes to be kept of the business conducted at its meetings.

(5) Subject to this Act, the procedure for the calling of meetings of the board and the conduct of business at meetings of the board will be determined by the board.

Validity of acts of Board and immunity of members

7. (1) No act or proceeding of the board is invalid by reason only of a vacancy in the office, or a defect in the appointment, of a member.

(2) No liability attaches to a member for any act or omission by the member, or by the board, in good faith and in the exercise, or purported exercise, of powers or functions or in the discharge, or purported discharge, of duties under this Act.

(3) A liability that would, but for subsection (2), attach to a member of the board attaches instead to the Crown.

Personal interest of member

8. (1) A member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the board is disqualified from participating in the board's consideration of that matter.

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(2) A member who is a producer is not disqualified under subsection (1) by reason of an interest that the producer shares with all other producers.

Remuneration, etc., of members

9. The board will pay to its members such remuneration, allowances and expenses as are determined by the Minister.

Powers of the board

10. For the purpose of carrying out its functions, the board may—

- (a) acquire, hold, deal with and dispose of real and personal property;
- (b) enter into any kind of contract or arrangement;
- (c) acquire or incur any other rights or liabilities;
- (d) exercise such other powers as are vested in it under this Act or are necessary for, or are incidental to, the efficient discharge of its functions under this or any other Act.

Staff

11. (1) The board may appoint such staff as is necessary or expedient for the purposes of this Act.

(2) The board may, with the approval of the Minister, make use of the services of employees, or any facilities, of the State.

Accounts and audit

12. (1) The board must cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the board.

Report

13. (1) The board must, on or before the thirtieth day of September in each year, deliver to the Minister a report upon the administration of this Act and the *Egg Industry Stabilization Act, 1973*, during the period of 12 months that ended on the preceding thirtieth day of June.

(2) The Minister must, within 12 sitting days after delivery of the report, cause a copy of the report to be laid before each House of Parliament.

Report as to efficiency

14. (1) Every three years the Minister must appoint a suitable person to examine the degree of efficiency with which the board carries out its functions under this Act and the *Egg Industry Stabilization Act, 1973*.

(2) The person appointed under subsection (1) must deliver a report to the Minister on his or her findings and the Minister must, within 12 sitting days after delivery of the report, cause a copy of the report to be laid before each House of Parliament.

(3) The costs of the examination and the report will be met by the Board from its funds.

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Registered Agents

Registered agents of board

19. (1) For the purposes of this Act the board may register suitable persons as its agents.

(2) Any person desiring registration as an agent of the board shall apply in writing to the board for such registration, and give the board such information relevant to his application as the board requires.

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(4) The board shall have a discretion to grant or refuse registration to any applicant therefor.

(5) The registration of an agent shall remain in force until it is cancelled, or the agent surrenders it, or dies.

(6) The board may cancel the registration of any agent if he has failed in any way to comply with this Act or the regulations or to carry out any of his duties as an agent of the board, or if he becomes bankrupt, or in any way, as a debtor, takes the benefit of the laws relating to bankruptcy.

(6a) An agent or former agent aggrieved by a decision of the board under subsection (6) of this section may in the prescribed manner and within the prescribed time appeal to the Minister.

(6b) The Minister may hear and determine an appeal made pursuant to subsection (6a) of this section or the Minister may appoint some competent person to hear and determine the appeal.

(6c) The Minister or the person referred to in subsection (6b) of this section may by direction confirm, annul or vary the decision of the board appealed against and the board shall forthwith give effect to that direction.

(6d) A direction given under subsection (6c) of this section is final.

(7) Every registered agent shall be entitled to take delivery of eggs from producers on behalf of the board, and shall perform such other duties and functions on behalf of the board as the board directs.

Producer Agents

20. (1) For the purposes of this Act the board may licence suitable persons to be Producer Agents.

(2) A licence shall be in the prescribed form and shall be issued subject to such terms and conditions as are prescribed or as are imposed by the board.

(3) The fee for a Producer Agent Licence shall be determined in the prescribed manner.

(4) A person desiring a Producer Agent Licence shall make application in the prescribed form.

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(5) The board shall have a discretion to grant or refuse a Producer Agent Licence to any applicant therefor but shall not capriciously refuse an application.

(6) Subject to this section, a licence under this section shall remain in force until it is cancelled or the Producer Agent surrenders it or dies.

(7) The board may cancel the licence of any Producer Agent who has failed in any way to comply with this Act or with any term or condition of the licence or to carry out any of his duties as such a Producer Agent or who has become bankrupt or in any way, as a debtor, has taken the benefit of the laws relating to bankruptcy.

(8) A Producer Agent or former Producer Agent aggrieved by a decision of the board under subsection (7) of this section may, in the prescribed manner and within the prescribed time, appeal to the Minister.

(9) The Minister may hear and determine an appeal made pursuant to subsection (8) of this section or the Minister may appoint some competent person to hear and determine the appeal.

(10) The Minister or the person referred to in subsection (9) of this section may by direction confirm, annul or vary the decision of the board appealed against and the board shall forthwith give effect to that direction.

(11) A direction given under subsection (10) of this section is final.

Control and Marketing of Eggs

Duty to sell and deliver eggs to board

21. (1) On and from the day of commencement of the *Marketing of Eggs Act Amendment Act, 1972*, a producer shall not sell or deliver any eggs to any person other than the board or registered agent of the board and a person other than the board or a registered agent of the board shall not purchase or take delivery of eggs from a producer, but this subsection does not apply to or in relation to—

(a) any eggs sold or delivered to any person by a Producer Agent under and in accordance with terms and conditions of his licence;

or

(b) any eggs sold or delivered by a producer in accordance with an exemption under section 23 of this Act or otherwise disposed of by a producer in the manner provided for in that section.

(2) The board shall accept delivery of all eggs tendered to it pursuant to this Act if such eggs are of merchantable quality and comply with any prescribed requirements.

(3) Without in any way limiting the ordinary meaning of the expression "merchantable quality" in subsection (2) of this section the regulations may prescribe standards of merchantable quality of eggs for the purposes of this Act and eggs that do not attain or comply with those standards shall not be of merchantable quality for the purposes of this Act.

Ungraded eggs not to be sold in shops

21a. A person shall not offer or expose for sale any eggs in any shop unless those eggs bear a stamp evidencing the fact that they have been graded under and in accordance with this Act.

Effect of delivery of eggs to board

22. All eggs delivered to the board by producers and accepted by the board shall thereupon be vested in and become the absolute property of the board freed and discharged from all mortgages, charges, liens, pledges, interests, trusts, contracts, and encumbrances affecting them; and the rights and interests of every person to or in the eggs shall thereupon be converted into a claim for payment therefor in accordance with the provisions of this Act.

Exemptions

23. (1) The board may by notice published in the *Gazette*, or by written notice given to the producers thereby affected exempt from the operation of sections 21, 21a or 22 of this Act—

- (a) any producers of small quantities of eggs;
- (b) any specified sales or deliveries of eggs or all sales and deliveries complying with any specified conditions.

(2) The board may by notice published or given as mentioned in subsection (1) of this section at any time revoke or vary any exemption for the time being in force under that subsection.

(3) This Act shall not apply to any eggs given *bona fide* by the producer thereof to any person in reasonable quantities, provided that such eggs are not for re-sale.

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Mode of delivery to board

24. (1) Delivery of eggs to the board may be effected by delivering the eggs to a registered agent of the board.

(2) The tendering of eggs by a producer or person on his behalf, to a registered agent of the board for acceptance shall be *prima facie* evidence of an intention to deliver the eggs to the board to be disposed of by the board in accordance with this Act.

Issue of certificate to person other than producer

25. A producer may prior to or at the time of delivering eggs to the board notify the board that the eggs are delivered on behalf of some other person and that the certificate for the eggs is to be issued to that person.

Certificate to produce upon delivery

26. (1) As soon as practicable after the receipt of any eggs the board shall issue to the person entitled thereto a certificate in the prescribed form certifying that the eggs have been delivered and that payment therefor is to be made to such person or his assignee.

(2) The person entitled to a certificate under this section shall be—

- (a) the producer by whom the eggs were delivered; or

- (b) if the producer has notified the board that the certificate is to be issued to any other person, that other person.

(3) A person to whom a certificate has been issued, or to whom the rights under a certificate have been assigned, may assign his rights under the certificate by endorsement thereon specifying the name of the assignee.

Sale of eggs by board

27. (1) The board shall sell all eggs of which it becomes the owner under this Act to such persons and at such prices and on such terms as it deems proper.

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(3) In selling such eggs the board shall pay due regard to the reasonable trade requirements of the merchants and associations who in the course of their business sell eggs by wholesale or retail.

Grading

28. (1) The board shall, unless in any case it is inconvenient or impracticable to do so, grade or cause to be graded all eggs delivered to it. The grades of eggs and the characteristics of the eggs of each grade shall be as prescribed by regulation.

(2) The price paid by the board to producers for eggs which have been graded, shall vary according to the grade of the eggs.

Advances to producers on account of price

29. Upon acceptance of any eggs the board shall make an advance to the person holding the certificate issued for those eggs of such amount on account of the price of the eggs as the board thinks fit.

Settlements with producers

30. (1) The board shall determine what shall be the accounting periods for the purpose of determining and paying the amounts owing to producers and others for eggs delivered to the board.

(2) The board shall, at or after the end of each accounting period, make payments to all holders of certificates for eggs delivered to the board during that period. The payments so to be made shall be based upon—

- (a) the quantity and, in the case of eggs which have been graded, the grades of the eggs so delivered;
- (aa) the characteristics or qualities of eggs, the development of which is, in the opinion of the board, desirable to encourage;
- (b) the net proceeds of the sales of all eggs of the corresponding grades sold by the board during the accounting period;
- (c) the amount of the advances made to the holders of the certificates;
- (d) any other circumstances affecting the amount of the payments.

(3) The board may deduct from the proceeds of the sale of any eggs, and retain, a sum equal to the amount of money spent by the board in and about the transport, storage, grading, drying, pulping, packing and marketing of the eggs, and a contribution towards the cost of the administration of this Act and any money necessary to repay any advance made to the board and interest on such advance.

(4) For the purposes of this Act the decision of the board as to—

- (a) the grade of any eggs delivered to the board;
- (b) the amounts to be deducted under this section,

shall be final and conclusive.

Non-liability of board for payments in good faith

31. Where the board in good faith and without negligence has made any payment to the person appearing from any certificate to be entitled to such payment, the board shall not be liable to make any payment to any other person for the eggs mentioned in the certificate.

Delivery of certain eggs for grading and stamping

31a. (1) A person to whom any eggs are sold or delivered in the course of trade and commerce between the States may deliver those eggs to the board for grading and stamping.

(2) The board shall cause all eggs delivered to it pursuant to subsection (1) of this section to be graded and stamped as if they were eggs sold or delivered to the board pursuant to subsection (2) of section 21 of this Act.

(3) When eggs delivered to the board pursuant to subsection (1) of this section have been graded and stamped as provided in subsection (2) of this section the board shall cause those eggs to be re-delivered, at the place where they were so delivered, to—

- (a) the person who so delivered those eggs;
- or
- (b) a person nominated by the person who so delivered those eggs.

(4) There shall be payable to the board, in respect of the grading and stamping of eggs delivered pursuant to subsection (1) of this section, by the person who so delivered those eggs, a charge of an amount fixed by the board as being, in the opinion of the board, an amount equal to the cost of the grading and the stamping of the eggs.

Prohibition on the sale of certain eggs

31b. (1) A person shall not sell by retail any eggs which may be delivered to the board pursuant to subsection (1) of section 31a of this Act for grading and stamping unless those eggs have been graded and stamped as provided in that section.

(2) In proceedings for an offence that is a contravention of subsection (1) of this section it shall lie upon the defendant to prove that the sale was not a sale by retail.

(3) In this section "sale by retail" means a sale made in the reasonable expectation by the seller that the eggs the subject of the sale are to be used or consumed by the buyer and "sell by retail" has a corresponding meaning.

Miscellaneous provisions

Offences and penalties

32. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

(2) Any person guilty of any offence against this Act shall be liable to a fine not exceeding two hundred dollars.

(3) Proceedings for offences against this Act shall be heard and determined summarily.

Evidence that defendant was a producer

32a. In any proceedings for an offence against this Act an allegation that at the material time the defendant was a producer shall be *prima facie* evidence of the fact so alleged.

Service of notices

33. Except where this Act otherwise provides, any notice required by this Act to be given to any person, may be served personally or by post.

Regulations

34. The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, but without limiting the generality of the foregoing powers—

- (a) for requiring any persons to furnish the board with any information relating to eggs;
- (aa) for regulating and controlling the conditions under and the circumstances in which eggs are stored, displayed for sale, sold or delivered;
- (ab) for regulating and controlling the packing of eggs and the type or kind of packing material that may be used for packing eggs;
- (b) for enabling the board or any person authorized by it to inspect any records or accounts relating to eggs or any premises on which eggs are produced, stored, graded, packed, dried, pulped, or otherwise treated;
- (ba) for regulating, controlling and licensing the drying, pulping or other processing of eggs and for regulating and controlling matters incidental to such drying, pulping or other processing;
- (c) for prescribing the duties, functions, and conduct of registered agents and Producer Agents;
- (d) for prescribing penalties not exceeding in any case a fine of two hundred dollars recoverable summarily for breach of the regulations.

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APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 108.

Section 2(1):	definition of "declared organization" repealed by 71, 1987, s. 3(a) definition of "eligible candidate" repealed by 71, 1987, s. 3(a) definition of "levy day" repealed by 71, 1987, s. 3(a) definition of "Minister" repealed by 71, 1987, s. 3(a) definition of "the appointed day" repealed by 71, 1987, s. 3(a) definition of "the Commonwealth Acts" repealed by 71, 1987, s. 3(a) definition of "hen" substituted by 71, 1987, s. 3(b) definition of "producer" amended by 71, 1987, s. 3(c)
Section 2(2):	repealed by 71, 1987, s. 3(d)
Section 2a:	repealed by 71, 1987, s. 4
Section 3:	repealed by 71, 1987, s. 5
Section 4:	amended by 118, 1983, s. 2; substituted by 71, 1987, s. 6
Sections 4a - 4d:	repealed by 71, 1987, s. 6
Sections 5 - 8:	substituted by 71, 1987, s. 6
Section 9:	amended by 11, 1980, s. 2; substituted by 71, 1987, s. 6
Sections 10 - 14:	substituted by 71, 1987, s. 6
Sections 15 - 18:	repealed by 71, 1987, s. 6
Section 21a:	amended by 71, 1987, s. 7
Section 23(4):	repealed by 71, 1987, s. 8
Section 34(e), (f) and (g):	repealed by 71, 1987, s. 9
Schedule:	repealed by 71, 1987, s. 10